

## HEARING COMMENCES 11 NOVEMBER 2019 AT 9.01 AM

## KARAKIA TĪMATANGA (DR RUAKERE HOND)

## (09:01) DR RUAKERE HOND: (MIHI)

*Karanga te rā, karanga[h]ia mai ngā i[h]i o te rā, kia [h]ui te ora, kia [h]ui te māia, kia [h]ui te manawanui, kia manawanui mai nā, me [h]ui atu anō ki tēnei mea te kōrero. Kia wetekina te pō, te pō uriuri, te pōtangotango, te pōauau, otirā te pōkaika[h]a, kia noho nei ko tēnei mea te māramatanga ki runga anō i a tātou. Tākiri mai rā ko te ata, tēnā ka ao, ka ao, ka awatea. [H]orahia mai te ao mārama ki runga i tēnei minenga i runga i tēnei [h]ui[h]uinga tangata, ki ngā w[h]akaaro i [h]aere mai ki runga i a Pōneke i tēnei wā. Nō reira nau mai, e rarau, e rarau mai rā. [Interpreter: And as the day dawns upon, so that we are able to gather with heart and vigour, and of course which brings us here to this judicial procedure. Through the many layers of darkness, and then we find light in order to find a meaningful way, a light and opening. Piercing of the dark into the early morn, and with that enlightenment and insight which brings us all together, brings us here to Wellington, and again a warm welcome to all who have gathered here.]*

*E rarau ki runga anō i ngā aituā, anā, e [h]aere tonu ana ngā kōrero. W[h]akarere atu i ērā anō o ngā kōrero i roto i ngā tau kei konei tonu rātou, ia kupu kei runga i ia w[h]ārangi e whakaari mai ana. Nō reira [h]aere mai rā kia piri, kia tata ki tēnei tēpu, ana kia no[h]o kia – e tae mai ai me ngā taringa me ngā karu, ana kia kite atu i ngā kōrero e rere tonu ana. Nō reira e mi[h]i kau ana ki ngā ta[h]a katoa o tēnei anō o ngā [h]ononga, ngā [h]ononga o mua e w[h]akaari ana i a koutou e no[h]o tahi mai ana, tēnā koutou, tēnā koutou, e rarau. [Interpreter: And again we must reflect on our dear loved ones, and of course those who have resonance with this particular here, and we also think of them. So let's gather, listen, listen to what needs to be discussed in this forum, so we can see evidence that will be presented to us. And of course I wish to weave in all the many interconnectedness and interest that bring us here into this space. Welcome.]*

## MŌTEATEA

### DR RUAKERE HOND:

*Titiro mai ki tēnei, te [h]unga nei kua ako i te waiata o Pari[h]aka hei tautoko mai i a au i tēnei rā. Kua [h]ari mai a To[h]u rāua ko Te W[h]iti ki roto i te w[h]are kia no[h]o nā ko tēnei kōrero, “He maungārongo i runga i te w[h]enua, [h]e maungārongo ki runga i a tātou te tangata i te rangi nei.” Tēnā koutou, tēnā koutou, tēnā tātou. Ka tuku atu nei [h]e kōrero anō tōhito o tētahi, karakia rānei, āpiti atu, ana tēnā ka tuku atu i tēnei wā. [Interpreter: We have Tohu and Te Whiti in this famous song, we bring it here, and of course what it resonates is peace and goodwill amongst us all. So I wish to hand matters over to the elder who will lead us in a prayer accordingly.]*

0905

### MIHI (KAUMĀTUA)

### HĪMENE (HE HŌNORE)

### KARAKIA TĪMATANGA (KAUMĀTUA)

#### (09:09) JUDGE WAINWRIGHT: (MIHI)

*Tēnā anō tātou i runga i te āhuatanga o tēnei wiki, te wiki whakamutunga o te tono o Wai 85 i mua i te Taraipiunara nei. Nā reira nau mai ki tēnei nohonga motuhake o mātou. Te mea tuatahi kia whakamōhio mai ko wai koutou ngā rōia. [Interpreter: Again welcome, the final week hearing in particular to Wai 85 presented before the Tribunal at this point in time. Welcome again to these hearings. Firstly, can we have appearances please.]*

#### (09:10) MATANUKU MAHUIKA: (MIHI, APPEARANCE)

*Tēnā koe e te Kaiwhakawā, koutou ko Te Rōpū Whakamana i te Tiriti. Just making an appearance. A heoi anō, Matanuku Mahuika tēnei e tū ake nei. Ki taku taha ko Tara Hauraki me Nathan Milner, ko mātou ngā rōia mō te kaitono o Wai 85, Wairarapa Moana Incorporated. Nā reira tēnā koe, tēnā koutou, tēnā tātou. [Interpreter: Again welcome to you, Judge. And the Waitangi Tribunal.]*

I make an appearance. Matanuku Mahuika, Tara Hauraki and Mr Milner, we represent Wai 85 Wairarapa Moana Incorporated again. Great to see you all.]

**JUDGE WAINWRIGHT:**

Tēnā koutou.

**(09:10) ASHER EMANUEL: (MIHI, APPEARANCE)**

Tēnā koutou. Asher Emanuel for the Settlement Trust.

**JUDGE WAINWRIGHT:**

Sorry, I cannot hear you.

**ASHER EMANUEL:**

Tēnā koutou. Asher Emanuel for the Settlement Trust.

**JUDGE WAINWRIGHT:**

Kia ora.

**ASHER EMANUEL:**

Kia ora.

**(09:10) BADEN VERTONGEN: (MIHI, APPEARANCE)**

*Tēnā koutou. Ko Baden Vertongen tōku ingoa, for the Raukawa Settlement Trust.*

**(09:10) ANDREW IRWIN: (MIHI, APPEARANCE)**

*A kāti tēnā rawa atu koutou katoa Te Rōpū Whakamana i te Tiriti. Ko Irwin tōku ingoa, kei konei mō te Karauna. Kei taku taha ko Ms O'Driscoll, ko Mr Graham hoki. [Interpreter: I wish to acknowledge all you present, and again to the Waitangi Tribunal. We are Irwin, representing the Crown, Ms O'Driscoll and Mr Graham.]*

**JUDGE WAINWRIGHT:**

Mr?

**ANDREW IRWIN:**

Graham.

**JUDGE WAINWRIGHT:**

Graham. Tēnā koutou.

**ANDREW IRWIN:**

Tēnā koutou.

**JUDGE WAINWRIGHT:**

All right. There are just a few interlocutory matters that we should begin with. The first is that the evidence of Murray Hemi was filed on Friday. I have a hardcopy of it here. Its lateness means that we will entertain any applications for questions to be submitted in writing after the hearing because these are detailed matters to which Mr Hemi's evidence addresses itself and it is appropriate that people would have the opportunity to consider it more than just over the weekend. So, that's the first thing.

The second thing is that Mr Emanuel, you will be aware that the Wai 85 applicant filed with the Tribunal an application for the Tribunal to consider whether the Settlement Trust, now having become itself effectively an applicant, and in light of the memorandum directions that the Tribunal produced before closings, to put before this inquiry comparable information to that which the Settlement Trust asked Wai 85 to produce earlier on, and I cannot really see any reason why that would not be information that the Settlement Trust could and should provide. Do you have a contrary view?

**ASHER EMANUEL:**

Kia ora Your Honour. The memorandum which we filed on 5 November sets out some of those reasons, and firstly, just in terms of the relevance and rationale we referred to the basis that the Mangatū Tribunal set out for requesting that information and pointed to the evidence that's already before the Tribunal in this inquiry from Aunty Marama Tuuta about the population size of the Settlement Trust about the geographic distribution of affiliations as

among the hapū karanga, and in view, Your Honour, of the privacy obligations which the Settlement Trust takes quite seriously.

Counsel advance the argument that on balance, that evidence might suffice to assist the Tribunal in reaching any conclusions it needs to reach about the different characteristics of parties which are before it, and of course the Settlement Trust would follow the Tribunal's direction to file that register. It's simply to note that they take those obligations seriously and if the Tribunal were to be of the view that it has enough evidence already, then the Settlement Trust would prefer not to file that information.

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**JUDGE WAINWRIGHT:**

All right. Well, I think under the circumstances of this inquiry, the Settlement Trusts' preference is, notwithstanding we do want that evidence, if you want to produce it under some restriction of its circulation such that it is available only to the participants of the inquiry, that would be fine. By all means – well, in fact, not by all means, but please in your memorandum point to the evidence that is before the Tribunal already that you think answers the need.

The Tribunal has a statutory duty to consider anybody to whom it might transfer assets and to understand their legal basis and constitution and their financial situation and their auditing situation because the soundness of those entities is a matter to which we must turn our minds, so we cannot do that in a vacuum. I do not think that is before us Mr Emanuel, not that I am aware of, so those matters do need to be on the record.

**ASHER EMANUEL:**

Thank you, Your Honour. Just with respect to the register, if it is, if I am understanding, Your Honour, that it is the Tribunal's concern to inspect the register and take that into account, would it be possible then to file on the condition that it is available to the Tribunal for its consideration and I make that request in view of a memorandum from Wai 85 which did not set out any particular issues which that applicant has which would like to resolve by

examining the register. So, if I understand the position then it would be sufficient for the Tribunal to have that evidence before it.

**JUDGE WAINWRIGHT:**

You mean the panel itself and nobody else?

**ASHER EMANUEL:**

Yes, Your Honour.

**JUDGE WAINWRIGHT:**

Well, I mean, if matters are relevant to the inquiry Mr Emanuel, then on the basis of natural justice the parties must be in a position to consider them, mustn't they?

**ASHER EMANUEL:**

Yes, certainly. Your Honour, I would agree just in terms of the Tribunal's natural justice obligations would be if there is, I submit, an adverse finding in respect of that applicant which might arise from the inspection of the register where they would need to have notice of that finding and of the evidence but from what I understand Your Honour to be saying in view of the rationale that former Tribunals have given for having access to this kind of information, the reason is to for the Tribunal to be aware of that information.

With respect to my friends, I don't understand what it is that is contested about the information which is contained in the register of beneficiaries and so I make in this submission, Your Honour, that it would be available to you and to the panel and the Tribunal as a starting point unless there is a rationale for it being more broadly available in view of the Settlement Trust concerns about its members privacy.

**JUDGE WAINWRIGHT:**

All right. Thank you.

**MATANUKU MAHUIKA:**

Ma'am, we would want that material to be available on the same basis as the material that the incorporation made available. Though the request for it comes out of Ms (**inaudible 09:19:07 – Turu**)'s evidence, and we would want an opportunity to scrutinise it. Happy that there are conditions attaching to the disclosure of the information in order to protect privacy and similar conditions were requested by the incorporation where enclosed information from the incorporations register and other materials and so would consent to similar conditions being placed on the use of any similar material provided by the Settlement Trust.

**JUDGE WAINWRIGHT:**

All right. Well, that seems to me to be unequitable situation, Mr Emanuel and we will confirm that in a memorandum and directions, but yes, parallel information should be furnished by the Settlement Trust and it will – its circulation will be limited to the participants in the inquiry, but our position would be that if it is relevant to the inquiry, as I believe it is, then the participants of the inquiry are entitled to see it.

0920

**ASHER EMANUEL:**

Kia ora. Thank you.

**JUDGE WAINWRIGHT:**

Kia ora. The final matter is, you will be aware of a late application by the Pouākani Claims Trust to, well in the first instance, persuade the Tribunal that it should not proceed to make binding recommendations in this inquiry on account of what they alleged was uncertainty about the ownership of the bed of the Waikato River. In response to that, we produced a memorandum of directions, which unfortunately for reasons that are not entirely clear to me, did not get to the Pouākani Claims Trust until Friday, so then they proceeded to seek the opportunity to make oral submissions here today. But they are not represented before us, so I assume that the message which was that they had come in too late and that we were entitled to proceed on the basis of the

certificate of title for the purposes of our inquiry, and I gather that that message has got through to the counsel for the Pouakani Claims Trust, and they are not seeking to be heard. There is no one here for the claims trust, is there? No?

All right. Are there any other matters that counsel wish to raise before we proceed?

**MATANUKU MAHUIKA:**

Ma'am, I thought I would raise the matter of replies. Provisions not currently made for it in the timetable and it is affected a little bit by the fact that the Settlement Trust isn't in a position to present its closings until December. In the course of presenting the submissions for Wairarapa Moana tomorrow, I will, of course look to reply to matters that are raised within the submissions of the other parties. But, I did wonder whether or not there might be a formal opportunity to maybe just file something in writing for the sake of the record –

**JUDGE WAINWRIGHT:**

Yes.

**MATANUKU MAHUIKA:**

– and completeness. And also, there was I think a mention earlier in the process about whether we needed to file some brief submissions wrapping up the matters that are being discussed by Mr Sterling and also Mr Hemi.

**JUDGE WAINWRIGHT:**

Thank you, Mr Mahuika, I think that would be procedurally sound. And yes, there will be leave granted for replies and for further questions, as I said, in relation to Mr Hemi's evidence which would have effect, I think, as you say, wrapping up the issues comprised in those briefs and closings on those once the questions have been answered. I mean actually why don't counsel suggest dates for those steps for us to look at?



Is there anything else? No? All right. Well, in that case, Mr Hemi, we are looking at your *taunaki i te ata nei, ko te nama #J104*. Tēnā koe. [Interpreter: Evidence.]

**MATANUKU MAHUIKA:**

Ma'am, as you have said, Mr Hemi has filed a brief of evidence I think it is #J104 the number. In the interest of time, what he was proposing to do is not read the brief unless Your Honour has a different view and he will simply highlight the key matters that the brief of evidence covers. Well, that was certainly the intention.

**JUDGE WAINWRIGHT:**

Well, I think we could take a quick gamble through the introductory parts, Mr Hemi, but I think it would be good to hear the substance of his *kōrero* as written. So, I would invite him to go through it for us.

**MATANUKU MAHUIKA:**

Very good.

**(09:26) MURRAY HEMI: (MIHI, #J104)**

Thank you. *Nei, roto i te āhuratanga o tēnei ata, tēnei te mihi ki a – tēnei tāku mihi atu ki a koutou katoa. Kia hohoro ai te marino, kia rongō pai hoki ki a tātou e ngā whanaunga. E ōku rangatira, tēnā koutou.* [Interpreter: And with all that brings us here today and this morning. Again, I wish to express my welcome to you in finding a common view forward for calmer decisions. To my esteemed leaders before me, I acknowledge you.]

**READS BRIEF OF EVIDENCE #J104**

I'm a descendant of the owners recorded on the 1883 title to Wairarapa Moana. I belong to Papawai, Hurunui-o-Rangi, Te Oreore and Pouākani marae. I have a BA in Māori from Canterbury and a Masters in Applied Science and Natural Resource Management from Lincoln. Between 1993-1996 I undertook an oral history project recording the oral histories of many of the remaining first settlers in the Pouākani Block.

I have spent some 20 years as an environmental communication consultant and historian. I have written a number of history publications as well as published academic papers on mātauranga Māori and Western science with Waikato University. In 2003 I published a chapter in local government and the Treaty of Waitangi edited by Janine Hayward. I was extensively involved in a published history of Lake Wairarapa, *Wairarapa: the lake and its peoples (2012)* in which I contributed to four chapters.

I was most recently employed as a publication project leader for the Ministry for Culture and Heritage. The project was a national history of New Zealand's Treaty settlements.

In 2006 I researched and wrote for Ministry for Culture and Heritage a history of the struggle between Māori and local government authorities with a particular focus on the environment. In 2018 I worked at Museums Wellington as a Senior Historian leading the curation and history communication team. I am currently employed by Miraka as Kaitiaki o te Ara Miraka.

Paragraph 4. I have read the evidence of Mr Bruce Stirling regarding the Native Land Court's determination of title for Wairarapa Moana in 1883. I was also present at the hearing on 24<sup>th</sup> September 2019 when he presented his evidence. I have read the evidence of Marama Tuuta."

I'll be sufficient to say at this point, I have not made any comments in this particular brief, mainly because he don't have the details or understand, 1. The raw data as well as methodology by which she's reached her conclusions. And so, I look forward to the opportunity to see that raw data and to make more of an analysis of your methodology.

Paragraph 6. Executive summary. Mr Stirling argues that the 139 owners included in the 1883 Title did not include all the hapū members with customary rights to Wairarapa Moana. He arrives at this conclusion for the following reasons:

- (a) One rangatira (Te Manihera Rangi-taka-i-waho) said at the time that there were 500 Wairarapa Māori owners of the Wairarapa Moana;
- (b) More than 20 hapū are referred to in the records he examined as 'holding customary rights there'; and
- (c) the 1883 decision of the Native Land Court was controversial.

In his view, 500 customary owners of Wairarapa Moana is entirely reasonable given the number and range of hapū referred to as holding customary rights there.

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Mr Stirling seeks to contextualise the experience of Wairarapa Moana Māori and the 1883 title decision within the broader experience of Māori within the Native Land Court and to use a quote:

These hapū were forced into the Native Land Court in 1882 against their wishes by a Crown application intended to promote the Crown's interests. The Crown provided no legal option for the hapū to hold their customary interests in Wairarapa Moana under the collective authority of their rangatira. The hapū were instead obliged to accept an individualised ownership list that resulted from a brief and contested title investigation in 1883.

It is not disputed that the Native Land Court was a mechanism utilised to the great prejudice of Māori by individualising land interests that had been held under collective authority, and in doing so facilitated alienation of Māori land.

However, while this is accepted as a general proposition, it is also important to examine each case on its own facts. It does not necessarily follow that, because the Native Land Court generally disadvantaged Māori across the motu, the 1883 decision itself was wrong, or substantially flawed.

This evidence addresses the three key reasons set out at paragraph 6 above for Mr Stirling's conclusion that the 1883 Title determination was flawed. Having considered the sources relied on by Mr Stirling, as well as others, in my view it

is difficult to reach the same, very firm conclusions about the Court's decision.

This is because:

- (a) The 500-owner population number cited by Mr Stirling is based on one, arguably questionable source, and it is not corroborated by anyone else in 1883 or anyone since. The 500 customary owners would be a large proportion of the total Wairarapa Māori census population, a population that Mr – a census figure that Mr Stirling has himself referred to elsewhere as being inaccurate and likely an overstatement.

And the footnote at the bottom of the page, footnote number 8 just details more specifically the challenges associate with the census figures.

- (b) The 22 hapū listed are not unique and independent of each other.
- (c) While there was opposition to participating in the Native Land Court generally – it was an unwelcome situation - opposition to the hearing was withdrawn, as Mr Stirling himself notes in previous work.  
This fact is not noted or recorded his #J96 evidence. Once the hearing was underway, all the leading rangatira were represented and participated in the hearing. Where claimants were able to present their credentials successfully they were consequently accepted in good order by the rangatira present.
- (d) There were no appeals, rehearing's, petitions or similar seeking to challenge the names on the 1883 list. Mr Stirling's dismissal of this point at the hearing, that Wairarapa Māori were too busy with other things is unsustainable. Throughout this time there were appeals, rehearing's and petitions about other Native Land Court decisions. Some of these actions continued on till the 1920s and 30s.
- (e) The Native Land Court hearing was not "brief" as Mr Stirling records in his #J96 evidence. Elsewhere Mr Stirling has stated that the Native Land Court received detailed evidence from numerous witnesses.
- (f) Mr Stirling also fails to account for the hui and wānanga that were held subsequent to the 1883 decision. And in fact, there was a whole lot of

hui and wānanga before 1883 as well. It is significant that none of these gatherings generate any source of discontent, formal protest, or legal contest regarding the 1883 decision.

In all my years of personal and whānau research on oral traditions I have not come across any mention of the 1883 ownership decision as controversial. In addition, in my review of research filed in the Wairarapa ki Tararua Inquiry by researchers such as Stirling, Crocker, Wairau and McCracken, I have identified no reference to the 1883 decision as being controversial.

Evidence of Te Manihera Rangi-taka-i-waho. When estimating the number of owners of Wairarapa Moana at the Native Land Court hearing in 1882, Te Manihera Rangi-taka-i-waho stated:

I am a large owner in the upper lake. I hold the same as the other chiefs. There are some 30 chiefs, but I think there are about 500 other owners. In the lower lake they are about the same with some of the chiefs with a larger share.

Te Manihera is the only person to make such a massive estimate of owners. Mr Stirling accepts this single statement uncritically.

It is important to note that Mr Stirling misreads Manihera's statement. What Te Manihera is saying is there are about 500 owners in the upper lake and in the lower lake there are about the same. Te Manihera's statement is not clear whether it is the same 500 he is referring to, or whether there are potentially up to 1,000 owners.

Again, this is a massive estimate of owners by Te Manihera. Te Manihera's evidence in 1883 should be treated with caution. Te Manihera was considered by his contemporaries, both Māori and Pākehā, to be untrustworthy and self-interested.

Sorry, I am just paging through. I'm at paragraph 39. It is important to note that by 1883, Te Manihera --

**JUDGE WAINWRIGHT:**

Hang on, hang on Mr Hemi, why are you at paragraph 39?

**MURRAY HEMI:**

I'm just not sure. Do you want me to continue on? Okay, I'm trying to save time.

**JUDGE WAINWRIGHT:**

I think we are good for time.

**MURRAY HEMI:**

I might have something else to do.

**MATANUKU MAHUIKA:**

I'm sure he's only joking about that, Ma'am.

**JUDGE WAINWRIGHT:**

I'm sure – what else would have to do that is as important as this? Haere tonu.

**MATANUKU MAHUIKA:**

Go back to paragraph 13, Mr Hemi.

**MURRAY HEMI: (CONTINUES)**

So, I'm at 16, 17.

**CONTINUES #J104 FROM PARA 16**

Sales around the Wairarapa Moana 1853 – sorry, that's not a right date. It's probably 1853 to 1854.

In 1853 the Crown completed over 40 purchases in less than six months in the Wairarapa area. Lands associated with Wairarapa Moana were part of this

massive purchase campaign. The first sales in the vicinity of Wairarapa Moana related to settler homesteads.

For example, McMaster's Homestead and Blacksmith's. Donald McLean initiated these transactions with a view to enticing further sales amongst the Māori community. George Sisson, Assistant Land Purchase Commissioner stated these initial sales 'created a spirit of emulation amongst the Natives, and those who had at first stood aloof began to evince a desire to sell through a feeling of rivalry towards those who had derived money in this way.

The purchase of the Tūranganui block, in September 1853, provided McLean a further opportunity to increase rivalry and heighten the desire to sell. By providing a 2,840-acre reserve solely to Raniera te Iho in the Tūranganui he further whet the appetite for sales. As McLean explained to Governor Grey, "The Crown grant for Raniera is producing a wonderfully good effect among the other young chiefs who are anxious to have all their titles on the same footing."

Thus, McLean was able to groom a number of māori upon whom he could rely to advocate, initiate or complete sales within the region. Wiremu Kingi Tutepakihirangi, who signed 14 deeds, was one of the most regular participants. Ngairo Takatakaputea participated often in the central valley and signed 12 deeds. Raniera te Iho signed 11 deeds and Wiremu Tamihana Hiko signed 10 deeds participated in many of the lower valley transactions. The single most frequent participant in sales deeds during the 1853 and '54 was Te Manihera; he signed 19 deeds and witnessed 5 others.

0940

So, just a brief biography of Te Manihera. Te Manihera was born in Wairarapa but attended William Williams' school at Waerenga-a-Hika in Gisborne. And it's really important that he goes there. He's kind of sent there as a person to learn the new emerging ways of the Europeans. So, he's learning his English, he's quoted as being an absolute reference in biblical quotations. And so, he's kind of really being involved and enveloped into the Pākehā way so when he is eventually brought back to the Wairarapa, he's seen as the young spirit with all this knowledge and all of this ability about what is the new pathway for

Wairarapa. So he's specifically sent then he's also specifically brought back as one of the new young leaders.

So, he returns to the Wairarapa from Nukutaurua as a young man and at that time he was actually, had had his first marriage so he's of an adult age. So, during the early settlement period, Pākehā regarded him as their staunch friend and he readily accepted Pākehā settlement. And I think that is part of the Williams' influence on his upbringing, his way of seeing the world. By 1853 – off the back of numerous land sales arrangements – he built a large European house, wore elegant European clothes and ran his land as an individual property owner.

In 1847 Francis Dillion Bell described Te Manihera as one of the 'younger men, who by continual intercourse with the Europeans had acquires tastes which a large sum of the money from the purchase of their land would enable them to gratify.' Interesting, he's also credited with convincing Te Hapuku to build a relationship with Donald McLean and Te Hapuku then on, goes on to be a key support for McLean in the land purchases in the Hawke's Bay.

So, Manihera was initially a supporter of leasing, by 1853 as become a key supporter of Crown purchases and he also appears to be one of its major beneficiaries. As a result of his support Te Manihera was able to secure access to large sums of money from land sales as well as stock as well as stock to run over a number of his individual reserves at Owhanga, Kuratawhiti and Wharekaka. McLean reported to Grey that, 'Manihera is now in excellent humour. I told him that I had no doubt that your Excellency would sanction his having a nice cottage built for himself at Papawai out of the proceeds of the 5 percent.'

When the Small Farms Association sent a surveyor to the Wairarapa in 1854, Ngairo and Te Hiko denied the surveyor access the Wharekaka block, having not received any of the £1,000 paid to Te Manihera for their land.



William Fox, Wellington Commissioner, recognised the preferential treatment afforded Te Manihera when, in 1857, McLean afforded Te Manihera the opportunity to make a private purchase of 640 acres in Wharekaka. Barry Rigby and Andrew Francis considered the extraordinarily 'high' price paid for 18,000 acres of the Owhanga block was a 'politically motivated' arrangement between McLean and the vendors - his main pro-sales supporters – Wiremu Tamihana Hiko, Raniera te Iho, Te Manihera, and Wi Kingi Tutepakihirangi.

In 1858, William Searancke, District Crown Purchase Commissioner, went so far as to refer to Te Manihera as McLean's favourite pet. By 1860 Searancke was publicly denouncing Te Manihera as a scoundrel and a liar. He describes Te Manihera as 'an arch traitor;' who had sold all his own land and that of his friends. When Searancke made those comments public – made public the many shortcomings of Te Manihera, McLean transferred Searancke out of the region within the year. Piripi te Maari, however, had a similar assessment of Te Manihera when, before the MacKay Commission, he referred to Te Manihera as a 'deceitful person.'

Te Manihera lost his fortunes as quickly as he gained them. By 1859 Te Manihera has reputed to have accumulated long-standing debts totalling £1,500 and was desperately seeking to sell land to clear his debts. McLean stepped in ensuring the Government loaned £915 to Te Manihera, "in order to extricate him from his pecuniary difficulties."

After a visit by Tamihana te Rauparaha, a Kīngitanga movement formed in the 1860s. Although the head of the rūnanga, Te Manihera continued to sell land. He was ejected from rūnanga after, 'but a short time and left (it was said) in consequence of heavy fines having been imposed upon him by the rūnanga for his sale of land to the Crown and for drunkenness.'

In March 1862, McLean wrote on behalf of Colonial Secretary Fox to offer Te Manihera, Te Weretā, Ihaia Te Whakamairu, Ngatuere, Hiko Tamaihikoia, Wiremu Te Potangaroa, and Hemi Te Miha an annual salary of £50 each to

assist the Court. Te Manihera ultimately accepted the Government's offer but only after expressing his dissatisfaction with the salary paid to him, writing: 'I'm not the same as those other kaumātua residing with their £50.'

In 1872 the Crown purchase agent, St Hill, signed a memorandum of agreement with Te Manihera for the purchase of an estimated 85,000 acres in various Ngā Waka-a-Kupe and Maungarake blocks. Other owners immediately objected to the sale. Wiremu Mahupuku went to Wellington to personally protest at the purchase attempt, saying, with respect to Te Manihera, that he, 'is ever extending his schemes to other men's property and the reason is because he has become involved in debts and mortgages.'

Te Manihera soon set his sights on the sale of Wairarapa Moana. In February 1876 Te Manihera invited a very elderly Te Hiko Tamaihikoia to travel with him and Hemi Te Miha to Wellington to discuss the sale of the Wairarapa lakes. At that meeting Te Hiko Tamaihikoia told the Government negotiator, Edward Maunsell, he did not intend to discuss the Wairarapa lakes but instead wanted the Pukio block matters settled. Hemi Te Miha was of a different mind. He surprised Te Hiko Tamaihikoia by agreeing there and then to sign the Lakes Deed. Afraid to miss out, Te Hiko was forced to follow suit; the sale became known as Te Hiko's sale.<sup>46</sup> Te Manihera confirmed with Maunsell that he had used his influence to obtain Hiko Piata's consent to sell the Wairarapa lakes.<sup>47</sup> Te Manihera received £20 for his efforts but then refused to sign the Deed himself unless he got 400 acres of land in the vicinity of the Wairarapa lakes.<sup>48</sup>

According to Maunsell, Te Hiko asked that the balance of payment for the Wairarapa lakes be given to Wi Kingi [Tutepakihirangi]. Maunsell took £400 in gold to a meeting of owners in the billiards room of the Greytown Hotel. He laid the gold on the table and Wi Kingi took charge of the money. Te Manihera objected violently to the money being paid out in this fashion. Wī Kingi, however, ignored him and continued to distribute the sales money (and kept half for himself).

Five months later Maunsell reports that Te Manihera has been removed from his Government salaried position due to his conduct. He further noted Te Manihera's reputation for treachery, opposition and duplicity and added that He 'bears a bad character in the district not only from the Pākehā but also the Māori'.

In order to pay off a mortgage on the Uruokakite North block, Te Manihera sold the Wharekaka reserve of 1,389 acres in the 1870s.<sup>51</sup> This was a reserve he had secured through the sale of larger Wharekaka block in 1854. But he continued to accumulate debt. Throughout this time his name appears frequently on the debts register in the Masterton District Court. In 1877, he sought to raise a further loan of £700 against Uruokakite North by leasing the land to Charles Jury. In 1882, he was again in debt owing £185 on goods purchased and small cash advances. Despite all his leases, mortgages and land sales, sadly, Te Manihera remained in debt till he died in 1885.

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Stirling has observed elsewhere that Te Manihera steadily lost all of his personal wealth and was left trying to do what he could to improve his remaining interests. Despite his attempts to hold onto the remaining land he shared interests in, many of his fellow owners opted to sell their individual shares, leaving Te Manihera with land with little hope for development. In effect, he reaped what he had sown – having set the trend by selling his own individual land interests several decades earlier.

Te Manihera's claims about the number of Wairarapa Moana owners and his own 'large' interest in the lakes must be treated with caution.

First, Te Manihera is the only person to record such a massive estimate of owners and his evidence is not corroborated by anyone in 1883 or anyone else since.

Second, it is questionable whether Te Manihera had as large an interest in the Wairarapa lakes as he suggests. Maunsell, who had been a long-time resident and long-serving Crown purchase agent for the Wairarapa lakes had earlier

noted that, rather than being a large owner, Te Manihera's interests were 'comparatively small to that of Hiko, Arihia, Hariata, Hemi Te Miha, Te Waka Tahuahi, and Wi Kingi Tutepakihirangi.' This is borne out directly by Hiko and Wi Kingi who themselves determine the distribution of the sale proceeds; leaving Te Manihera a powerless and frustrated spectator.

By 1883 Te Manihera was broke, desperate and estranged from both the Māori and Pākehā communities. His unbroken 30-year record of self-advancement in the Native Land Court and his financial despair means he simply cannot be held up as either a completely reliable or credible source.

Indeed, in comparison to Te Manihera's estimate of over 500 owners, only a year earlier Under-Secretary of the Land-Purchase Department, Richard J Gill, and Native Minister, John Bryce, suggested a list of 'all-comers' on the certificate of title for Wairarapa Moana would include at least 200 names. However, they considered that this number, 200 owners, had been purposefully inflated by the owners as a way to foil any Crown attempts at individual purchase.

It is notable that in all of the Crown purchases around Wairarapa Moana that Te Manihera was involved in, many involving substantial areas of land, Te Manihera was prepared to sign or witness deeds alongside owners totalling between 2–17 owners. It is difficult to reconcile his behaviour (signing off on deeds of less than 17 signatories) with his single 1883 statement that there were 30-60 chiefs of the Lakes along with 500-1,000 owners." Appendix one sets out more detail in terms of the sales and seller numbers in relation to those early Crown purchases.

42. Mr Stirling states that there are 22 hapū mentioned in the records examined by him.

Mr Stirling concludes that this list of over 20 hapū provides support to Te Manihera's statement that there are 500 owners of Wairarapa Moana. As discussed, Mr Stirling's reliance on a lone statement from an individual whose

contemporaries considered to be of questionable personal integrity is problematic in itself.

Further, however, no methodology exists for divining populations from lists of hapū names. A hapū name does not denote or indicate a particular population size or range of likely population. It is surprising, therefore, that Mr Stirling is able to state a clear correlation between the number of 22 hapū and the 500 owners given by Te Manihera. A correlation he deems to be 'very reasonable.'<sup>58</sup> Unfortunately, Mr Stirling provides no methodology of his own by which I can determine the 'reasonableness' or otherwise of this conclusion.

Whatever the methodology, the 500 owners estimate is not corroborated by any other source material including traditional Wairarapa histories, whakapapa or population records. The Wairarapa Māori census population at this time was recorded as approximately 700, including children, and this figure was generous. In that context, Te Manihera's 500 owners estimate would represent almost every adult male and female Wairarapa Māori.

Mr Stirling's population estimation exercise assumes each hapū is a separate and distinct unit; each directly and specifically associated with Wairarapa Moana. These assumptions are inaccurate. Many of the named hapū are connected to lands beyond Wairarapa Moana. Many others are sub-groups or descendants of the same hapū line. A brief overview of the whakapapa and history connecting these hapū makes that clear.

The migration of Te Rangitawhanga was a critical event in the traditional history of the Wairarapa. It led to the extensive settlement of Ngāti Kahungunu around Wairarapa Moana and beyond. This settlement was established through the gift of land by Te Whakumu and Te Rerewa of Rangitāne in exchange for waka from their Hawke's Bay Kahungunu relatives. This is foundational Wairarapa history.

Te Rangitawhanga was accompanied to the Wairarapa by a number of other tipuna. Eruera Rangitakaiwaho in his evidence on Mapunaatea recalls that

after a fight at Oruarehi, in Heretaunga, Te Rangitawhanga, Tu te Miha, Hamiti, Rakairangi, Tukaiaora and Karewhare came to settle in the Wairarapa. These tipuna are central to establishing Wairarapa Moana mana whenua/mana moana; this is reflected in many of the relevant Native Land Court minutes in cases relating to Wairarapa Moana lands. Correspondingly, these tipuna are a significant part of Mr Stirling's list of hapū. A number of other hapū, however, relate to descent lines before the arrival of Te Rangitawhanga, Tu te Miha, Hamiti, Rakairangi, Tukaiaora and Karewhare to the Wairarapa. They relate to Hawke's Bay hapū that existed prior to migration and are identities that were conveyed to the Wairarapa. These hapū are: Rakaiwhakairi, Hineraumoa, Muretu, Tukoko, Moe. These hapū are not Wairarapa Moana exclusive, making Mr Stirling's methodology and analysis problematic."

So I kind of thought about how I might convey this in a way that's understandable, and if I thought about my physical address, I live at 6 Main Street in Greytown, Greytown South in the South Wairarapa in the region of Wellington. It's one house, but I'm describing that house in four or five different ways in terms of its location, its street number, the name of the street, part of the town, part of the region, part of the district. So, if you thought about the way that the hapū list has been configured, there's a potential for that to be counted six times, whereas with most evidence given, it's a kind of whakapapa process.

So I live at number 6 Main Street, Greytown, Southend, South Wairarapa, Wellington Region. So is that six different names, but actually I'm talking about one single location. So in lots of ways, when people talk about the hapū, they might name a matua hapū which they originate, maybe it's in the Hawke's Bay, maybe it's even in Gisborne, and as they kind of start to describe those names, they start to centre more specifically exactly where they are and who it is that allows them to occupy that particular spot or that particular place in the Wairarapa. So, it's very easy to kind of confuse that whakapapa line in terms of descent and location with actually a list of distinct and separate hapū, and again, essentially that's part of the methodology and analysis that proves problematic in this instance...

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So, according to the whakapapa I've provided, "Clearly Tukoko, Hinetauirā, Te Rangitawhanga and Whaitongarere are one descent line comprising sub-groups of each other. The hapū mentioned in proceedings were less a collection of distinct units and rather a description of descent lines tracing the origins of current owners back to their original forebears.

Kahukuraawhitia is another example where a major decent line pre-dates the arrival of Te Rangitawhanga and his contemporary **Te Hamiti**.

It can also be misleading to assume that every hapū is a separate, standalone entity, distinct from the others. Hapū names can be a collectivisation of inter-related sub-groups each with their own hapū appellation as well. Hinewaka, for example, is an amalgam of several hapū. As Mr Stirling has noted elsewhere," in other research.

So, the hapū in Mr Stirling's list are not hapū all living at the same time on the shores of Wairarapa Moana. Nor are they all separate and distinct identities. Mr Stirling is in effect double - and triple - counting hapū by confusing hapū names with descriptions of descent lines and, at the same time, discounting the inter-relatedness (or amalgamation) of many hapū. It is therefore unclear whether his tally of 22 hapū remains a 'reasonable' correlation with an owner population of 500 (or more) individuals. Again, there is no methodology available to re-examine Mr Stirling's calculations.

So with this historical context in mind, it is helpful now to compare Mr Stirling's list of hapū with the hapū membership within the Kahungunu ki Wairarapa Tāmaki Nui-a-Rua Trust.

Of the 22 hapū mentioned by Mr Stirling, two hapū, that's Tahu and Hamua, are essentially iwi appellations and are ubiquitous over a wide area: Tahu in fact extends from Takapau through to the Tāmaki-Nui-a-Rua region and into the Wairarapa; Hamua in the Wairarapa is implicitly linked to Rangitāne iwi." And Tipene Chrisp talks more about that in his evidence in the original main

hearings. “Six hapū names recorded by Stirling: Rakaiwhakairi, Kahukuraawhitia, Tukoko, Hineraumoa, Muretu and Moe are hapū associated with early descent lines and pre-date the arrival of Kahungunu into the Wairarapa.

So that essentially leaves 14 hapū identified by Mr Stirling that, according to his research, are directly associated with Wairarapa Moana. So that title there should be Wairarapa hapū not “apu”. That might’ve been a nod in your direction.

**JUDGE WAINWRIGHT:**

Can that paragraph 55, Mr Hemi –

**MURRAY HEMI:**

Yes.

**JUDGE WAINWRIGHT:**

Just to clarify what you are saying there, you are saying that if you deduct the ones that you say are either Rangitāne or from pre-arrival hapū, you end up with 14?

**MURRAY HEMI:**

Yes.

**JUDGE WAINWRIGHT:**

Okay.

**MURRAY HEMI: (CONTINUES #J104)**

**CONTINUES #J104 FROM PARA 56**

While relying on Te Manihera’s statement, Mr Stirling makes no allowance for the possibility that Te Manihera may have been referring to these 500 people as having something other than outright ownership, for example some form of indirect interest or right. Mr Tipene Chrisp, in earlier Tribunal evidence in the



Wairarapa ki Tararua inquiry, refers to a continuum of land rights from exclusive to dominant, shared and limited. He says to codify these rights a network of relationships, political interests, trade, inter-marriage, and gifts existed to underpin hapū claims to lands and resources. Te Whatahoro, Aporo Hare, Tunuiarangi, and Wi Hutana gave similar evidence to the 1891 Royal Commission.

People had varying rights over the Wairarapa lakes and their resources. Hoani Paraone Tunuiarangi summarises the situation as follows:

All the people fished together at the mouth of the lake, but it was different in the creeks and rivers; each hapū had their rights to these places.

This is further endorsed by Piripi te Maari:

Each hapū and their chiefs had the right over their respective localities.

Almost 30 years later Tunuiarangi reiterates that:

There were other Wairarapa hapū, which were not owners in the lake.

Mr Stirling understands there are varying types of rights over Wairarapa Moana.” Now, this is... “Elsewhere in ‘previous’ evidence,” I notice that’s not in here. “Elsewhere in ‘previous’ evidence he refers to ‘direct rights were those derived through ancestral connection to, and occupation of, the lands around the Wairarapa lakes.’ He notes that: ‘All other rights were indirect,’ and observes that indirect rights relied on customary rights such as tuku or on residual rights based on having once occupied land. This understanding is emphasised further in Mr Stirling’s own work on Wairarapa ownership where he concludes:

It was the occupation of land around Wairarapa Moana and the use of the resources of the lakes adjacent to this land that – when combined with the correct ancestry – established the sort of customary claim that the Native Land Court had come to recognise and clothe with legal title.

A demonstration of this situation can be found in a passage from earlier research completed by Mr Stirling. Mr Stirling quoted (hapū names highlighted) an extensive record taken by Te Whatahoro during an 1896 wānanga of owners at Papawai. It clearly details the direct rights associated with location, hapū and rangatira.”

Interesting, just before paragraph 62, there’s a reference to the hapū of Ngāti Kuraawhitia, but actually that’s the big name of all of these other smaller hapū Te Rangiapohia, Te Rangitaukiwaho, Tauawhio, Taritari, Korako, Pahero, Pihu, Rangiputangarua. They were all subgroups of this matua label called Ngāti Kuraawhitia.

62. Mr Stirling has not provided this passage or referred to this passage in his recent evidence.

But what is clear is that the 1896 wānanga did not conclude that the Wairarapa lakes belonged to 22 hapū or 500-1,000 individuals. Rather, these notes from 1896 demonstrate that there were specific and particular rights assigned to noted individuals and their descendants. These notes suggest that this land belonged to a much more limited group of hapū and people. As Mr Stirling himself concludes:

This comprehensive listing of lands, and the hapū and rangatira responsible for them, indicates how intensively Wairarapa Moana was used by local Māori, and how closely the lakes and the lands around them were managed for the benefit of the customary rightsholders...This emphasises the significance of the interests of particular hapū (and iwi) interests relative to others around

Wairarapa Moana; something the blunter instrument of a Native Land Court title failed to clearly acknowledge.

This suggests a much more limited category of people with direct interests in the land around the lakes. It also confirms that although there may have been a wider grouping that accessed the lakes and used its resources, their interests were indirect interests and subject to...”, there’s a word missing here, “...and subject to the “direct” interests of the hapū that occupied the land around the lakes.

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65. At paragraph 58 of his affidavit #J96, Mr Stirling considers:

The gifting of Wairarapa Moana to the Crown in 1896 was undertaken not by the 139 owners on the 1883 title but by two komiti acting on behalf of all of the customary owners. These were referred to as the “Tribal Committee” and “the Incorporated Committee of Owners, acknowledgement that those on the title did not represent all of the customary owners. This is also apparent from the actions of tribal komiti in the mid-1880s to regulate the use of Wairarapa Moana and bar any of the individuals on the title from dealing with the Crown for their legal interest in the title to the lakes.

His testimony is that the existence of two komiti implies a deficiency or need to augment the list of 139 owners with additional personnel. I go on just to list the membership of those two committees.

68. It is important to note one of the committees is the Incorporated Committee of Owners. The role of this committee, described by the Chair, Tiriti Maika Purakau was to operate under the instructions of the owners of the Wairarapa Moana where ‘the men women and children’ have given their consent.

The Komiti Kaporeihana is not likely to have been a legally incorporated body. In all likelihood it was an attempt to mimic a European form or body by which to formally represent the owners.

But since then I did a little bit more reading and have discovered the Native Land Administration Act which is in 1886 is essentially the legislation to enable owners to act as a single legal entity. I'm not sure at what stage that particular Act was repealed but I think in lots of ways this may be a hangover from that original idea.

The thing that struck me as being curious is that the Komiti Kaporeihana has seven members and the Native Land Administrative Act makes a provision for the establishment of seven who are then in the power to dispose of land, subject to a meeting of owners. So in lots of ways there's either some connection or there is some echo of those provisions from that particular Act.

However, the Komiti o te Iwi, however, was a legally formed committee established under the Natives Committees Act 1883. The Act established Māori committees, such as this, to assist the Native Land Court in its judgments over land title. It seems logical the owners' committee would work in concert with such a Government-sponsored committee.

Both committees were almost exclusively comprised of owners recorded on the 1883 ownership list. The only ones not recorded on the 1883 list of owners were Ropata Heketa Manihera (he's the eldest son of deceased owner Te Manihera), Kingi and Hoani Ngatuere (who are the sons of deceased owner Ngatuere Tawhao), and former Crown purchase agent, Henare Parata [Henry Pratt] – second husband to Ngahuia (who is the widow to Te Manihera). So it is unclear how or why Mr Stirling concludes that the existence of the two Komiti (with all of its members being either on the 1883 list of owners, or sons or in-laws of those recorded on the 1883 list of owners) why he concludes that this illustrates a deficiency in the 1883 ownership list. He gives no explanation or evidence in support of this conclusion. If anything, the membership of this committee tends to reinforce the 1883 list of owners.

The Wairarapa Native Committee komiti was established in early 1884 and had been considering the matter of the Wairarapa lakes at least since 1887. In that year Wi Hutana stated he was very keen, alongside Piripi te Maari, to assemble the Committee to 'submit "the word" which the Honourable Native Minister told us to in reference to Wairarapa Lakes.' William Bock also refers to a meeting of the Committee arranged for the 26th of March 1887 'to deal with the lake question'. Piripi te Maari and Nuku Piharau confirm other meetings occurred between March 1886 and May 1887.

It was really interesting too, I went through and had another look at Therese Crocker's report and it's really clear the number of meetings and the amount of discussion that occurs in relation to the lakes. So, I think it's clearly established, I've seen it with Therese's work, is there is a lot of discussion prior and/or after the 1883 decision.

72. Had there been any issue around the question of the 1883 ownership list it would almost certainly have been raised. Either of these komiti would have been the perfect vehicle for this. However, there is nothing on record to suggest that this was an issue.

The depth of the controversy and dispute caused by the title investigation refers not to the Court's final list of owners, but to the strong preference of many of the represented owners to withdraw the proceedings from the Native Land Court. Despite Mr Stirling's best efforts to conflate the two matters, they are not one and the same.

Similarly, the 'stark disputes' he relates at paragraph 20 relate not to ownership title but to traditional histories, and in particular the contested Kahungunu and Rangitāne/Hamua traditional interests. In the end most of the Rangitāne/Hamua claimants are, in fact, admitted onto the 1883 Title. The stark dispute, therefore, does not last long and is readily resolved within the proceedings of the hearing.

In cross examination Mr Stirling stated that the lack of protest from Wairarapa Māori after the 1883 awarding of title was a result of many dispossessed owners simply being too busy with other issues.

Wairarapa Māori have a long history of protest with the Crown over the ownership of the Wairarapa lakes – spearheaded in particular by Piripi Te Maari. That Te Maari would opt to stop protesting matters of ownership because he was too busy is difficult to reconcile with his approach over the Wairarapa lakes up to that point.

In fact, Wairarapa Māori were actively involved in other protests. Mr Stirling cites the Whatakai Reserve dispute which was pursued from 1863 to 1901 and included a petition from Te Manihera to the General Assembly in 1872. There was also the Te Kokoti-a-Whakauruhia protests which concerned just 64 acres. The protest action ran from 1871-1896. In this instance Te Manihera went to the Supreme Court and was supported by Matiaha, Whatahoro Jury, Hoani Rangitakaiwaho, Taare Turi (Charles Jury), Komene Rawiri, and Heketa Ropata Manihera. A subsequent report the Native Affairs Committee in July 1891 recorded that Whatahoro had pursued this claim for 20 years at huge expense.

Rangi Tamihana Hiko and others petitioned Parliament over ownership of a 200-acre reserve beside Lake Onoke in 1927. The petition was rejected but, unperturbed, an application to the Native Land Court was lodged in 1929 seeking title. Hiko and Tokoarangī Te Maari lodged a subsequent petition in 1933 and Hiko and others lodged final petition in 1938.

Other records of protest, including the June 1890 petition signed by Te Whatahoro and 49 others and the Memorial by the solicitors to the 1891 Royal Commission on behalf of the Native owners, also show that where ownership was disputed opportunities were taken to protest.

In relation to the ownership of Wairarapa Moana, however, there is simply no record of protest that compares with these other examples. When issues

relating to the 1883 title came back before the Court in 1924, it was in relation to the allocation of relative shares, rather than disputing the list of owners.

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In 1924 the Native Land Court resolved the relative interest issue by allocating most of the 139 owners with a full seven shares, the children five shares, and the grandchildren three shares. Wiremu and Hamuera Mahupuku felt their allocation had been insufficient. They therefore challenged the decision and went to the Appellate Court in 1926. This challenge did not concern itself in any way with the original 1883 ownership list, but rather the relative interests between the owners.

Mr Stirling's contention that Wairarapa Māori were too busy to protest any outstanding ownership over their Wairarapa lakes cannot be reconciled with the significant number of other protests. There were ample opportunities to protest. A number of these other protests illustrate how readily Wairarapa Māori pursued Māori Land Court – pursued Land Court issues. In many other instances they clearly do protest and for a long time. But not about the 1883 ownership list.

Throughout that period, it is clear that individuals such as Te Manihera, Matiaha, Whatahoro Jury, Hoani Rangi-taka-i-waho, Taare Turi (Charles Jury), Komene Rawiri, Heketa Ropata Manihera and others did have the time, ability, resources, and collective will to protest important land and lake matters. To suggest these people were too busy to attend to ownership concerns over Wairarapa Moana makes little sense. Te Manihera, Tunuiarangi, and Te Whatahoro each demonstrated a clear ability and willingness to protest at the highest levels and ownership over the Wairarapa lakes was a significant matter.

The more credible explanation for the lack of evidence of protest over the ownership list post-1883 is that there simply was no controversy associated with that decision. My own experience of histories of the Wairarapa do not suggest any issues or protests about the 1883 decision. I also do not recall any

witnesses during the Wairarapa ki Tararua Inquiry suggesting any such controversy or dissent.

The only parties identified by Mr Stirling who appear not to have been included in the 1883 ownership list were 33 children. Tunuiarangi who declared himself 'very strong' on the relative interests of owners, accepts that children not included would still eventually benefit from the ownership of their parents. To quote:

Then the sub divisional Court sat, and parents' children and grandchildren (rightful owners) got a full share each. As for who were not rightful owners, three and four were put into a full share; and they were very lucky to get that much. As for myself – and others with me – rightful owners, our children were not put in. These children must be content with the parents share.

Taiawhio Te Tau pointed out there were 'other names as well as those' on the list, but he did not want to take up the issue. Instead when questioned he simply said: 'this was done by the old people. I have no objection to what the old people did. The only objection is to the inclusion of parents and children [and grand-children] for separate shares.' Clearly none of the alleged 'deficiencies' were 'controversial' enough to trigger any hard-fought protest.

## **Summary**

Mr Stirling's evidence is significant more for what information it leaves out than what it includes. In reaching his conclusions, Mr Stirling relies on what he himself calls the blunter instrument of the Native Land Court proceedings.

There is, in fact, a much richer tapestry of information available on this matter which Mr Stirling is aware of. He chooses not to use it and thereby limits the level of understanding that might otherwise have been available to him.

Mr Stirling has seen Te Whatahoro's records of a hui held in January 1896, which was held just prior to the gifting of the Wairarapa lakes to the Crown. He



knows 'how intensively Wairarapa Moana was used by local Māori, and how closely the Wairarapa lakes and the lands around them were managed for the benefit of the customary right holders.' The 1896 notes record 'how much more detailed and subtle the nature of customary interest was than the minutes of the Native Land Court might lead one to believe.' The notes detail these customary responsibilities 'rangatira by rangatira, hapū by hapū.'

None of Te Whatahoro's papers have been included in Mr Stirling's analysis (in #J096). This is unfortunate because the Te Whatahoro directly contradicts Mr Stirling's key argument. Further, this source would have shed further light on the position of Wairarapa Moana Māori in relation to the 1883 ownership lists.

My reading of Court evidence concerning nearby land blocks – In my reading of Court evidence concerning nearby land blocks, there are no statements made about there being 500 owners in Wairarapa lakes or adjoining land property.

Te Manihera is the only individual to claim the Wairarapa lakes are owned by as many as 500 people. No one else, historically (Māori or Pākehā), supports this evidence.

Te Manihera's statement is not corroborated by the historical record. Te Manihera is a very dubious Native Land Court witness. Yet Mr Stirling persists with Te Manihera's sole statement. It is the only statement that supports his theory.

In my view, the list of 22 hapū Mr Stirling has compiled is inflated. Firstly, Mr Stirling assumes witnesses are naming individual hapū when they are clearly describing descent lines. Secondly, Wairarapa Moana hapū are closely related and exist dually within the larger collective hapū names such as Rākaiwhakairi and Kahukurawhiti – that's wrongly spelt - as well as within their Wairarapa Moana specific hapū identities.

### **Children Not on the 1883 List**

This is presented as a bigger issue than the historical record suggests. Owners subsequently seem content to raise no objections to those decisions reached by the 'old people.'

Mr Stirling's conclusions are not supported by the sources, nor are they consistent with his own analysis of the same sources in previous work. For example, his #J96 affidavit states:

After taking evidence from only a handful of claimants about the tīpuna for Wairarapa Moana the case closed on 13 November 1883, and later that day a list of 139 owners was passed by the Court.

However, in other work Mr Stirling has concluded that 'more detailed evidence was taken in November 1883' and that 'extensive evidence being taken from 26 other hapū representatives. Mr Stirling goes on to say that the ownership list was 'imposed on the owners by a fraught and hard-fought process.' There is no evidence suggesting this case was especially or particularly fraught or hard-fought. In this case it is simply not established on the evidence that the 1883 title determination was fundamentally flawed.

Mr Stirling has been very selective in his use of sources. Rather than through examination and explanation, any information contrary to his theory is dealt with by ignoring and, or not considering it.

Mr Stirling draws a number of conclusions on traditional rights, customary title, and rightful ownership of the Wairarapa lakes. He has not drawn on any relevant traditional histories, whakapapa or manuscripts. Instead, he has relied on a narrow set of sources to support his theory.

A number of other sources, however, undermine Mr Stirling's conclusions at a fundamental level. These sources, while relied upon by Mr Stirling on previous occasions, have not been considered by him in this instance.

Mr Stirling's evidence as at odds with the oral histories I grew up with. Our traditional records, whakapapa, and wananga records do not support his theory that the 1883 decision was controversial, or that there were a far greater number of customary owners of Wairarapa Moana than the 1883 decision recognised.

I have long appreciated the work of Mr Stirling during our main claims process. I have acted as an advisor to Mr Stirling on the traditional history of the Wairarapa lakes on previous occasions. I have found in the past his approach to Wairarapa history to be thorough, informed and considered. In my opinion, Mr Stirling has limited his understanding by limiting his research scope. He's excluded important traditional evidence which he was fully aware of and had access to and produced some key conclusions with no explanation, rationale or supporting methodology.

Finally, Government records and Native Land Court accounts show no evidence of any inordinate dispute, controversy, or any sources of on-going complaint that might support Mr Stirling's claim that the hearing itself was a fraught, hard fought and contested issue. There is no sustained body of record evidence that supports this conclusion. Kia ora tātou.

**JUDGE WAINWRIGHT:**

*Tēnā koe. Mr Hemi, whānau kua tae tātou ki te wā o te paramanawa, nā reira, ka hiki tātou hui tae atu ki te 11 karaka.* [Interpreter: We will adjourn for a break and we shall return at 11 o'clock.]

**HEARING ADJOURNS: 10.31 AM**

**HEARING RESUMES: 11.03 AM**

**JUDGE WAINWRIGHT:**

*Ka tukuna tā tātou hui kia haere.* [Interpreter: We will recommence our hearing.] I think what we are going to do is hand over to the parties to question Mr Hemi in the first instance. So, are you going to start Mr Emanuel?

**ASHER EMANUEL:**

Kia ora, yes, Your Honour. I was just in the process of filing an electronic copy of the documents for questioning Mr Hemi and I've handed up five to the registrar just now.

**JUDGE WAINWRIGHT:**

So when you are saying 'in the process', do you mean there is more that you have not handed up?

**ASHER EMANUEL:**

No, I was just asked to file an electronic copy as well for now just before we began again.

**JUDGE WAINWRIGHT:**

Okay. So, are we good to go?

**ASHER EMANUEL:**

Yes, we could start with the paper copies and I can file an electronic version afterwards or –

**JUDGE WAINWRIGHT:**

All right.

**ASHER EMANUEL:**

– I could get that electronic version distributed right now. But may as well get –

**JUDGE WAINWRIGHT:**

Well, I do not know what the capacity of the system is to do anything right now. Well, Sana says she has not got it so it is not going to be distributed until then. So, do you want to send it her now?

**ASHER EMANUEL:**

Yes. That would just take me a moment.

**JUDGE WAINWRIGHT:**

Take a moment.

**MATANUKU MAHUIKA:**

Ma'am, I assume if the electronic copy could be circulated relatively quickly, then it will mean that we have a copy as well.

**JUDGE WAINWRIGHT:**

I think he has got hard copies as well, Mr Mahuika. So I think if Mr Emanuel has a moment we will have soft and hard copies available to us.

### **SENDING ELECTRONIC COPY OF DOCUMENTS TO ALL PARTIES**

**ASHER EMANUEL:**

Thanks. Your Honour that has been sent now. Have the parties received that email?

**JUDGE WAINWRIGHT:**

Has Mr Emanuel's email hit your inbox, party? Yes? Yes, we are good to go.

**ASHER EMANUEL:**

Thanks. Thanks Your Honour.

**(11:06) ASHER EMANUEL TO MURRAY HEMI:**

Q. Tēnā koe, Mr Hemi. Could we begin at paragraph 11(c) of your affidavit?  
And here you point to the withdrawal of opposition to the hearing, correct?

A. Yes.

Q. And the theme here is that the title investigation is controversial than  
Mr Stirling is suggesting it is?

A. Correct.

**JUDGE WAINWRIGHT:**

Can I ask you, maybe better if you can stand? Is there a lectern because your view is a bit soft?

**ASHER EMANUEL:**

Yes, certainly Your Honour.

**JUDGE WAINWRIGHT:**

I think the wooden one. Would you like the wooden one or do you want to move?

**ASHER EMANUEL:**

Yes, it's just I have some papers around here would be –

**JUDGE WAINWRIGHT:**

So give it heaps Mr Emanuel because people who cannot see your face will find it more difficult to hear you.

**ASHER EMANUEL:**

Kia ora. Thanks, Your Honour.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. Mr Hemi, we were at 11(c) and you had agreed that that characterisation was – that the title investigation and title – there's controversial then Mr Stirling had suggested it was? You would accept though that at the 1883 hearing, no agreement was able to be reached among the claimants though?

A. Yes, and the fundamental question is whether the agreement was around title per say or the fact that Māori were agreeing to go to submit themselves to the Native Land Court hearing. And so, the withdrawal was opposition from Piripi Te Maari and Raniera Te Iho, is about – they'd then prepared to step into the Court to advance the issue. So, that's the big issue in terms of the contention.

Q. You have the bundle of documents that I just passed up from your counsel. Could we go to the **(inaudible 11:09:35)** evidence which is an extract beginning –

**JUDGE WAINWRIGHT:**

Just before you go on, I just want to ask Mr Hemi to repeat his answer because I am not sure that I quite understood what he was saying. So, you are saying to him, that at the Native Land Court hearing in 1883 that the Māori – the Māori claimants as they were called before the Native Land Court, could not agree on who the people should be on the title, and what did you say, Mr Hemi, in response to that?

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**MURRAY HEMI:**

I said, in 1883 opposition to further court involvement was withdrawn – actually, this is a quote from Mr Stirling, opposition to any further Court involvement was withdrawn, and as a result, two key rangatira – Piripi Te Maari and Raniera Te Iho – dropped their earlier opposition to Court in order to advance the issue. So what I'm reading from that is actually they were prepared to go in and then start to engage in the discussions around the Court ownership, the issue of ownership before the Court.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. Mr Hemi, we were going to the extract from the Crocker evidence which begins at page 3 of the bundle which I've just handed up, and I want to look at page 59 of that which is page 5 of my bundle, and the second paragraph there you can see the final sentence records, "No agreement was able to be reached. The Native Land Court conferred title of the Wairarapa Lakes Block to 139 people."

A. Mhm.

Q. So it was the case that there was no agreement between what the Court referred to as the claimant?

A. So between the adjournment and the decision of the Court there's a Court assessor, I can't remember his name, but his job was to go and work with the owners to compile the final list which is presented to the Court, and then the Court makes the decision in terms of the 139. So this is true, but what isn't talked about is the step in the middle whereas the Court

adjourned and then **(inaudible 11:12:20)** went through and started to go through and determine with the owners who that was.

- Q. But it's correct that agreement was not reached in that process?
- A. I don't know what the source is. Let me see. I don't know what the not agreement is relating to. Do you know?
- Q. You'd see, can you see with me at footnote 148 –
- A. Yes.
- Q. Crocker's citation is to the minute book, that's correct, isn't it?
- A. Sorry, I was looking at 49.
- Q. Okay. You'd accept that many of the claimants were very much opposed to the title investigation going ahead?
- A. Correct, and the reason for that was the opposition was actually being in the Native Land Court forum as opposed to questioning around ownership per se.
- Q. Mr Hemi, can we go to paragraph 12 of your affidavit? I'm just looking at the final sentence. It's your evidence, isn't it, that you've identified no reference to the 1883 decision being controversial?
- A. Mhm.
- Q. But it's true, isn't it, that Piripi Te Maari said that there were individuals added to that title through false evidence at a later point in time?
- A. Yes, but well I guess the question is, what is the threshold for controversial. So, if it was controversial to a point where they then decided to go and appeal petition and take this through the Courts in terms of a – because it was such a controversial as such and obnoxious finding, then I would say yes, it is controversial. But what you find in terms of the historical record, there is no protest, there is no long outstanding battle against the decision, so therefore where is the controversy?

**JUDGE WAINWRIGHT:**

Who said the false evidence quotation?

**ASHER EMANUEL:**

I could take us to that piece of evidence now, it's in my bundle of documents, and Mr Hemi can take a look at that. It's in the extracts from the appendices to



the journal of the House of Representatives beginning on page 13 of my bundle, and I am referring to page 49.

**JUDGE WAINWRIGHT:**

This is page 13 of your bundle?

**ASHER EMANUEL:**

Sixteen of my bundle sorry, Your Honour, is where page 49 of the extract is.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. Now, this page is quite dense with text. I am looking, Mr Hemi, at the second to last paragraph on the page beginning, "I told Piripi..."

A. Yes.

**JUDGE WAINWRIGHT:**

So whose voice is this – "I told Piripi..."?

**ASHER EMANUEL:**

This is a letter. Sorry, Your Honour, the bottom there is cut off. I am pretty certain it is Mr Gill. We're in the Record of Letters here.

**JUDGE WAINWRIGHT:**

So he was the undersecretary of what?

**ASHER EMANUEL:**

Pardon me, Your Honour, that's Maunsell (the Crown agent).

**JUDGE WAINWRIGHT:**

So it's Mansell?

**ASHER EMANUEL:**

Mansell.

**JUDGE WAINWRIGHT:**

Right.

**ASHER EMANUEL:**

And he is recounting what Piripi has said to him.

**JUDGE WAINWRIGHT:**

Okay.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. Mr Hemi, have you had an opportunity to read that?

A. Do you want me to read the whole thing?

Q. No, just to yourself that second to last paragraph.

**JUDGE WAINWRIGHT:**

Why don't you read it out because then people can understand what you are talking about?

**ASHER EMANUEL:**

Sure thing. Yes.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. "I told Piripi I would, according to my instructions, proceed to acquire all the shares I could. I said I had visited him to tell him this, **(inaudible 11:16:51)** should be aggrieved at what might appear to him a stealthy act and, as it were, ignoring his influence. He replied that a meeting had been held when all decided not to sell. That none wish to sell except Karaitiana Korou of Masterton who, with his relations, had no interests. Their names were inserted in the order of the Court through false evidence and he warned me not to pay money to Karaitiana." It's correct, isn't it, Mr Hemi, that that suggests that Piripi Te Maari considered that the title was flawed?

A. In this one single instance there is a failure, but I don't think that one failure in his view is there for a controversy, and if you find the subsequent historical record, there is no subsequent action taken to sort out even this one small single flaw. So, I'm not sure where the controversy is, my friend.

Q. Back to Mr Hemi, paragraph 11(c) of the affidavit. I'm looking at your third sentence which I will just read for the benefit of everyone present, "Once the hearing was underway, all the leading rangatira were represented and participated in the hearing where claimants were able to present their credentials successfully. They were consequently accepted in good order by the rangatira present."

A. Mhm.

Q. It's true though isn't it, Mr Hemi, that the Land Court minutes don't indicate who was present other than those which spoke?

A. Yes, but there's some 26 rangatira there and they're all big names.

Q. And it's true that fewer than 10 of the claimants gave evidence to the Court that day?

A. According to the records that's true, but I can't imagine a rangatira standing up in a room with his fellows and his peers telling things that were not true. And also, you need to be clear that all of these conversations come in a context where this material was live and fresh and was debated extensively amongst rangatira. So, it's highly likely, rather than having 26 voices, there were people who were selected to represent specifically in particular the ideas, interests and viewpoints of the collective. Now, I'm quite sure all of that would have been wānanga'd well before the hearing itself. In fact, there's lots of evidence to suggest there were extensive huis, discussions, both before and after.

Q. If we move on to paragraph 11(e) just a little bit down the page, Mr Hemi, it is your evidence, isn't it, that the Native Land Court hearing was not as brief as Stirling records?

A. Yes.

Q. Do you have a copy of the appendices to Mr Stirling's affidavit with you?

A. No...

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Q. You would have examined that in the course of preparing your evidence though and you would have examined the Native Land Court minutes in question?

A. Correct.

Q. It's not uncommon is it, in this era Mr Hemi for Native Land Court minutes to run to hundreds of pages?

A. Correct.

Q. And would you accept for the 1882 hearing we have nine pages of minutes?

A. Yes.

Q. And for the 1883 minutes we have 13 pages?

A. I would take that, you know the page.

Q. Okay, thanks. We will come onto the issue of Te Manihera, if we can go then to paragraph 13 of your affidavit?

**JUDGE WAINWRIGHT:**

So, how many pages of minutes are you saying in 1883?

**ASHER EMANUEL:**

13 pages Your Honour, it is at 96(a) are the appendices to Mr Stirling's.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

A. Sir, can I just be clear the question your briefing is because there is only nine pages, or 13 pages as appose to it was brief, in terms of its duration or its depth. I'm not sure your reference to brief then, because I can accept the number of pages I don't necessarily need to go back and check that, but can I be clear on your reference to brief then or your understanding of it?

Q. I was satisfied with the question and the answer Your Honour, if I can continue with the questions on a different topic.

**JUDGE WAINWRIGHT:**

You do not get to ask questions Mr Hemi.

**MURRAY HEMI:**

Fair enough. I just think he might be confused at all and that's concerning to me.

**ASHER EMANUEL:**

It's always possible. Paragraph 13 where we begin.

**JUDGE WAINWRIGHT:**

Paragraph 13 of what?

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. Mr Hemi's affidavit Your Honour and this concerns the statement by Te Manihera that there were 30 chiefs and 500 owners. And I have just started us there, so we can be located at the quote which these questions relate too, and I'll read it out for everyone. "I'm a large owner in the upper lake, I hold the same as the other chiefs. There are some 30 chiefs, but I think there are about 500 other owners in the lower lake, they are about the same with of the chiefs with their larger share." Now, we've had a look at that could we go back to my bundle, at the extracts from the appendices to the Journal of the house of representatives again, the same page 16 of my bundle? Which is 49 of that extract is that in front of you Mr Hemi?

**JUDGE WAINWRIGHT:**

Yes.

**ASHER EMANUEL:**

I'm looking at the top of the page where we have some record of the hearing and the last witness, his account is recorded their Ani Hiko, can you just take a moment to read that as such Mr Hemi?

**JUDGE WAINWRIGHT:**

Can you read out the parts that are relevant to your question?

**ASHER EMANUEL:**

Q. Certainly. "And daughter of Hiko Piata have interests through my father in Wairarapa lakes, a signed deed produced. I know that my father had a greater interest and right than any other man. I know Ruihi Te Mihi had

an interest in both lakes. There are several chiefs as stated by Manihera 30 minus the mana from my father.” Now, Mr Hemi if we go back to your affidavit at paragraph 14 it was your evidence wasn’t it that Te Manihera is the only person to make such a massive estimate of owners?

A. Yes, and what I’m saying here is in terms of the 500 as appose to the 30.

Q. You’d accept though that Te Manihera meaning is likely that there is some relationship between there being 30 chiefs and the owners which they represent?

A. No, I will not. No.

Q. It’s true isn’t it, that no one challenge Te Manihera statement at that hearing?

A. I think it’s really important to think about when people are standing and making statements, it would be extremely rude for another person to say that they are lying?

Q. Mr Hemi is it true though? It is true though that nobody contradicted that.

A. Sure, and again I reference back to the idea of these bland, blunt record of the Māori Land Court is not a great indicate of the subtleties and the nuances that occur in the room.

Q. And just before, Mr Hemi, you did tell the Tribunal that it would be very unusual for rangatira to stand up at one of these hearings and tell things before their peers which were not true, that’s right, wasn’t it?

A. Yes.

Q. Yes.

A. And if you look at the history and record, Te Manihera actually spends 30 years doing exactly that. So, he’s an extremely different individual than the rest of the rangatira in the room. That’s a pretty clear historical record.

Q. Moving on Mr Hemi to paragraph 15 of your evidence.

A. Yes.

Q. You say there, don’t you, that Mr Stirling misreads Manihera’s statement?

A. Yes.

Q. But it’s also the case in the second sentence that you say Te Manihera’s statement –

**JUDGE WAINWRIGHT:**

Sorry, Mr Emanuel, I was just taking in the answers of the previous question.

**ASHER EMANUEL:**

Pardon me, Your Honour.

**JUDGE WAINWRIGHT:**

Can you please start that again and show us where we should be looking?

**ASHER EMANUEL:**

Thank you. Paragraph 15 of Mr Hemi's evidence.

**JUDGE WAINWRIGHT:**

Right.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. Mr Hemi, your evidence in the first sentence is that Mr Stirling misreads Manihera's statement?

A. Yes.

Q. But then in your third sentence there you say, don't you, that Te Manihera's statement is not clear.

A. Correct, it isn't clear.

Q. So, you and Mr Stirling then have different interpretations of Te Manihera's statement?

A. I would totally agree.

Q. Yours being that Te Manihera is potentially referring to up to 1000 owners?

A. The potential is between 500, which is Mr Stirling's position, and up to 1000, correct.

Q. And it's your position that Te Manihera potentially means up to 1000?

A. There's a potential to be able to read that quote in that manner, yes.

Q. Are you familiar with the other reproduction of Te Manihera's quote in the appendices to the journal?

A. Yes. That's the one –

Q. If I could –

A. The 1891.

Q. Let's all go to that if I can, Your Honour. That one is on, again, page 48, which is page 15 of my bundle. I'm looking about a third of the way down the page. On the 14<sup>th</sup> line of Manihera's evidence.

**JUDGE WAINWRIGHT:**

What does it say, Mr Emanuel?

**ASHER EMANUEL:**

Yes, I will just read that now, Your Honour.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. "I have a large interest in the upper lake. We all have interests. I have the same amount of interest as all the other chiefs. 30 of us have equal interests. I do not know of any who have lesser interest than the others. The whole Tribe, perhaps 500, are also interested. I have no personal interest in lower lake. My interest has ceased in that lake. My parents had an eel weir, but I have given that up. I think there are about 30 interested in the lower lake share and share alike. I think there are 500 persons beside the 30 who are interested." It's clear isn't it, Mr Hemi, when reading that as well, that Te Manihera is not referring to 1000 people, but he's referring to a commonality of interests between the upper and the lower lake?

A. Can you say that again please sorry?

Q. It's clear, isn't it, that reading that, Mr Hemi, that Te Manihera is referring to a commonality of interests in the upper and lower lake and is not saying that there are 1000 owners?

A. No, I don't think that's clear at all. I know it's – he's clearly referring to 500, but I think in his second – the quotation that you first referred to me, actually that brings up the possibility there is actually additionally 1000. But I'm not sure whether this is that important frankly. Whether it's 500 or 1000, my evidence is actually even at 500, that's a massive proportion



of the Wairarapa population. So whether it's 1000 or 500 I don't think is necessarily that significant.

Q. In that quote, I just read it was true though, Mr Hemi, that Te Manihera said the whole tribe are also interested?

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A. Yes, again, it's a single source from a person who has somewhat disreputable background.

Q. Thanks.

A. You're welcome.

Q. If we can go on to paragraph 38 of Mr Hemi's evidence.

**JUDGE WAINWRIGHT:**

Paragraph 38?

**ASHER EMANUEL:**

Yes, Your Honour.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. This part of your evidence, Mr Hemi, is about some reasons that you advance for potentially doubting Te Manihera's account?

A. Yes.

Q. Your evidence there in the first sentence is that it is questionable whether Te Manihera had as large an interest in the Wairarapa lakes as he suggests?

A. Mhm.

Q. Could we move to the appendix to Mr Stirling's evidence which is #J96(a). It would be helpful, Your Honour, if this could be up on the screen because I don't think Mr Hemi has a copy of Mr Stirling's evidence with him today.

**JUDGE WAINWRIGHT:**

Well I have a copy of his evidence, but I do not think I have a copy of – yes, hang on, yes, yes.

**UNSPECIFIED SPEAKER: (11:31:40)**

Ma'am, I have a copy I can provide to Mr Hemi if that expedites matters.

**ASHER EMANUEL:**

That would be helpful. If we could go to page 7 of this document. These are the minutes of the Land Court hearing –

**JUDGE WAINWRIGHT:**

So is this #J104(a)?

**ASHER EMANUEL:**

No, Your Honour, it's #J96(a), it's Mr Stirling's evidence and the appendices to it.

**JUDGE WAINWRIGHT:**

Sorry, yes, I have got that.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. Do you have that Mr Hemi? I am looking at page 7.

**JUDGE WAINWRIGHT:**

Yes, I have that evidence but not the appendices.

**ASHER EMANUEL:**

All right. We have got it up on screen.

**JUDGE WAINWRIGHT:**

So this is it here, and what is the number of the document that we are seeing on the screen?

**ASHER EMANUEL:**

It is #96(a), Your Honour, page 7.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. We can see at the top there, Mr Hemi, this is Manihera's evidence, beginning at the top of the page?

**JUDGE WAINWRIGHT:**

So this is Manihera's evidence to the Native Land Court?

**ASHER EMANUEL:**

Yes, Your Honour.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. If we could scroll down right to the bottom of this page, Mr Hemi, that looks like Piripi Te Maari's evidence there, doesn't it?

A. Mhm.

Q. So it's correct, wasn't it, that he was the speaker right after Manihera?

A. Correct.

Q. I am looking at the third line of Piripi's evidence there, and am I correct to read that, Mr Hemi, my interest is the same as Manihera?

A. Yes.

Q. And you'd agree, wouldn't you, that Piripi Te Maari as regards matters to do with the lakes is a very credible witness?

A. Yes.

Q. If we could move on to paragraph 54 of your evidence, Mr Hemi? This concerns, doesn't it, Mr Hemi, your comments on Mr Stirling's counting of hapū with interests in the lake?

A. Yes.

Q. If we go on to paragraph 55, your evidence is that that leaves 14 hapū identified, that's how that starts –

A. So 14 identified by Mr Stirling, yes.

Q. By Mr Stirling, yes. So I just want to go and look at the process by which you came to that figure. So, back to paragraph 54 –

A. Yes.

Q. – you say two hapū, Tahu and Hamua –

A. Yes.

- Q. – are iwi appellations and are ubiquitous over a wide area?
- A. Mhm.
- Q. That's not a reason for discounting them from having interests in the lakes though is it, Mr Hemi?
- A. So if you're talking about hapū interests or iwi interest?
- Q. Those groupings, the fact that they are iwi appellations and ubiquitous over a wide area is not a reason to discount them from having interests in the lake, is it?
- A. Yes, it is. Unless all of those – both of those iwi, all of their population are actually resident beside the lake and using the resources. You can't possibility expect an iwi to have recognised ownership over or part ownership of the lakes.
- Q. So that's the basis on which you deduct those two names from the total?  
Thanks.
- A. Correct, and it's supported by Mr Stirling's work himself in terms of talking about the **(inaudible 11:36:11)** of legal title.
- Q. So I want to move on, Mr Hemi, to your second commentary there about the six hapū names. You say those are, and we're looking at paragraph 54 at the second sentence.
- A. Yes.
- Q. So these are associated with early descent lines and predate the arrival of Kahungunu into the Wairarapa.
- A. Correct.
- Q. Again, Mr Hemi, you'd have to accept that's not a reason for discounting those hapū from having interests in the lake, is it?
- A. That's exactly what my paragraph is saying so I don't accept that at all.
- Q. Are you aware, Mr Hemi, that all eight of those hapū whose names you deduct from the list are hapū within the Settlement Trust Deed of Mandate?
- A. Yes, but they're hapū names that came up as a result of Mr Stirling's research.
- Q. Mr Hemi, can we move on to paragraph 62 please of your evidence? That paragraph immediately succeeds a quote that you've included. We can

see in footnote 71 the source of that quote which is the Notes of wānanga on Wairarapa Moana in the notebooks of Whatahoro Jury.

A. Yes

Q. And at paragraph 62 you've said, "Mr Stirling has not provided this passage or referred to this passage in his recent evidence."?

A. Correct.

Q. Elsewhere, you say Mr Stirling has left out material that could have informed him. Is this one of those instances that you're referring to?

A. This extensive passage, yes.

Q. It's true though isn't it, Mr Hemi, and you'll be aware having read Mr Stirling's evidence that he presents a substantially very similar passage in the form of Te Whatahoro's evidence to the commission relating to the lakes in 1891?

A. I'd have to go and look at that to be honest.

Q. I think it might be worth looking at that. If you have Mr Stirling's evidence with you, could you please go to paragraph 48, that's #J96.

A. What paragraph number sorry?

Q. Forty-eight.

A. Yes,

Q. And without us having to go through and do a close reading and analysis, would you accept that this passage that Mr Stirling has quoted refers to many of the same hapū and interests as Whatahoro does in the wānanga that you've quoted from?

A. I'm sorry, I haven't done that analysis either...

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Q. You were at the hearing of Mr Stirling's evidence.

A. Yes.

Q. It was true, wasn't it, that Mr Stirling drew the Tribunal's attention to the records of the wānanga and hui, one of which you quote from Te Whatahoro?

A. I don't recall that. So, I do notice in the quote that's in Mr Stirling's #J96 compared to the one that I've provided detail is by far in way more clear and more specific in the quote that I have provided in my evidence

particularly in terms of the particular hapū. There could be no doubt about that.

Q. Well, Mr Hemi –

**JUDGE WAINWRIGHT:**

Mr Emanuel, do you have a reference to where in the transcript –

**ASHER EMANUEL:**

Yes.

**JUDGE WAINWRIGHT:**

- Mr Stirling referred the Tribunal to the material that Mr Hemi is talking about?

**ASHER EMANUEL:**

Yes, Your Honour, that is at 4.16, page 24 to 25. We could go to that presently, Your Honour.

**JUDGE WAINWRIGHT:**

Yes.

**ASHER EMANUEL:**

Unfortunately, I don't have a paper copy of it. If it would be possible for us to look at the transcript on the screen. I think it begins towards the end of the page here. Yes, Mr Stirling's answer there.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. Mr Hemi, it is the case then that Mr Stirling is referring the Tribunal in that answer to the manuscripts of the hui and if we go onto the next page –

A. Yes, in the broadest possible sense.

Q. Thank you, and if we go onto the next page. It's true at the top there, that Mr Stirling notes that there are Māori perhaps is fund board manuscripts? It's correct, isn't it Mr Hemi, that he says that?

A. Yes, it is my belief that Mr Stirling has had access to that material previously.

- Q. And then further down the page, his large answer there beginning, 'so there's quite a lot' – sorry, if we can go back up – He says, doesn't he, Mr Hemi, there's quite a lot there from 1891 and 1896 recording what people said and some of that is the – and that's almost certainly the HAHR.
- A. I'm not sure.
- Q. I'm about to move onto another –
- A. Was there a question there or not?
- Q. I asked you if it's true that he says, "There's quite a lot there from 1891 and 1896 –
- A. Yes, and it's a shame he's not able to provide this detail here to illustrate that or didn't worry about quoting this detail in his affidavit, per say, and about **(inaudible 11:44:53)** which is a shame.
- Q. If we can go to Mr Hemi's evidence at paragraph 11(d) to pick up on another topic.

**JUDGE WAINWRIGHT:**

Sorry, did you refer us to somewhere?

**ASHER EMANUEL:**

Yes, sorry, Your Honour, paragraph 11(d) of Mr Hemi's evidence. I want to start on a different topic and this is a good place to start the – his executive summary.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

- Q. Is it fair Mr Hemi to say that you are making – this is the summary of the point that you are making that the relative lack of protest or lack of protest tells against this being a controversial title?
- A. Correct.
- Q. And your evidence there in the third sentence is that, "Throughout this time there were appeals, rehearings', petitions about other Native Land Court decisions," and you provide some examples of this in your evidence, that's correct?
- A. Yes.

Q. Can we go to where those examples are and that's starting at around paragraph 76, if we could go to 76 of Mr Hemi's evidence? This paragraph refers to the Whatakai Reserve. Are we on 76, Mr Hemi?

A. Yes.

Q. And the Te Kokoti-a-Whakauruhia Reserve.

A. Yes.

Q. That's correct, isn't it, Mr Hemi that both of those are disputes concerning reserves from Crown purchase deeds, aren't they?

A. I would imagine so. I don't know these particular cases in great detail.

**JUDGE WAINWRIGHT:**

So, are we at paragraph 76 of Mr Hemi's evidence?

**ASHER EMANUEL:**

That's right, Your Honour.

**JUDGE WAINWRIGHT:**

So, what is the name of the block?

**ASHER EMANUEL:**

76. If you look at the second line, Your Honour, Whatakai Reserve and the fourth line, Te Kokoti-a-Whakauruhia. I had asked Mr Hemi about the examples which he was using of the protests about, among other things Native Land Court determinations and I asked Mr Hemi if he was aware that these were disputes to do with reserves arising out of Crown purchase deeds.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. Mr Hemi, you would be aware –

**JUDGE WAINWRIGHT:**

And what was your reply, Mr Hemi?



**MURRAY HEMI:**

I said that I was aware of these protests, but these are not areas that I know that well in any detail and I reliant basically on Mr Stirling's own work.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. Mr Hemi, you would be aware, wouldn't you, that there was really only a brief period available for appeal of the Native Land Court title determination?

A. No, I wouldn't be aware of that all.

Q. Are you aware that after the period for appeal has expired, special legislation was required to reopen that title?

A. No, but all I'm doing here in terms of using these illustrations and these protests, whether they're within time or out of time, go on for an ordinate period of time, 1871 to 1876 and there's a number of others that just go for massively long periods of time, whether they are in order or in time or not. That's what I'm wanting to illustrate.

Q. Staying with this theme of protest, Mr Hemi, could we move to paragraph 80 of your evidence. You're talking here about the 1924 determination.

1150

A. Mhm.

Q. It's true that that was a case about the relative interests of those who are on the title.

A. Mhm.

Q. And you're making the point there aren't you, at paragraph 80 that the contest here was about the allocation of relative shares rather than disputing the list of owners?

A. Correct.

Q. It's fair to say that this is part of your boarder characterisation of an absence of controversy about that title, that's fair isn't it?

A. Yes.

Q. If we go onto to 96 of your evidence just a give us a wee bit more context about the argument that you are making, Mr Hemi. In the second sentence there you are talking about Mr Stirling's point about the non-inclusion of certain children on the 1883 list –

**JUDGE WAINWRIGHT:**

So which paragraph are we looking at now, Mr Emanuel?

**ASHER EMANUEL:**

96, Your Honour.

**JUDGE WAINWRIGHT:**

96, the three line one?

**ASHER EMANUEL:**

Yes.

**JUDGE WAINWRIGHT:**

Okay.

**ASHER EMANUEL TO MURRAY HEMI: (CONTINUES)**

Q. And then Mr Hemi, your evidence is that the owners subsequently seem content to raise no objections to those decisions reached by the 'old people' –

A. Mhm.

Q. – and this is part of your broader point, just to be clear, that if this were a controversial we would have seen some protest or some evidence of that of this hearing?

A. Yes, drawn out by the parallel protest that were occurring through that period which went on for an ordinate amount of time and a lot of personal expense and time. Interesting, it's of similar record from the Wairarapa Moana ownership.

Q. It's true though, isn't it, Mr Hemi that special legislation was required to enable the 1924 hearing?

A. Yes. From memory, I don't know this accurately and now it's relation, is something to being out of time, was it?

Q. Yes. Were you aware that special legislation was required?

A. I do remember. I do recall reading something like that.

- Q. You would be aware then that that special legislation only allowed for an examination of relative interest and not the list owners?
- A. Yes, but what I'm trying to point out here in the broader context is actually there are a whole pathway of protests that Māori engaged throughout this period of time, rather than just the formal parliamentary or legislative process. There were – rather than just a formal process, there are a whole range of other pathways that Māori used, extensively in order to get their concerns across. What I'm saying is interesting in this case, it didn't occur.
- Q. Sorry, Mr Hemi, I may not have got it. Were you aware that the empowering legislation did not allow for consideration of the list of owners?
- A. No, I was not.
- Q. If that was so, you'd accept, wouldn't you, that it simply wouldn't have been possible for anybody at that hearing to argue about the composition of the list –
- A. Through that door way but as I'm pointing out, there are a number of other doorways and pathways that Māori used in other instances to raise their issues in the protest. And it's interesting, they consistently didn't do that.
- Q. The 1924 hearing, in the absence of protest is one of the examples you advance, isn't it, Mr Hemi for absence of protest?
- A. Yes.
- Q. And you've put it to the Tribunal that that supports your conclusion about the lack of controversy in this title.
- A. Yes, and not on its own because there are number of other pathways that I've illustrated at the same place, the same individuals engaged to get their protest across on other land blocks. And again, it seems incredible that they wouldn't use those pathways if they had the same issues in terms of the 1883 ownership list. Incredible.
- Q. Mr Hemi, having just a really quick look, evidence concerning essentially the character of Te Manihera comprises a significant part of this evidence, would you agree it goes from paragraph 13 through to 35?
- A. Do you want me – sorry, let me have a look. 13 through to?

- Q. 35.
- A. No. 41.
- Q. I'd agree, thanks, Mr Hemi. Paragraph 16 of your evidence, if we could have a look at that because it concerns your characterisation of Te Manihera.
- A. Yes.
- Q. Is it fair to say that your view is there's evidence that Te Manihera was self-interested?
- A. I'm simply recording all of the reflections that you can see in the historical record.
- Q. The inference you are inviting the Tribunal to make is that Te Manihera was self-interested and therefore there's credible with respect to the lakes issue.
- A. The evidence I provide points in that direction for sure.
- Q. A lot of the evidence concerns Te Manihera's sales, doesn't it?
- A. Yes, because he's involved in a lot of sales.
- Q. Yes. And his financial position.
- A. Correct.
- Q. The inference being that. Can we go please, Mr Hemi and members of the Tribunal to my bundle again for the last time, to the HADR extract, page 14 of my bundle, which is page 47 of the extract. If we could look at the bottom, just a little bit further up, thank you. Mr Hemi, it's a bit difficult to pull out the particular lines easily. We are in the last part of the account of the hearing, do you see the part where it says "Piripi Te Maari asks if the Native Land Court can adjudicate on water", can you find that?
- A. Yes.
- Q. All right. If we follow down two lines, it's an account there, "Manihera, he had made a desperate attempt to quash the case", it says that, doesn't it Mr Hemi?
- A. It does.
- Q. So, it's true that Manihera resisted the determination of the title to the lake?
- A. No, because the next line from Manihera says, "He had insisted that he'd been under a misapprehension which is in response to the line before

from Hamuera who states that an agreement had come to yesterday.” Now, I’m assuming that agreement is amongst the owners themselves and the rangatira making some sort of agreement about the proceeds of the case. Manihera is pointing out that he’s under some misapprehension in relation to that agreement.

Q. If you can come down to the second to last line, Mr Hemi.

A. Yes.

Q. It says there, doesn’t it, Manihera still insists on the case being dismissed?

1200

A. Correct, as does Piripi Te Maari. So, clearly their deciding that this – the contest in the misapprehension and the agreement are not clearly established at this particular event and make a decision both, jointly to go for dismissal until there is some more clarity and until that misapprehension is clarified. So, it’s clear the conditions are neither favourable for both parties in which case they go for dismissal and to wait and reorganise a strategy.

Q. Can we move on now to paragraph 64 of your evidence, Mr Hemi, back to the topic of hapū interests? Your – It’s true, Mr Hemi, you are making a distinction there between what you called direct interests and indirect interests.

A. Yes, in fact, that reference is Tipene **(inaudible 12:01:51)**.

Q. It’s – you’d accept though that direct and indirect interests in this context are both customary interests?

A. Yes. There distinct from ownership though to be clear on that.

Q. Can we go, Mr Hemi, to paragraph 40?

A. To this evidence.

Q. Paragraph 40.

A. 40?

Q. 40. It’s correct that your evidence here, Mr Hemi, is you are juxtaposing Te Manihera’s estimate of owners against that provided by Under-Secretary of the Land-Purchase Department, Richard Gill and Native Minister, John Bryce, correct?

A. Yes.

Q. The significance of this is that you are inviting the Tribunal to consider that estimate of the number of owners more credible than Te Manihera?

A. No. All I'm saying is that I'm reporting back what John Bryce and Richard Gill were saying in terms of what the numbers were being currently – their understanding of the numbers and their estimations that they – even that number was probably inflated. So, I'm simply reporting that source.

Q. The Land Purchase Department was at the time attempting to acquire the lake wasn't it Mr Hemi?

A. Correct.

Q. To advance the interest of the Crown and the settlers?

A. That's correct.

**ASHER EMANUEL:**

No further questions from me Your Honour. Just while I'm here, the suggestion at the beginning of the hearing about leave to file questions in writing, as Your Honour noted this material was filed quite late and the Settlement Trust done it's best in the time which is available but would be making an application to file some questions in writing –

**JUDGE WAINWRIGHT:**

Well, you do not need to make an application do you because I just granted leave. Thank you.

**ASHER EMANUEL:**

Great. Thank you. Also, Your Honour, Mr Stirling is here today and I'm not proposing to call him but if the Tribunal did want to call Mr Stirling as its witness, Mr Stirling is available to it and I confirm that with him, but I leave that in your hands.

**JUDGE WAINWRIGHT:**

Thank you.

**ANDREW IRIWN:**

Ma'am, I have no questions. If some questions do occur to me, I'll put them in writing at the relevant time set forth in a direction.

**JUDGE WAINWRIGHT:**

Thank you Mr Irwin. *Ko wai atu e hiahia ana kia patapātai i a te kaikōrero nei? Kāore? Nā reira, ka huri tātou ināiane ki ngā pātai o ngā mema e tīmata ana ki a koe Dame Margaret – no, to Ruakere.* [Interpreter: Are there any other who wish to question the witness? No? We shall turn to the panel and we will hand matters over to Lady Margaret].

**(12:06) DR RUAKERE HOND TO MURRAY HEMI:**

Q. *Koi anō nei te mihi atu ki a koe i runga anō i ngā kōrero kua takoto, e te rangatira. Ko ētahi o ngā whakaaro he wāhi whenua anō e whai – tērā ka kōrero Pākehā.* [Interpreter: Certainly, want to acknowledge you, sir and the evidence that you've given. Now, some of your expressions, you speak of the land.] Are there other blocks that you know of that have significant numbers of owners that exceed the 139 – so, are there other examples that you know of where there are significant numbers of block owners?

A. So, if I looked at the land deeds, the 1853, '54, that's not there, their all small numbers, between 2 and 17 I think I've written. And even if I look at the Māori Land Court accounts for lands that are adjacent there, there's no, certainly not the 500 and certainly not the 139.

Q. Okay. Do you have any suggestions or what is your take on the reason why both the Crown and Manihera would have wanted to inflate numbers? I mean do –

A. The Crown didn't want to do that because it made their job harder, right? So, if they had 1000 people that they were recognised as owners, they would have to go and get 1000 signature or as many as they could of that, to secure their majority interest in the lake. So, the smaller number of owners was easy for them in terms of their job to put their focus and pressure and encouraging and supporting people or inducing people to sell.

Q. But Bryce is making the point that there are potentially 200 –

A. Yes, yes.

Q. – and that is significantly more.

A. Yes. So he's saying that's a tool by the Māori owners to make it more difficult for the Crown to acquire.

Q. Okay.

A. And Manihera, in a similar way, maybe wanting to inflate the numbers because one of his key roles is the person to figure out who are the people to go and talk to to induce or create that land slide of sales. So it gives a him role, if the task is really hard for the Crown to do, clearly they need, I think I refer to him, I often think of him as an adjutant person who kind of facilitate and liaise the process of sales from the original Māori owners to the Crown. So in lots of ways he's creating a perfect role or position for himself. That's just pure supposition of course. There is no data that I'm aware of that can support that. But I can see actually if there was a big pile of owners that need to be dealt with, someone like Te Manihera would be their perfect accompaniment to the Crown to facilitate the process of alienation. But it's interesting Teresa Crocker talks about **(inaudible 12:09:33)** refers to the 1885 agreement which is signed by all the owners that none of the shares are to be sold. And if they are sold, then the person who sells them is subject to a £50 fine, which is payable to the remaining owners. So even the owners themselves are starting to coalesce themselves together around, "Well, if this is our ownership, this is our list of owners, we are going to stick together and hang tight on it."

Q. Ka pai.

1210

A. Yes. So the tie to the pact is and then we'll clear everyone who are signing to it and it's likely it's going to frayed off by the actions of the Crown agent or by Manihera himself. So there's a couple of tensions running or at play in terms of the ownership list per say.

Q. Ka pai. I was also interested, yes, I mean it is a common concept that the concept of ownership of people who are living on the land are generally perceived as maintaining ahikā and also understanding that these were periods of huge turmoil and people moving for all sorts of



reasons. So the 139 largely represents those who were living around the lake?

A. Well, for the purposes of the hearing, and I have no better information, no more intelligence or nothing magical that can tell me, "Here is actually the list," but for the people that were in the room and the people with the knowledge and the expertise and the leadership then I think they are all in the room, and it's the decision that the Court arrives on, having gone through and adjourned and allowed – well, (1) there's two things: Māori are actively involved in having wānanga and hui about this before; from the moment the Te Hiko sale is announced they are actively involved in wānanga and deciding and discussing who has a right, who doesn't have a right, who sold and didn't have the right, who is not going to be selling; and then after the decision there's all these wānanga and deciding and defining more specifically exactly where those rights are. So in lots of ways the 1883 Court hearing is just one event and it continued in both before and after around talking about ownership rights, both direct and indirect hapū, rangatira by rangatira, hapū by hapū. So that's an ongoing conversation, it doesn't start in the end in 1883. So I'm assuming all of that information both prior reaches a point where you can actually have a brief short hearing because actually all of that stuff has been determined out of the wānanga and has kind of clearly articulated and clearly described hapū by hapū, rangatira by rangatira, actually who are the people in this.

Q. I am trying to understand the 139. It is obviously a very complex thing and it demonstrates where they got to at that point.

A. Yes. The hearing is brief because it's not driven by the Crown trying to figure out and there's all these counter claims. Actually it's brief because they've already turned up with a defined list of who they are and how they connect. And so it can be a relatively straightforward process because actually all of that, all those discussions, all of that wānanga has been under way for at least a decade prior.

Q. *Ka pai. Ka nui anō tera.*

A. And then it is revisited again afterwards so it's an important kaupapa.

**JUDGE WAINWRIGHT:**

Mr Hemi, whānau, we are going to take the luncheon adjournment now because I would like to ask you some questions Mr Hemi and there are some cross-references that have been alluded to in the course of the questioning that I just want to follow-up on.

**MURRAY HEMI:**

Sure. Yes.

**JUDGE WAINWRIGHT:**

I have got some recollections that I do not have the chapter and verse at my finger tips and I would like to. So I do not want to embark upon that until I have just lined up those ducks.

**MURRAY HEMI:**

Okay.

**JUDGE WAINWRIGHT:**

So I am sorry that that departs slightly from the timetable. I think we are at about 12.15 pm, but we will take the adjournment now and we will reconvene at the time in the timetable which is 1.30 pm.

It does look like we will probably finish with Mr Hemi before the conclusion of the day. Mr Mahuika, are you in a position to commence your closing submissions?

**MATANUKU MAHUIKA:**

Look, I could, Ma'am, although I'd rather not break them if we have the time. I mean I would be surprised if they took all of tomorrow anyway.

**JUDGE WAINWRIGHT:**

Okay. So you would rather start in the morning?

**MATANUKU MAHUIKA:**

So I would rather start in the morning, if that's okay, Ma'am?

**JUDGE WAINWRIGHT:**

All right. Yes, I think that will be fine.

Okay. Well, *ki a kai tātou ināia tonu nei, ka hui anō tātou a te hāwhe pāhi i te kotahi. Kia ora.* [Interpreter: We'll have lunch and we will recommence at 1:30 pm.]

**HEARING ADJOURNS: 12.15 PM**

**HEARING RESUMES: 1.33 PM**

**JUDGE WAINWRIGHT:**

*Āe, kia tīmata anō tātou.* [Interpreter: We can commence our hearing.]

**(1:33) JUDGE WAINWRIGHT TO MURRAY HEMI:**

Q. Mr Hemi, here we are in the final stages of the evidence for our Remedies Inquiry and there's just a couple of things that I want to say about this activity that we are involved in here. This is a legal process that the Tribunal is engaged in and that as a result all the whānau of Wairarapa are engaged in and legal processes litigation tend to be about winners and losers and that encourages a very adversarial stance for people to take. However, I have to say Mr Hemi, I am sorry that this process has delivered us to a point where you have felt the need to be as categorical about the failures of people like Manihera –

A. Mhm.

Q. – and Bruce Stirling –

A. Mhm.

Q. – as a result of this. Because I think of both you and Mr Stirling as people of integrity who have been involved over a long period in trying to understand the past in Wairarapa and I would not impute bad motives to either of you –

A. Mhm.

Q. – and I am sad to see you imputing bad motives –

A. Mhm.

Q. – to Bruce because personally I do not think that is worthy of you –

A. Mhm.

Q. – and I do not think it is appropriate for him.

A. Mmm.

Q. So that is one thing. And then when I look at Manihera (Te Manihera Rangitakaiwaho) and the place that he played in the history, I wonder whether it was really necessary for there to be a character assassination of him in order for you to tell the story. I mean he lived in a time of enormous change and difficulty and he was a person caught in the intersection of cultures. If your evidence is to be believed he did things and said things that arguably he, “Could have not said, should have not said, could have not done, should have not done,” but it is very difficult for us now I think to have a perfect view of those times and the pressures that people were under.

A. Mmm.

Q. And, yes, he got into debt and apparently he had a problem with alcohol but he shared those difficulties with a lot of his whanaunga at the time.

A. Mmm.

Q. So I would like us to bring some aroha to that –

A. Mmm.

Q. – and to try and see that in a bit of context, and notwithstanding the things that you have brought to light about what he did and said. Personally, I do not think that that should lead us necessarily to discredit everything he said or believed, which I think you have invited us to do. I think you have invited us to look at what he said and really not give it any credence because we are invited to assume that he had bad motives around that, which he may have done. But in relation to what he said at the Native Land Court hearing, for instance, I am not sure how we can know that. You know, I mean we can all have hypothesis about it and you have said, I think you said in the course of your kōrero that, you know, when you were speaking in relation to Dr Hond’s question and you gave your

opinion that the reason why Te Manihera would have wanted to amplify the number of people with interests in the lake was because his self-interest would have been served by his being involved in a process of unravelling all of that for the Crown. Sure that is possible –

A. Mmm.

Q. – but I would like to explore with you some other options. And when I say ‘explore with you’ I mean explore with you. I am not trying to challenge you.

A. Mhm.

Q. I am not trying to put you on the backfoot and make you cling to a position that after the questioning today perhaps you would like to soften your position on. I would invite you to do that if that is appropriate.

A. Mhm.

Q. Because really here we are in 2019 we have a very imperfect record of what happened in the past.

A. Mhm.

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Q. We are all cobbling together our understanding of what people may or may not have been motivated by in what we may or may not fully understand they actually did or said. I mean we don’t know how reliable any of these records are so, you know, I think it is very difficult for anybody to be categorical to be honest. You know, with all of these propositions I think there must be a range of options that could have been more or less true, some more likely than others, right, and no doubt our views on people and their other conduct and other context will inform that. But it is a process of reconstruction, of trying to understand that time and place and what people were doing and there are so many influences that we do not know now; we cannot capture. So that is really about, you know, us as a Tribunal and the role that we are playing here. Yes, we have to make decisions according to statute, but we are also at the end of a long process that we have been on with you and your whānau here, and I look out here and I see faces that we have been seeing for two decades and I also want the outcomes to be informed by aroha and by manaakitanga.

A. Mmm.

Q. Because, at the end of the day, wherever the assets lie what is most important is whanaungatanga and if this process wrecks that no one comes out the winner, right? So I am not sure how much the Tribunal can do about that, but for my part I do not want there to be adversity between you, and to the extent that this process can be done properly without that adversarial conduct that is how we would like it to be.

A. Mhm.

Q. So now I would like to explore some ideas with you.

A. Okay.

Q. So the idea that there may have been interests in the moana that the 139 owners doesn't necessarily capture that is the idea that I am interested in exploring.

A. Mhm.

Q. So, first of all, the 139 owners, the idea that there would be owners is not a Māori idea, is it?

A. No, but by 1883 that's not a new occurrence for them either.

Q. They were accustomed to people going on to titles?

A. Yes.

Q. Yes.

A. So from 1853 in fact it's like a landslide experience. And then they are left with the consequence of thinking about actually how has that impacted on us and then they are faced with the 1865 Native Land Court processes. So by 1883 it is not an unheard of or a completely foreign concept.

Q. No. But this was not just land, was it, this was Wairarapa Moana?

A. Mhm. Mhm.

Q. So having a list of owners of Wairarapa Moana to me does not seem just the same as having a list of owners for Motuwaireka which was 630 acres.

A. Yes.

Q. We are talking about 25,000 acres.

A. Yes. Although, it is interesting to note when post-1855 with the earthquake and there is a large strip of land, I think it's on the western side of the lake, that becomes available they immediately start talking about ownership of that land.

Q. Sure.

A. And so I don't think the idea of the water and the land being separate in any way was a common way of thinking or seeing and we all could agree with that. But actually 1855 is a really good example of where that lake converts into land and actually the question is essentially focussed on ownership.

Q. And that was because – well, I do not know exactly why it was. But one can hypothesise that Māori understood that as soon as land came out from the moana because of the history of these blocks that the Crown was going to grab it.

A. Correct. Yes, yes. And in lots of ways that's the interesting role that Manihera plays in terms of he's of the new generation in terms of land sales and ownership is that's the language that he's trained and brought up and becomes the expert in.

Q. Yes.

A. So that's very much in terms of the new generation these young Māori that we talk about in my affidavit, actually is all around this new generation of seeing the world in a different way which is around ownership.

Q. Although, arguably, and I know that you are cynical about what he said at the Native Land Court hearing, –

A. Mhm.

Q. – but arguably the language that he was using which in one interpretation of it is about layers of interest is more like what we could say was a traditional view of it potentially. Because he is talking – let me find the passage – so he goes, on page 48 of the bundle that – page 15 actually of the internally numbered bundle that Mr Emanuel put up for us –

A. Mhm.

Q. You might want to have a look at it.

A. I'm just going there now.

Q. So it is just below halfway down the page that has 48 at the top –

A. Yes.

Q. – and they are talking about Te Hiko's sale and he talks about the interests in the lake. He says, "I have a large interest in the upper lake. We all have interests. I have the same amount of interest as all the other

chiefs, 30 of us have equal interests. I do not know of any who have lesser interest than the others,” and I think he is talking about the chiefs there. “The whole tribe perhaps 500 are also interested. I have no personal interest in the lower lake, my interest has ceased in that lake.” And he goes on to say his parents had an eel weir but he’s given that up.

A. Mhm.

Q. Then he says, “I think there are about 30 interested in the lower lake, share and share alike.” So again, this is, you know, how good is this record, I don’t know. But it seems to me that he’s saying, “If you look at a rangatira interest there are perhaps 30 interests of approximately equal size in the upper lake –

A. Mhm.

Q. – and another 30 in the lower lake –

A. Yes.

Q. – and then there are a whole lot of other people,” and you have spent a lot of time discrediting that number of 500. But let’s say everyone else who is interested in the lake, –

A. Yes, sure. Yes, sure.

Q. – however many that is –

A. Yes.

Q. – they have another level of interest. I think that is one way of interpreting what he is saying.

A. Yes. Did you want me to offer an alternative?

Q. Yes.

A. Okay. So, some of it might be around the hierarchy in terms of the ability and the privilege to make decisions on behalf of the others.

Q. Yes.

A. So the interest might not necessarily interest in terms of what you might term ‘ownership’, it might be interest in terms of him distinguishing interests in terms of interest as chief in terms of being able to make decisions on behalf of, –

Q. Yes.

A. – as opposed to others who have an interest but are not going to be involved in the decision-making.



- Q. On the list, yes.
- A. So that is another alternative.
- Q. And if you were, you know, talking about ownership that seems to have been a short hand for ranking those interests, right?
- A. Mhm.
- Q. So it is not saying that the wider community does not have an interest –
- A. Correct.
- Q. – but there seems to have been. at least in the terms that Manihera is talking about and his general kōrero seems to be endorsed by Piripi Te Maari and Komene Nuku Piharau, they seem to be saying that his estimation of the number of chiefs involved and that they have a more or less equal interest they endorse that.
- A. Yes.
- Q. So there seems to be a consensus that there is a kind of, as you say, a right to speak for people –
- A. Correct.
- Q. – that you can innumerate.
- A. Yes, yes. I think it's really important to notice though that they can't just see that without also having the lens of understanding this whole regime. This whole future for Māori land is about ownership and so –
- Q. Well, you have got to get your name there.
- A. Yes, yes.
- Q. Yes.
- A. So I understand what you're talking about in terms of interest, in terms of the old traditional way of seeing it, but they have also been exposed and conditioned to understanding that the world has changed. At the end of the day, ownership is going to be one of the key facets for associations with the lake moving forward.
- Q. But what it seems to me from this account that is contained in these papers is that it's not uncontroversial. If we have a look at the different things that people say they are not being that categorical. I mean Piripi Te Maari says, "I know the Wairarapa lakes. I have an interest. I do not know whether my share is equal to that of Manihera as the place has not been surveyed.

A. Yes.

Q. Our shares are equal. Hohepa Aporo is my younger brother his interest is this.

A. Yes.

Q. He is my younger brother and has an equal interest with myself.” Well, he is not pretending to know everything.

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A. Totally, yes.

Q. He is saying, “There is some stuff around the edges here, I am not going to be assertive about where things lie. I just know where things lie for me and my brother.”

A. Understand, yes. And I guess just if I wanted to follow on from that, I totally agree in terms of they couldn't be categorical then and I don't think I can be categorical now.

Q. No.

A. But what I have done I tried to deliver it with aroha and develop it with aroha, but actually just trying to say, “Actually, here's a complete counter point,” as a way to offset what I'm hearing and reading Mr Stirling, in summary, in the middle is for sure something that we might arrive on, but actually I've probably gone harder to that end as a way to kind of actually say, “The historical record doesn't support that categorical conclusion either, –

Q. And –

A. – particularly in relation to the Native Land Court. That's not the best place to go and get a reference. Unfortunately that has been one of the key elements that's influenced the discussion so far.

Q. Because it has a record.

A. Yes, yes. Although, interestingly there is a significant record of –

Q. The Whatahoro Jury one.

A. Yes, yes.

Q. Yes.

A. Yes. Which hasn't been introduced unfortunately or used in this instance.

Q. Well, you have got it before us now and we will have a close look at that.

A. Yes, and I'd imagine there's more material as well.

Q. Yes. Well, I think there is a lot isn't there Francis? And then Anihiko also talks about the possibility of interests that she cannot nail down.

A. Yes.

Q. So, she is talking about other people who may have interests. She doesn't know how much their interests would be. And then she talks about a person called Te Wakatahuai and she says, "He's dead. I do not know how he derived an interest in those lakes. I do not say he had no interest but I do not know how he derived it." And she mentions another person and says, "I do not know what his interest is."

A. Mmm.

Q. Well, that seems to me to indicate a situation where, even people who are well-informed are raising the possibility that people have interests that they don't know about that they can't define at that point.

A. Yes.

Q. And then if we go back to that, or what appears to have been the end of the day, of the 26<sup>th</sup> of October and that interchange on page 14 of the materials that Mr Emanuel put before us, and here we have, you know, it being introduced that people are not just there in their own right. If we have a look down the page about two thirds down where it says, "Hamuera Mahupuku put in a list of names for his client Hoani Te Toru representing three hapū."

A. I'm not sure where that is?

Q. It is two thirds of the way down.

A. Okay, yes, yes.

Q. Yes?

A. Yes.

Q. So that specifically says that somebody's name is there in a representative capacity –

A. Yes.

Q. – and then there seems to be at this point a pulling away by Piripi Te Maari and Manihera about the whole process. Piripi Te Maari says, "Well, can the Native Land Court adjudicate on water?" Now, what did he mean by that? I mean potentially he is raising that question of, "What actually are we working out here? Ownership of what is at stake?"

A. Yes.

Q. “Does the Native Land Court know about stuff that isn’t land?”

A. Yes.

Q. And, interestingly later on page 16 of those materials where there is a letter which appears to be from Richard Gill to the Honourable Native Minister and then he is talking about Piripi Te Maari and Raniera te Iho and saying that, you know, they’re good chaps.

A. Yes.

Q. And then he says, “The two men have authority over a large section of the owners, and with them will rest to a large degree the final settlement of the waters of the lake passing to the Government.”

A. Yes.

Q. I mean so what were they talking about? You know, that does not sound like nothing. You know, they are talking about all the water, all the land, all the rights.

A. Yes.

Q. I am not sure that it was particularly straightforward for people.

Q. And I am not trying to say in anyway. I guess at the end of the day if I had written two sentences and said, “This was really unclear and none of these conversations were semi-dimensional linear conversations,” that might have been enough, but I did need to kind of belabour the point to ensure that there was at least some rebalance of the discussion. But you are right the whole confluence between the water and the land and Māori understandings of it and then going to the Māori Land Court as to whether it had jurisdiction over the water and the land or just the land, and then also the whole question around the relative interest in water, in fisheries, and in land are all in the mix. It just happens in 1883 where the conversation is particularly on land ownership all of those other underpinnings are there, as well as all the personal relationships and all of the –

Q. Exactly. Because it’s immediately after Piripi Te Maari says this thing about the Native Land Court adjudicating on water that it says Manihera Te Rangitakaiwaho made a desperate attempt to quash the case.

- A. Yes.
- Q. So was it that that triggered him, you know?
- A. Yes.
- Q. I do not know.
- A. Yes.
- Q. And then they were all whatever agreement they would come to the day before suddenly that is all put in question.
- A. Mhm. Mhm.
- Q. And Hamuera is saying, "Well no, accept all those names," and the others are saying, "No, no. Piripi says we want it dismissed." And then, as it looks like the chief Māori people there are walking away from it, it says, "The Court advised them not to insist on withdraw as case will have to come on another year, and in the meantime the Crown will proceed to have its interests ascertained."
- A. Yes.
- Q. No pressure.
- A. Yes.
- Q. I mean that is saying, "You guys cannot withdraw because if you do we will award interests without you." So any uncertainties that there may have been in anybody's minds the Court is saying, "Suck it up because we are going to go on regardless." That does not seem to me to be, and I think this is consistent with Mr Stirling's evidence, it is not conducive of inviting the Māori parties to sit down and really come to an agreement. It is inviting them to just push on regardless.
- A. Yes. And I would point out, as I pointed out before, actually prior to the 1883 there are a whole series of wānanga and get-togethers and meetings where all of that occurs, but at 1883 who knows what other issues are at hand.
- Q. Yes.
- A. But if I took a step back from your point and looked at it overall, I guess all I am saying is, you know, look at the 1883 proceedings with caution because there's all of these other invisible, undisclosed, and unclear aspects that are going on. So whether Mr Stirling is awesome or whether I'm awesome it doesn't really matter, my point is actually if you look at

these entire proceedings in isolation and think that this provides clarity and surety, whether it's one person's statement or whether it's the decision of the Court, all I am saying is you need to be very careful around relying on this alone. But all I am pointing out is actually what I am pointing to is there are a huge amount of discussions and meetings about ownership prior and there are a huge amount of discussions in meetings about ownership after 1883. I'm sure all of those then inform Māori to make decisions about whether they want to contest that decision or whether they don't. The fact is they don't and I think that implies some element of satisfaction and willingness to accept whatever the outcome was in 1883 because there was no demonstration process.

Q. Well, that is a possible interpretation of what was going on.

A. Yes.

1400

Q. Alternatively, perhaps what they did in the face of the determination of the Court to get a list no matter what so that the Crown's interests could be defined –

A. Mhm.

Q. – they shifted their focus to protecting the ownership of the lake that remained to them. So that whatever names were on the list they still owned all but 17 of the interests and their focus became, “It doesn't matter whose names are there, let's just damn hold on to that because that's going to be job enough in itself.” And if you look at what the focus was in the subsequent years, it was manning the barricades, it seems to me, to make sure that individual owners didn't sell and they were very successful in that.

A. Well again, it's around finding the evidence that demonstrates that clearly and I'm not aware of that.

Q. Well, there is no evidence that demonstrates any of these propositions.

A. There you go.

Q. They are all possible constructions aren't they?

A. I totally agree.

Q. Your proposition really focusses on discrediting Mr Stirling's reliance on Manihera saying that there were perhaps upwards of 500 you have said

–

A. Mhm.

Q. – interests in the lake, but at the gritty end the question is not in my opinion where there are 500 to a thousand other interests. It is, "Were there really as few as 139," because there is a big gap between 139 and 500 –

A. Mmm, mmm.

Q. – and there is a whole lot of numbers in that intervening space. I am driven to look at where Mr Stirling said in support of his contention that the 1883 list didn't represent all the customary owners –

A. Mmm.

Q. – well, first of all, there is that question about, "What is a customary owner, what level of interest should or could have been captured –

A. Yes.

Q. – in a resource that was the defining taonga of this area?" Mr Stirling, well you recall, did look at other blocks and look at the number of owners in those blocks and observed that in an area like Taumatakaihuka which was 3220 acres there were 149 owners –

A. Mhm.

Q. – and in Mataikona which was 18,000 acres there were 163 owners. Well, again this is sort of just counter-evidence, isn't it, or other information to put into the pool. But, do you have any ideas about why there would be 149 in an area of 3220 acres and 139 in an area of 25,000 acres?

**(2:03) MATANUKU MAHUIKA TO JUDGE WAINWRIGHT:**

Q. Ma'am, I am reluctant to intervene but in terms of that question I did raise that matter with Mr Stirling. There are in fact three blocks that comprise that block if you look at the appendix to his evidence and the number of owners that he gives in respect of that block is simply an accumulation of the total number of owners on those blocks.

A. I'm sorry, which block Mr Mahuika?

Q. That's the Mataikona block.

A. Right.

Q. So there are three blocks of land so there are three separate ownership lists and the question that I put to him was, “Is there overlap between those ownership lists,” because you might not actually be looking at –

A. Right.

Q. – 140 odd different people, there might be overlap.

A. And, is that true of Taumata Kaihuka as well?

Q. No, I don’t think it is. But I mean it’s important to the context of the question that’s being asked of Mr Hemi that that is an issue there in terms of that block, so it might not actually be 140 separate owners. It is simply adding up the three.

A. Well, in a way I think Mataikona is a less good example as a counterfactual because Mataikona –

Q. Yes.

A. – it does have 18,000 acres and as you say it is three separate blocks.

Q. Yes.

**(2:05) JUDGE WAINWRIGHT TO MURRAY HEMI: (CONTINUES)**

Q. But in some ways I think – I mean I do not know the answer to this. It is an exploratory question, “Why would we have a relatively small block with 149 owners and a huge block with 139?” And I mean there are a whole range of possible answers there aren’t there?

A. Yes. So just a counterpoint to that, if you looked at the Tauherenikau No.4 Block which was purchased in September 1853, the signatories to that deed by my quick count is 16 people including some children, four of whom are Te Manihera’s children. The Tauherenikau No.4 Block is massive. It stretches from the top of the lake all the way to Waingawa. So there you go, like that probably the largest single block and they didn’t even know the size of it, but just based on Rigby and Francis’ report.

Q. Yes.

A. It’s a huge block but here we are with 17 people signing off on it.

Q. So what does that tell us?

A. It just tells us the methodology we’re using here, using size of blocks and names of people or lists of hapū doesn’t get us any further. It just gets us



around and around in circle trying to argue detail that doesn't actually give us a sense of population. As I pointed out earlier on, there is no methodology reliably that can allow us to define from a list of hapū or even a list of names or an area of land how many owners should be associated with that. So it gets us exactly nowhere.

Q. But it surely at least tells us that there were not only 17 people with strong interest in Tauherenikau.

A. Yes. But then the other side to that is, so the block that you were just talking about there's 100 and whatever it is somehow that's the better correlation than this one. All I am saying is there is no correlation in any of this stuff.

Q. Which does not mean it does not tell us anything. Maybe what it tells us is that in some situations people wanted to say everybody who was associated with the land and in other situations they simply wanted to talk about the leading people associated with the land, and we do not know which these is.

A. Yes, I couldn't agree more. It's like there is no method by which we can reliably make any assessments about actually what the size should be or shouldn't have been from block to block according to how many names were there or the sizes of the block and that applies just as equally to Wairarapa Moana. But what happened was we ended up with a list for better or for worse and it defies me or probably anyone else in this room to come up with a better list. Because we simply don't have that knowledge, that wisdom, and the people who understood all of the inter-dynamics on that day and all the days previous and subsequent are no longer here.

Q. No. And implicit in that decision on the day a lot of circumstances, some of which must have been to do with the exigency of a Court's timetable and its determination that it was going to be concluded no matter what, but also in the heads of the people who put those names up was knowledge about who those people represented –

A. Correct, yes.

Q. – and what their whakapapa reason was for being there, what their residence reason was for being there and we do not know that now.

A. Yes, but you can be pretty confident that it was not just a list of 139 names just for a list of 139. That there would have been some intelligence and some reason for them going and having their name there just as a recognition of their mana and their connection. So it wasn't just a random collection then.

Q. Oh, no.

A. Like, "Now we've got a random list of names, let's go hard out and protect the lake itself from being sold." Actually there was also a huge amount of intelligence in dividing that 139 and, as I've said, that's out of all of these wānanga previous to the 1883 gatherings.

Q. Although we don't know the relationship between the list that was ultimately agreed and what the wānanga came up with, do we?

A. Yes. Although it surprised me, given the number of the 26 rangatira sitting in the room all providing evidence, that they will then suddenly allow someone else to script the list of names that wasn't based on the wānanga and the hui that they had previously. So that would be a bigger jump.

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Q. Yes. I mean I wondered whether we could infer that the focus – it seems to me that there is no doubt that the people who were in the room were the right people. Well, apart from the controversy of the Rangitāne interests. The Kahungunu interests, no one was saying those people who were in the room shouldn't be there. But the question as to who those people represented and whether they were another view of it would have put other people into the ring. We cannot answer determinatively can we?

A. No, we cannot. But I did just want to pick up again on the point around the controversy that those that were from the Rangitāne/Hamua those that were interested because those that were expressing interest and they had a residual connection or had some relationship were let in. Those that had a historical relationship but didn't actually have a living or a residual interest were not let in.

Q. No.

- A. So there wasn't any controversy around the Hamua/Rangitāne. It was more around understand the tupuna connection but if your connection isn't alive or recognised by others in some form, then pretty much that was extinct from the moment of gifting of the land in exchange for the waka.
- Q. But we don't know what that other dimension of connection. I mean obviously residents is one thing but what about user?
- A. Yes. But if you took a step back from all of this stuff I don't know of many traditional relationships where people just allowed people to use their resources willy nilly.
- Q. But didn't someone say that more or less one of the rangatira –
- A. At the mouth of the river?
- Q. – yes, said basically, "We guard closely our interests in the streams and the rivers."
- A. Yes.
- Q. But there is so much in the moana that it is a free for all.
- A. Yes. But if you took that further along and then there was a point where there wasn't so much in the river or there wasn't so much in the lake, do you think that that change might have happened –
- Q. Sure. Sure.
- A. – and those that were in charge of allowing willy nilly to arrive at the lake –
- Q. Yes.
- A. – might have decided, "Actually not you this season, this is just for the people at home?" So that could well have been an eventuality too –
- Q. Yes.
- A. – but all I'm saying is, I hear what you are saying but it may be more – one of the things I really struck with this is the acts of love. Like people are put into the deed out of aroha.
- Q. Mmm.
- A. So I would imagine this maybe also an expression of love to the wider family within the Wairarapa, but that doesn't mean that they are owners.
- Q. No. I mean but it may be that that kind of complicated web of interests –
- A. Absolutely.

- Q. – is why people did not want it put in a title.
- A. I totally, I totally agree with you in all instances. All I'm saying is, those are not things that you can divine or discern out of the paper record.
- Q. No. But if you think about, you know, people were rational people, right, they had this amazing resource –
- A. Yes.
- Q. – that was more or less exhaustible. I mean for this level of population and that level of resource –
- A. Yes.
- Q. – the need to husband it in this era seems to have been not required. So why wouldn't you, if you were a rational Wairarapa Māori, go to the other people in the Lower North Island, "We're going to manaaki you. In the season you can come and take eels," because that immediately sets up an utu, does it not?
- A. Yes.
- Q. So why wouldn't you use that resource to engender obligations from all your neighbours to give you generosity when the time came that you needed it?
- A. Yes. Yes, I a hundred percent again. The point again is just because you are offering manaaki to someone doesn't mean they then become owners of it.
- Q. No.
- A. No.
- Q. But it does mean that there's layers and layers of interests in this resource –
- A. Absolutely. Yes.
- Q. – and as soon as you get the Native Land Court putting 139 names on a piece of paper, that whole rich tapestry of interests and cross-interests and understandings is set in concrete.
- A. Yes. But again, I still come back to the 139, is not just a product of willy nilly names being added that actually there is a whole wānanga and process of thinking about that one grant. The next one is, "Actually, so here is the 139 that we've identified. Our next job is to make sure that that ownership is secure so that we can continue on that association of

manaaki,” and our history doesn’t allow that to happen. That actually, that decision in 1883 still sets up the prospect for the specific nominated 139 to hold that on behalf of the owners and their capacity to manaaki the Lower North Island as you were referred.

Q. Well, because we do not know what the wānanga came up with or – I mean at this point for instance on the 26<sup>th</sup> of October where they are all seeking to withdraw, –

A. Yes.

Q. – we do not know what lay under that. I mean maybe there was a whole controversy about a tranche of people who might have gone into the title but for that day they have decided, “No, we will keep to the 139.” And then they are all going, “No, no, no, let’s have a look at that again.” And the Court says, “No, you can’t”. I mean we just do not know is the point.

A. I totally agree, yes.

Q. Yes, we do not know. I mean they clearly were not –

A. Although, it’s interesting in both instances you have Piripi Te Maari and Manihera somewhat at odds, or both desperate to quash the proceedings.

Q. Yes.

A. So it’s not like there’s –

Q. For whatever interest they represented.

A. – some invisible group of people that are suddenly appearing in the Court to have their voice. Actually, there are two representatives here who maybe they’re running their own independent strategy and just decide, “Actually now is not the day to proceed.”

Q. Well, we do not know –

A. Correct.

Q. – but they both were insisting that the case be dismissed –

A. Yes.

Q. – and it wasn’t. But that really, in my opinion, does go to your saying, “No, no, no, there was no controversy about it.” Well, there might have been, Mr Hemi. We do not know why they wanted it dismissed.

A. Yes. So, the same point there might have been and there not have been.

Q. Yes.

- A. I can sit with that.
- Q. Yes. Well certainly, that last range of interchanges that does not look like a kua tau situation, does it?
- A. No, but that's pretty tough on one, two, three, four, five lines. That's a big bow to draw.
- Q. Yes, but these are not nobodies.
- A. Yes, I'm not saying that. But if you look at the – look, I can count the words, it's 25 words potentially. So on the basis of 25 words do you really want to draw that bow, given our previous discussions around how uncertain and how unreliable and not categorical this whole process is? Do you really think that those five lines is enough?
- Q. Well, it does not get us anywhere.
- A. Exactly.
- Q. I mean it certainly does not get us to your point which is that there was no controversy.
- A. Well, it comes back to the same point. I totally understand there may have been controversy or there may not have been but again, same point that you raise is –
- Q. We do not know.
- A. Yes, we don't know.
- Q. Well, I guess it takes me also to the point where these documents are capable of different interpretations and I have not seen anything to make Mr Stirling's interpretation, you know, a deceitful, out of hand, covering things up kind of interpretation or yours. It's very open texted material and we can make of it what we can in terms of what we know about the surrounding circumstances, and we are not all going to come up with the same answer necessarily.
- A. Mhm.
- Q. So you were contrasting this list of names that the Native Land Court ultimately accepted with other situations where Wairarapa Māori persevered with protests –
- A. Mhm.
- Q. – and Mr Emanuel pointed out to you that two of those that you pointed to were not directly analogous, in that they were not about names in the

primary title, they were about names in the Crown reserve. I wondered whether you had investigated the historical record to the point where when you went on and you said that 'some of them went for a massive period of time' whether you had looked into them closely enough to work out how similar they were to this?

- A. No. So I didn't look at the specifics, if any, of those cases. My point was actually if there was an issue some of the key players that are involved in the Wairarapa Moana were prepared to go to the longest and largest extent at their own cost to find the right outcome. So it's interesting they are prepared to do it in this instance and I'm just drawing some contrast.

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- Q. Because in order to make that point you would need to be able to – well, I suggest to you that in order to work out whether, when they were deciding to pursue that and not that, that the real reason was because this one mattered to them and that one did not or, whether it was because the circumstances of the kaupapa meant that they could somewhere with that one whereas they could not with that one. I thought that you would probably need a bit of close observation to confidently say or the reason they didn't pursue this was because it wasn't a controversy?

- A. Yes. And the exact opposite to that is to say that they didn't pursue Wairarapa Moana because there was a controversy. That doesn't make a lot sense to me either.

- Q. Well, it is not that they did not pursue Wairarapa Moana, is it? They pursued Wairarapa Moana to the nth degree but they sat with the names and they pursued other things.

- A. I'm not sure that that's clear to me.

- Q. Well, they did though. That is what they did.

- A. So when you say 'they pursued Wairarapa Moana to the nth degree' –

- Q. Well, they pursued their determination to hold onto it and to fend off potential purchases in the lake interest –

- A. Yes.

- Q. – including, you know, especially the Crown. So that is where Piripi Te Maari mā, you know, concentrated their endeavour –

- A. Yes. And so you are suggesting that they'd have that fight but they wouldn't bring up any issues of outstanding or outstanding ownership?
- Q. I don't know.
- A. Yes. Because it would seem strange to me.
- Q. I do not know what the reason was –
- A. Yes.
- Q. – but I think there is a construction that would enable us to hypothesise that they put all their eggs in the basket of having got 139 interests of which only –
- A. Yes.
- Q. – 17 were owned by the Crown –
- A. Yes.
- Q. – that the chief thing was to hold onto what they had ā-hapū, ā-iwi, rather than fight amongst themselves about who should be on the title.
- A. Yes. And I would just say, it would strike me as strange that they would argue about the control of the lake mouth and not raise issues of outstanding ownership. It just doesn't make sense to me.
- Q. Okay. And then one of the things that did not really make sense to me in terms – I mean what you were saying is we should not listen to Manihera said about, you know, the 500 or whatever other interests there were because if we look at his life story we can discredit him as a reliable witness and that may be so. But in terms of his motivation for characterising the interests in the lake in the way that he did, is your interpretation of his reason for saying that there 'were lots of interests' that that would put him in the box seat in determining who the other interests belong to or who they might belong to?
- A. No. So that's not central in terms of central at all in relation to what I was trying to say.
- Q. Well, why do you think he was doing it? Because I mean in order for us to discredit it as an item of kōrero we either have to say he did not know or he was lying?
- A. Yes. So I think the more central point for me is he's the only one that makes that statement.
- Q. Well, yes, okay.



A. So yes, you can give all the credit you like to it, but generally I find if there is two or three others or at least one other that's corroborating that story then I'd give it some credit. But all I'm saying, whether it was Te Manihera or anyone else that single statement alone by one individual without any corroboration (either in the proceedings or external to it), for me it was like yes I'd be pretty careful around those things and generalise the latest statement.

Q. Well, Bryce and Gill said –

A. Yes.

Q. – there were 200 interests. And they said, “Oh, but those Māoris they are just trying to make it hard for us to buy things.”

A. Yes.

Q. Really?

A. Yes. But if you think about 200 and 139 and 200 is inflated that's not too big a step to take.

Q. So you saying, “Two hundred, okay that's possible?”

A. All I'm saying is, here's an interesting piece of evidence that might provide some strength or some credibility to that particular number. I'm not saying this is the number. All I'm saying is, let's have a look at few other pieces of information that might give us more confidence about what's being stated. All I'm saying clearly is the 500 from Manihera is not repeated or substantiated anywhere else, even by himself.

Q. Yes. Well, I mean, as I said, I think that the interesting question for us is, what are the kinds of interests that were captured in the 139 –

A. Mhm.

Q. – and what kind of interests would be captured if it was 200? I mean what is the different between that in terms of who would be on the list or what kinds of interests were being captured? Obviously, if it is more, the same question becomes amplified and I –

A. Yes. So it's the same question around direct ownership or direct interest versus indirect. Is this process trying to recognise the indirect interest of all of the lower North Island or is it's just trying to focus on the direct interest in the lake directly related to tūpuna, access, use and residency in that immediate community?

- Q. Well, there is a whole range in there though, isn't there? I mean obviously it is like everything else, you could name I do not know maybe 139 people that no one would say did not have an obvious interest because they are, you know, the core people.
- A. Mhm.
- Q. But then if you spread the rings a bit larger who gets into then? And you spread it a bit larger who gets into it then? And then you have got the whole of the lower North Island, –
- A. Yes.
- Q. – well that is a range of relatively –
- A. Correct.
- Q. – minor interests.
- A. And so the challenge is drawing a line.
- Q. Yes. It is hard, isn't it, because we don't actually know exactly what the criteria were that the wānanga applied.
- A. Except to say again, the decision in 1883 is informed by all of that wānanga discussion amongst the key players that were also in the room on the day.
- Q. Well, that is if they agreed, and we do not know whether they did.
- A. Well again, it just comes to, "Well, where is the evidence in terms of protest after that?" So we kind of end up you and I are sitting in different positions and we don't have enough evidence.
- Q. I do not know if we are in different positions. I am just saying it is pretty open textured. I just think that –
- A. Yes, I –
- Q. Yes.
- A. – totally agree. My point comes back again is, if you can read in 25 words that this is actually something significantly different, then I understand that is a pathway you could take.
- Q. All right.

**JUDGE WAINWRIGHT:**

All right. Well, the Tribunal has reached the of the questions that we want to ask today. I do not know whether there are more questions that we want to put

to you in writing Mr Hemi. That is something that we will consider at a little bit more leisure, and obviously other parties will want to do that as well whether they think that they can take any of these matters further in questions in writing. Is there anything that you want to add at this point Mr Mahuika?

**MATANUKU MAHUIKA:**

If you wouldn't mind, I will ask a couple of questions.

**JUDGE WAINWRIGHT:**

Yes.

**MATANUKU MAHUIKA:**

Just a couple of things that arose particularly from that last exchange. It's more for the purposes of the record than anything else.

**(2:29) MATANUKU MAHUIKA TO MURRAY HEMI:**

Q. So, kia ora Mr Hemi.

A. Kia ora.

Q. Look, in terms of the approach that you took in preparing your evidence, the focus on the evidence of Mr Stirling and the role that Manihera played in relation to land dealings, can you just for the purpose of the record explain why it was you approached it in the way that you did?

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A. Yes. My focus is entirely on what is the kind of underlying theory with Mr Stirling's work. It isn't for me to try and introduce new research or introduce anything that is beyond that. So I'm really wanting to provide a counter-point and a counter-argument with some sources and some references that indicate actually I'm not sure it's that conclusive. I'm not sure you can actually draw all those inferences. And if you have, I don't know what the methodology is by which you've reached those.

Q. And, in taking that approach, did you go so far as to suggest that Mr Stirling was being deceitful in the way that he presented his evidence?

A. No. I just think it's unfortunate that some of the material that he has had access to could have been informative for these proceedings as well.

- Q. And why did you think that?
- A. Well, I was stunned and amazed really to see the stark contrast between his *Wellington Regional Council Report*, which is appended, and his #J096 evidence and just thought we're dealing with the same sources in the same instance and the same people, but Mr Stirling's conclusions are fundamentally different. I just thought that was a remarkable achievement.
- Q. Okay. But you weren't in the context of that saying that he was deceitful. You had just reached different conclusions, is that right? Is that what you're saying?
- A. Correct, yes.
- Q. If I look at the different land dealings that were occurring within the Wairarapa in that latter quarter of the 19<sup>th</sup> Century, would there have been a topic that was more important than the ownership of Wairarapa Moana?
- A. In the Wairarapa, God no.
- Q. And so you say that for what reason?
- A. Because it was such a topical issue and because there had been such a long and strong resistance to any engagement of the Crown around sales. Maunsell repeatedly writes back to his superior saying how hard it is to broker or to make any progress. There's decades long record of that, yes, and there must've been a reason for that.
- Q. And so you may recall that you had an exchange with my friend Mr Emanuel about the brevity or otherwise of the Court hearing and I think you expressed the view that you didn't think it was brief. Why did you express that view?
- A. Well, I guess I see the whole process of the hearing as just one step in a whole process of figuring out and working at (1) around strategy; (2) around who are the owners; and (3) around who can be best positioned to represent their argument both in the Court and moving forward. So I think I had expressed earlier, this needs to be seen as a kind of ongoing, a continuum of wānanga and discussions. The Māori Land Court is just one event where that occurs. But it doesn't occur in isolation like suddenly it's occurred; like suddenly it's an event. Actually, it has a whole

huge degree of pedigree and discussion up into the event and then also after the event.

Q. And so if we look at then the role of Manihera and your characterisation of Manihera, why did you think it was important to discuss how the record has characterised him?

A. For two reasons. Simply, Mr Stirling's evidence is scant in that regard and it's important to understand as a key player and as a key influence and also as the source of one of his key quotes, actually the background and the nature of the individual. And also, to be honest I might not have been specifically looking for positive examples and references to Manihera, but in all of my research I didn't find a lot of that, except in his early days when he arrives and is seen as a staunch friend of Pākehā. From that point forward, even his Pākehā colleagues are wearing thin of his approach. To be honest, look, I'm from Papawai so the Manihera family is very important to me, so if I had found a more opportune way to provide more of a broader spectrum of who the man was I think would have been in my best interest to do that as well. But actually in terms of the record and what is remarked about him consistently is his nature of being quite unreliable and quite prepared to sell the land of his friends and his relations. It's quite a powerful quote.

Q. So, are you suggesting in this case that that's what he was trying to do?

A. In this case?

Q. Yes. Or, is your issue more one about reliability?

A. More around reliability. Because I think in this instance in terms of Wairarapa Moana and the hearings there's just far too many people in the room. So one of the things that works really well for Manihera is he tends to have deeds or agreements with the Crown that are separate, that are away from the public hui or the public owners or out of the eye of the public. And so most of his success are around managing for individuals to come and sign deeds in isolation. This instance it's a hugely public, well-known and well-traversed area and I think it's quite a different space for him to be operating in.

- Q. But I suppose the point is, and the point that Judge has made, do you think it's possible to be definitive about what his motives were at that time?
- A. Absolutely not. In fact, even just reading the accounts that we've just traversed now in terms of the Māori Land Court discussions there's wheels within wheels of all of this stuff and it's hard to say one way or the other.
- Q. And so, are you aware in the wānanga that occurred beforehand and then occurred subsequently to the Court hearings of there being a reference to there being 500 owners or people with interests in Lake Wairarapa?
- A. Certainly not in any of the Land Court discussions and land associated. But again, I haven't had any great time spent with the Te Whatahoro records.
- Q. Okay.

**MATANUKU MAHUIKA:**

Yes, those are all of my questions, Ma'am. Thank you very much.

**JUDGE WAINWRIGHT:**

All right. *Ko te āhua nei kua tae tātou ki te whakamutunga o te rā nei, i te mea ka hiahia koe ki te tīmata āpōpō. Nā reira ka hoatu ahau* – [Interpreter: We have come to the convening our hearing, and we will recommence tomorrow. I will hand matter over –] Mr Emanuel?

**ASHER EMANUEL:**

Your Honour, sorry, just before you do finish up, this is related to the other hearing but I thought it might be convenient because we are here right now. The submissions for the applicant parties in Wai 429 are due today at 5.00 pm and in part because of the work we've been doing today the Settlement Trust would like another 24 hours for those submissions. I have spoken to Ms Dixon and my friend Mr Irwin about that possibility and there is agreement that if the applicant parties were to file tomorrow at 5.00 pm instead of today at 5.00 pm, the Crown would be happy with that, if it too could have another day?

**JUDGE WAINWRIGHT:**

*Kei te pai.* [Interpreter: That is fine.]

**ASHER EMANUEL:**

Kia ora. Thank you Your Honour.

**JUDGE WAINWRIGHT:**

*Nā reira...*

**DR RUAKERE HOND:**

*Pai tonu kia tuku atu te mauri kōrero ki a koe e koro. He rā anō āpōpō e rere tonu ana te kupu te kōrero i roto i a tātou, engari anō e tika ana kia whakakapi i ā tātou ma[h]i mō te rā nei. Tēnā koe.* [Interpreter: There is another day there, sir, but, however, I will hand over matters to you to give prayer.]

**KAUMĀTUA: (14:38:28)**

*Te mea tuatahi ki a koutou te Rōpū Whakamana i te Tiriti o Waitangi, a ka nui te mihi ki a koutou mō tō koutou awhi, tautoko ki a tātou e pā ana ki te mārama o ngā kōrero i kōrero mai, nō reira tēnā koutou, kei te mihi ki a koutou. Ā, tēnā koutou ngā māngai e kōrerohia i tēnei rangi, ka nui te mihi ki a koutou. Tēnā koe e te rangatira, Murray, tēnā koe mō ngā kupu aroha i kōrero mai mō tātou e pā ana ki te Wai 85. Kei a koe tonu e ngā rangatira kei waenganui i a tātou, kia kaha, kia māia, kia manawanui. Nō reira e te whānau, ko tā tātou waiata whakamutunga ko Tū Tira Mai Ngā Iwi, whai muri o tērā ko te karakia. E tū e te whānau.* [Interpreter: I wish to acknowledge the Waitangi Tribunal, in particular your patience to listen to all evidence that is brought before you, so acknowledgements there. I wish to acknowledge all the many leadership groups here. Again, I wish to acknowledge you. And of course to you there, Murray, there's no doubt the empathy with your evidence was very well received. So, we want to acknowledge your dedication in your work. So we will close off with a waiata Tū Tira Mai Ngā Iwi, and I will close off with a waiata thereafter.]

**WAIATA (TŪ TIRA MAI)**

**KARAKIA WHAKAMUTUNGA**

**HEARING ADJOURNS: 2.40 PM**