I TE RŌPU WHAKAMANA
I TE TIRITI O WAITANGI

Wai 3325 Wai 3280
Wai 3344 Wai 3284

KEI RARO I TE MANA **o te ture o te Tiriti o Waitangi 1975**

I TE TAKE **te Huringa Āhuarangi (Wai 3325)**

I TE TAKE O **he kereme nā Anthony Whata mo tana whānau, hapū, iwi, whānau whānui me whāngai (Wai 3280)**

I TE TAKE O **he kereme nā John Fenwick mo tana whānau, hapū, iwi, whānau whānui me whāngai (Wai 3344)**

I TE TAKE O **he kereme nā Mark Mohoaonui Ross mo tana whānau, hapū, iwi, whānau whānui me whāngai (Wai 3284)**

NGĀ TĀPAETANGA WHAKAPUARE MO TE PAKIRĒHUA HURINGA ĀHUARANGI (WAI 3325)

I TĒNEI RĀ TE 11 O NOEMA 2024

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NGĀ TĀPAETANGA WHAKAPUARE MO TE PAKIRĒHUA HURINGA ĀHUARANGI (WAI 3325)

May It Please the Tribunal

Introduction

1. We act for;

a. Mr Anthony Whata (Wai 3280);
b. Mr John Fenwick (Wai 3344); and
c. Mr Mark Mohoaonui Ross (Wai 3284), together known as "the Claimants".

2. These opening submissions are filed on behalf of the Claimants and present their concerns regarding the Crown's handling of climate change policy, particularly its impacts on Māori landowners, Māori cultural practices, and the economic well-being of Māori communities

Statement of Issue

3. This inquiry focuses on the impacts of climate change on Māori, exploring the physical, spiritual, cultural, social, health, and economic consequences, both historically and future. It examines how these impacts intersect with the Crown's obligations under the Treaty of Waitangi (Tiriti o Waitangi), particularly in terms of partnership, protection, and redress.[1]

4. The inquiry will assess whether the Crown's actions and policies in response to climate change align with Treaty principles, including whether Māori have been adequately consulted and supported in mitigating and adapting to climate change. Key issues include the Crown's role in preventing or exacerbating harm to Māori communities, the effects of climate change legislation such as the Emissions Trading Scheme, and whether Māori have the autonomy to develop and implement their own climate strategies.

Breaches

5. Counsel submit that the Crown have breached their obligations towards the Claimants and Maori under the Treaty of Waitangi in relation to its handling of climate change. Key breaches identified by the Claimants include;

a. **Failure to adequately consult Māori**: The Crown has not properly engaged with Māori, particularly Māori landowners and farmers, on crucial climate change policies like the Emissions Trading Scheme

[1] Wai 3325, #1.4.3, Waitangi Tribunal Statement of Issue

(ETS), resulting in financial disadvantages and exclusion from carbon credits, especially for Māori-owned native forests. The lack of consultation undermines the principle of partnership and has led to negative economic impacts, such as the devaluation of Māori land under multiple ownership.

b. **Undermining Māori kaitiakitanga:** Climate change is increasingly eliminating the ability of Māori to practice kaitiakitanga over their lands, with environmental degradation threatening the health of tāonga species and natural resources. The Crown's policies, especially in relation to land use and environmental management, have contributed to the vulnerability of Māori communities, disrupting their cultural and spiritual connections to their ancestral lands.

c. **Discriminatory climate policies:** The Claimants highlight that the Crown's climate change policies, such as the ETS, do not account for the unique challenges of Māori land, such as multiple ownership, restricted land-use options, and the inability to access financial support. This results in a failure to protect the environment and economic well-being of Māori communities and exacerbates the socio-economic disparities between Māori and non-Māori landowners.

The Crown Policy on Climate Change

6. The Crown's policy on climate change is primarily framed through a combination of legislation, international commitments, and strategic initiatives that aim to mitigate and adapt to the impacts of climate change, while also fulfilling its obligations to reduce greenhouse gas emissions. The core legislation is the Climate Change Response Act 2002 [CCRA]. The framework established by the ***Climate Change Response (Zero Carbon) Amendment Act 2019 (CCRA Act)*** includes;

a. **Net Zero Target:** New Zealand has set a legally binding target to achieve net-zero emissions by 2050 across all sectors of the economy;

b. **Emissions Trading Scheme (NZ ETS):** The NZ ETS is a key tool for driving emissions reductions. It is a market-based mechanism that places a price on carbon, incentivizing businesses and sectors to reduce emissions or purchase carbon credits to offset their emissions;

c. **Emissions Reduction Plans:** for meeting the emissions budget and keeping on track to meet the 2050 emissions target;

d. **National Climate Change Risk Assessments:** to identify and assess the risks to New Zealand from the current and future effects of climate change;

e. **New Zealand Adaptation Plan:** New Zealand is also focused on adapting to the impacts of climate change, such as rising sea levels, more extreme weather events, and changing patterns of drought and flooding, and

f. **The Climate Change Commission:** The CCRA Act created the independent Climate Change Commission to advise the government on meeting emissions reduction targets, providing guidance on policy and monitoring progress

7. It is worth noting that there are requirements in the CCRA Act to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi, including to ensure that Maori have been adequately consulted and to include a strategy to mitigate the impacts on iwi and Maori of reducing emissions. Counsel is aware that if the Treaty Principles Bill is enacted, it will remove section 3A of the CCRA Act.

8. We submit the Crown's climate change policies have not been designed with the meaningful involvement and participation of Māori communities. Despite the legislative framework established by the CCRA Act and its associated mechanisms, the Crown's policies and climate strategies lack genuine consultation with Māori and do not adequately address the unique needs and concerns of Māori communities, hapū and iwi.

9. The Claimants, who are engaged in farming and forestry, are experiencing direct consequences from the Crown's Climate Change Policy, particularly the framework around the Emissions Trading Scheme and policies related to carbon credits. These sectors are crucial to Māori economic development and land use, yet they are being disproportionately impacted by the shift toward carbon pricing without sufficient support for transition or adaptation. Māori landowners and farmers are at the forefront of these changes, but they are not being provided with the necessary resources, financial support, or advisory services to navigate the complexities of these policies.

The Claimants evidence

John Fenwick

10. Mr Fenwick highlights the pressure to balance economic needs for 1,500 landowners with environmental goals, such as reducing emissions and protecting water quality. Mr Fenwick raises concerns regarding the Crowns failure to consult Māori farmers on key policies like the Emissions Trading Scheme, resulting in financial disadvantages, such as the exclusion of Māori-owned native forests from carbon credits. He highlights the difficulties Māori face in accessing capital due to devaluation of land under multiple ownership and calls for the creation of

a Māori Agri-business Fund to support farmers in transitioning to low-emission and alternative land uses.[2]

Anthony Whata

11. Mr Whata provides evidence on the challenges faced by his trust, which manages 4,000 hectares of land in a climate-sensitive region. He highlights the vulnerability of the land to climate change due to factors like erosion, flooding, and storm surges, exacerbated by limited infrastructure and difficult access. Mr Whata underscores the long-standing issues of Māori land, such as multiple ownership and limited access to finance, which delay efforts to adapt to climate change. He criticizes Crown policies like the Emissions Trading Scheme and the lack of compensation for carbon sequestration on Māori land, which leave his trust facing financial uncertainty.[3]

Mark Ross

12. Mr Ross highlights several key climate change impacts affecting his iwi's ability to uphold kaitiakitanga and manage land sustainably. These impacts include the degradation of ecological values, particularly the health of taonga species like freshwater species, and increasing challenges in maintaining cultural connections to the environment. Ross notes disruptions in seasonal patterns linked to the maramataka, the rise of invasive species, and uncertainties surrounding the Emissions Trading Scheme, which complicate both environmental and economic planning. These factors collectively threaten the sustainability of their natural resources and cultural practices.[4]

Submissions

13. Māori have a profound interest in New Zealand's climate response. Climate change and Crown's response to it have a significant impact upon the relationship of Māori to their land, the environment and sites of spiritual and cultural significance. Our claimants submit that these are 'tāonga tuku iho' which in accordance with the principles of the Treaty of Waitangi require active protection.

14. The Claimants concerns include;

a. The design and operation of the Emissions Trading Scheme (ETS), particularly the role of forestry in achieving New Zealand's emissions targets. Māori are estimated to own $4.3 billion worth of forestry assets,[5] and employ approximately 2,200 workers in the

[2] Wai 3325, #A26 Brief of Evidence of John Fenwick dated 30 October 2024
[3] Wai 3325, #A27 Brief of Evidence of Anthony Whata dated 30 October 2024
[4] Wai 3325, #A28 Brief of Evidence of Mark Mohoaonui Ross dated 30 October 2024
[5] Te Hau Mārohi Ki Anamata Report Chapter 14 at p.275

sector.[6] As a result, any policy shifts in this area will have a significant impact on Māori communities, landowners, and workers;

b. The treatment of agricultural emissions is a critical issue for Māori, given the significant role of pastoral farming in the Māori economy. Approximately 72% of Māori economy emissions come from sheep, beef, and dairy farming,[7] making Māori overrepresented in New Zealand's overall emissions profile. As a result, Māori have a strong and vested interest in the government's approach to reducing agricultural emissions, and any policies in this area must consider the unique circumstances and needs of Māori landowners and farmers who are central to this sector; and

c. The development of an adaptation framework is essential, as Māori land, communities, marae, and urupā are vulnerable to the impacts of climate change. Where homes and sites of cultural significance need to adapt or potentially retreat from areas of high risk, it is crucial that the Crown upholds its Treaty obligations and provides appropriate redress. This includes ensuring that Māori are supported in managing the impacts of climate change on their whenua and tāonga, with a focus on preserving cultural and community values in the face of increasing climate risks.

15. The claimants see themselves as kaitiaki of the land and people. While acknowledging that farming is a significant emissions contributor, the Claimants argue the need for land use flexibility and diversity. The solutions include;

a. Mitigation efforts focused on research and development;

b. A 'technology-first' approach to reducing farming's climate footprint, alongside improved collaboration between Māori communities and local councils on climate adaptation; and

c. Funding support for climate change adaptation for Maori in agri-business.

16. The Claimants submit that any climate response or policy designed by the Crown must fully acknowledge and respect Māori rights, interests, and Treaty obligations, ensuring that Māori are actively involved in shaping climate solutions and that their cultural and economic well-being is safeguarded in the transition to a low-carbon future.

[6] Reserve Bank of New Zealand. 2018. Te Ōhanga Māori – The Māori Economy 2018 Retrieved from https://www.rbnz.govt.nz/-/media/ReserveBank/Files/Publications/Research/Te-Ohanga-Maori-Report-2018.pdf (accessed 22 April 2022).

[7] Māori Economy Emissions Profile Report - National level analysis [2.1] at p7 (Hongongoi 2021)

Relief Sought and Recommendations

17. The Claimants seek a range of remedies in climate change mitigation and adaptation planning, engagement and funding policies. These include;

a. Uphold Te Tiriti o Waitangi in Climate Change Policy: Ensure that climate change policies and adaptation plans give effect to Te Tiriti o Waitangi, recognising Māori rights, responsibilities, and interests in relation to their whenua and communities;

b. Provide Climate Risk Information to Māori: Share comprehensive, accurate data on climate change impacts and risks (such as sea-level rise, extreme weather events, and environmental degradation) on Māori land, communities, and cultural sites, enabling informed decision-making and planning;

c. Recognise Māori Knowledge and Culture: Honour mātauranga Māori alongside other knowledge systems in Climate Change policies, and respect the cultural values, identity, and practices of local Māori communities;

d. Empower Māori Leadership in Climate Decision-Making: Facilitate meaningful Māori participation in climate change policy development and decision-making, including joint or delegated authority for Māori to lead adaptation planning and response strategies for their whenua and communities;

e. Protect Māori Land and Sites: Conserve and protect Māori tāonga, marae, urupā, papakāinga, and other significant sites, and ensure Māori rights to settlement land are respected;

f. Encourage Collaboration between Māori, Government, and Local Authorities: Promote collaborative and co-creative partnerships between Māori communities, the Crown, local governments, and other stakeholders to develop and implement climate change adaptation strategies, ensuring shared decision-making and responsibility;

g. Ensure Fair Funding: Provide adequate funding to support Māori participation in adaptation planning, compensate for land loss, fund mātauranga Māori research, and implement Māori-led adaptation solutions, and

h. Such other remedies as are warranted and to be discussed further at length in our closing submissions.

18. In conclusion, the Claimants submit that the Crown's climate change policies have breached its Treaty obligations by failing to adequately consult Māori communities and by undermining their ability to exercise kaitiakitanga. The lack of support, particularly regarding the Emissions

Trading Scheme, has caused significant economic, cultural, and environmental harm to Māori landowner, their whānau, hapū and iwi. This failure to engage with Māori in a meaningful way breaches the principles of Treaty partnership, protection, and redress, exacerbating the vulnerabilities of Māori to climate change.

19. Furthermore, it is important to note that the enactment of the Treaty Principles Bill, if passed, will remove Section 3A (Te Tiriti) from the Climate Change Response Act 2002. This provision currently acknowledges the Crown's obligation to act in a manner consistent with the principles of the Treaty of Waitangi, and its removal would significantly undermine the Crown's responsibility to engage with Māori in the context of climate change.

20. The Claimants seek a comprehensive and transformative response from the Crown that honours its Treaty responsibilities and ensures Māori are actively involved in climate decision-making. The remedies sought - such as providing climate risk information, empowering Māori leadership, and ensuring fair funding for adaptation - are crucial to protecting Māori land, culture, and well-being. These actions are necessary for upholding the Treaty and enabling Māori to play a central role in shaping a sustainable climate future.

May it please the Tribunal, these are our opening submissions.

I tēnei rā, te 11 o Noema 2024

Ngā Rōia mo ngā Kaikereme

Ārama Ngāpō

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Hussain Sabori

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