

IN THE WAITANGI TRIBUNAL

WAI

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

A claim by Sir Graham Stanley Latimer of Kaitaia, retired farmer, on behalf of himself And the New Zealand Maori Council and All Maori and Mr Tom Kahiti Murray, Deputy Chairperson of the Tai Tokerau District Maori Council on behalf of himself and all Maori supported by the following claimants in regard to Maori proprietary interests and rights to access and use of water and geothermal resources in Aotearoa

First Claimants

Taipari Munro, Chairperson of Whatitiri Maori Reservation situate at Poroti Springs, Northland in the rohe of Ngapuhi nui Tonu

Second Claimant

Kereama Pene and Rangimahuta Easthope for themselves as owners in Lake Rotokawau, situate in the rohe of Ngati Rangiteaorere o Te Arawa

Third ClaimantsContinued ...

## STATEMENT OF CLAIM – NATIONAL WATER AND GEOTHERMAL CLAIM

Dated: 7 February 2012

RECEIVED

Waitangi Tribunal

**7 Feb 2012**Ministry of Justice  
WELLINGTON

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Peter Clarke and Jocelyn Rameka for themselves as owners in Lake Rotongaio, situate at Waitahanui Settlement, Lake Taupo in the rohe of Nga Hapu o Tauhara

Fourth Claimants

Eugene Henare for himself and as an owner in Lake Horowhenua, situate at Hokio Township, Levin in the rohe of Muaupoko iwi

Fifth Claimant

Nuki Aldridge, Ani Martin and Ron Wihongi, Kaumatua of Ngapuhi on behalf of themselves and as owners in Lake Omapere, situate at Kaikohe, Northland

Sixth Claimants

Eric Hodge on behalf of himself and as an owner in Tikitere Geothermal Field in the rohe of Ngati Rangiteaorere at Tikitere

Seventh Claimants

Walter Rika, on behalf of himself and as an owner in Tahorakuri Maori Land Block situate at Ohaaki, Reporoa

Eighth Claimant

Peter Clarke and Emily Rameka as owners in Tauhara Mountain Reserve (4A2A), Taupo

Ninth Claimants

Maanu Cletus Paul and Charles Muriwai White as members of Ngai Moewhare, a marae located in the rohe of Ngati Manawa and a claimant in Te Ika Whenua inquiry

Tenth Claimants

Whatarangi Winiata, on behalf of himself and all Hapu of Ngati Raukawa who have an interest in the Horowhenua / Manawatu water systems.

Eleventh Claimant

## STATEMENT OF CLAIM

The claimants by their solicitor say:

### **The Claimants**

1. The first claimants are the Chairperson of the New Zealand Maori Council and the Deputy Chairperson of the Tai Tokerau District Maori Council.
2. The New Zealand Maori Council and the Tai Tokerau District Maori Council are statutory entities created by the Maori Community Development Act 1962.
3. The statutory functions of the New Zealand Maori Council include conserving, improving, advancing and maintaining the physical, economic, industrial, educational, social, moral, and spiritual well-being of all Maori.
4. Within its district, and subject to the directions of the New Zealand Maori Council, the statutory functions of the Tai Tokerau District Maori Council are identical to those of the New Zealand Maori Council.
5. The Second to Eleventh claimants or groups of claimants are either individual or representatives of trusts who have interests in significant fresh water and/or geothermal resources. The Claimants reserve the right to add other claimants and expect to add significant further claimants by way of amended statement of claim to be filed within two weeks of the date of this statement of claim.
6. The Claimants consequently make this claim on behalf of themselves and generally on behalf of all Maori.

## **PART 1 – FRESH WATER RESOURCES**

### **Background - Maori Customary Rangatiratanga over Fresh Water Resources**

7. Prior to the execution of Te Tiriti o Waitangi / the Treaty of Waitangi, Maori owned all of the resources of Aotearoa New Zealand according to their own usages and concepts of title.
8. In accordance with the above, Maori controlled the aquifers, springs, streams, lakes and rivers (“**Fresh Water Resources**”) of Aotearoa prior to Te Tiriti as separate Taonga and entities.

#### **Particulars**

- 8.1. Fresh Water Resources were a Taonga of Maori;
- 8.2. Fresh Water Resources were relied upon heavily by Maori for their cultural, spiritual, sustenance and economic needs, including travel and trading;
- 8.3. Maori whakapapa identifies a cosmological connection between themselves and Fresh Water Resources through at least the following connections back to their founding tipuna:
  - 8.3.1. Rain and mists and morning dew as the tears and grief of Ranginui and Papatuanuku upon being separated;
  - 8.3.2. Tawhirimatea, being the god of winds and storms;
  - 8.3.3. The source of Parawhenuamea, pure mountain water, as being derived from the union of Tanemahuta and Hinetuparimaunga (the mountain maid);
  - 8.3.4. Freshwater resources sometimes being identified as the embodiment or creation of other ancestors.
- 8.4. The attribution of mauri and mana to Fresh Water Resources generally.

- 8.5. Maori pepeha frequently refer to Fresh Water Resources with which tribes and individuals identify and are inextricably linked;
  - 8.6. Maori culture displays other signs and expression of rangatiratanga over Fresh Water Resources, including frequent reference in waiata and whakatauki, the identification of taniwha as tribal or resource guardians in many water bodies, and their use as boundary markers;
  - 8.7. Maori had and have complex customary rules pertaining to their rangatiratanga, management, and use of Fresh Water Resources.
9. Pursuant to te Tiriti, Maori continued to control and had guaranteed use and access to all of their resources, properties and other Taonga, including Fresh Water Resources.

**Background – Previously Recognised Historical Breaches of Te Tiriti - Removal of Rangatiratanga and Control Rights over Fresh Water Resources from Maori**

10. In breach of the Treaty, the Crown has unilaterally acted and legislated to remove rangatiratanga and control over Fresh Water Resources from Maori, without consent or compensation.

**Particulars**

- 10.1. The Crown instituted a system of conversion of Maori customary rights to a European land title system which failed to grant to Maori any or any adequate right of rangatiratanga over their Fresh Water Resources.

**Sub Particulars**

- 10.1.1. The European titles granted were neither tribal nor resource based in accordance with Maori Rangatiratanga over resources;
- 10.1.2. Water is treated as an appurtenance to land under section 2 of the Land Transfer Act 1952 and predecessor Acts;

10.1.3. The title to the bed of streams and rivers has consequently been used as a proxy for rights to water, to the extent that rights in flowing water exist at all;

10.1.4. Save to the extent that it is disturbed by statute, rangatiratanga over beds of streams and river has been determined by the application of the rule ad medium filum aquae, and then passed together with any subsequent conveyance of riparian land;

10.1.5. Section 14 of the Coal Mines Amendment Act 1903 and subsequent legislation has vested the beds of navigable rivers in the Crown, expropriating river beds and associated waters of navigable rivers even where Maori retained riparian ownership;

10.1.6. to the extent that rights in water are governed under such land-title related systems, they do not provide for and are contrary to Maori rangatiratanga and control over water resources as indivisible Taonga and entities.

10.2. By adoption of the English common law position that there is no ownership of or property in natural water, the Crown otherwise failed to recognise Maori rangatiratanga and control over Fresh Water Resources.

### **Sub Particulars**

10.2.1. English Common law rules related to ownership and use of water which were adopted by the English Laws Act 1858 and its successors.

10.2.2. Such common law rules allow riparian owners:

10.2.2.1. unfettered rights to use of water for purposes connected with the riparian land including drinking cooking, cleaning, washing, and feeding and

supplying the ordinary number of livestock which might be based upon the land;

10.2.2.2. rights to use of water for extraordinary purposes such as milling, irrigation, trade, manufacture and mining, provided that the use is reasonable and the flow of water is preserved substantially undiminished and quantity and character.

10.2.3. In regard to subterranean waters, such common law rules recognise no property in Fresh Water Resources, but allow a land owner uncontrolled use and abstraction of such water as they may wish from underneath their land, including to the exclusion or detriment of others.

10.2.4. The above provides no recognition of Maori rangatiratanga and control over Fresh Water Resources as indivisible Taonga and entities.

10.3. The Crown has continued to remove to itself further core rights inherent in the rangatiratanga over Fresh Water Resources, through at least the following legislation:

#### **Sub Particulars**

10.3.1. The Electrical Motive Power Act 1896, the Water Power Act 1903 and successors granted to the Crown the sole right to approve and subsequently to use water for hydro generation purposes;

10.3.2. Section 21 of the Water and Soil Conservation Act 1967, itself continued by section 354 of the Resource Management Act 1991, granting to the Crown the sole right to dam any river or stream, or to divert, take, or use "natural water" (subject to limited exceptions);

10.3.3. The Resource Management Act 1991 further continues the expropriation of Maori claims is rangatiratanga and control in water resources.

10.3.4. All of the above legislation further derogates from Maori rangatiratanga and control over Fresh Water Resources as indivisible Taonga and entities.

11. Although Fresh Water Resources have been alienated through the above mechanisms, Maori have not willingly sold either rangatiratanga or control over Fresh Water Resources.

#### **Particulars**

11.1. Where Maori retain ownership of riparian land surrounding the water resource, the above statutory and common law rules have divested Maori of rangatiratanga and control rights without their consent;

11.2. Maori recognise Fresh Water Resources as separate Taonga and entities distinct from land resources;

11.3. Consequently, where Maori have sold riparian land this has not included sale or abandonment of rangatiratanga or control over adjoining Fresh Water Resources, either:

11.3.1. where there has been limited sale or unwilling alienation of adjoining land;

11.3.2. where there has been wider alienation of adjoining land in the case of other Fresh Water Resources;

where in both cases the willing alienation of adjoining land has been limited to the grant of reasonable and foreseeable domestic use rights, always subject to the ongoing rangatiratanga and control of Maori;

11.4. Contrary to this, the above statutory and common law rules have generally divested Maori of rangatiratanga and control rights, and

vested riparian rights and (in the case of non-navigable fresh water resources) ownership of river beds and associated rights to purchasers of land adjoining the water resource, all without the agreement of Maori.

### **Breaches – Crown Acts and Settlement Policy**

12. Maori rangatiratanga and control over Fresh Water Resources, together with Crown breaches in regard to that rangatiratanga and control, have been previously recognised a number of Waitangi Tribunal reports.
13. In breach of the Treaty, the Crown has, in the settlement of Maori historical grievances, refused to recognise Maori rangatiratanga and control over Fresh Water Resources, and consequently failed to provide any or any adequate redress or compensation for breaches in relation to that rangatiratanga and control.

#### **Particulars**

##### 13.1. The Crown's Red Book (p 111):

- 13.1.1. refuses to offer return of legal interests in Fresh Water Resources to Maori;
- 13.1.2. refuses to provide compensation for any past interference with Fresh Water Resources for hydro-electricity generation purposes;
- 13.1.3. Impliedly refuses to offer compensation for any past interference with Fresh Water Resources for other commercial, industrial or municipal purposes; and
- 13.1.4. Provides "possible redress options for rivers and lakes" which do not include economic redress or rights equivalent to ownership.

- 13.2. In spite of previous Tribunal recommendations, the Crown has failed to ensure that the Resource Management Act 1991, its

accompanying regulatory regime and other relevant statutes provide (either adequately or at all) for the ongoing exercise of Maori Rangatiratanga over Fresh Water Resources, either through adequate Maori regulatory control, imposition of resource rentals in favour of Maori, or otherwise.

### **Prejudice – Fresh Water Resources**

14. As a result of the above breaches of the Treaty, Maori:

14.1. Continue to be denied their Treaty right to recognition of their rangatiratanga and guardianship over Fresh Water Resources

14.2. Continue to be denied the right to control the use of Fresh Water Resources in accordance with their own systems of resource management;

14.3. Continue to be denied the right to profit from the development uses of Fresh Water Resources, including through charging resource rentals or other fees for use of water for purposes including power generation, commercial, industrial and municipal usage;

14.4. Consequently continue to suffer severe cultural, social, spiritual and economic adverse effects through degradation of Fresh Water Resources through pollution, over use resulting in in-stream degradation, unauthorised alteration of the natural state of Fresh Water Resources, lack of protection of significant cultural features and values associated with Fresh Water Resources, and similar effects;

14.5. Continue to have a strong sense of grievance related to the denial of their proper relationship with Fresh Water Resources.

15. As a result of the Crown's failure to acknowledge the validity of Maori claims to rangatiratanga and control over Fresh Water Resources during the negotiation of Treaty settlements:

- 15.1. claimant groups who have yet to settle the historic grievances will not receive any or any adequate compensation for prejudicial breaches of their rights in Fresh Water Resources;
- 15.2. claimant groups who have settled their historic grievances to date have not received any or any adequate compensation for prejudicial breaches of their rights in regard to Fresh Water Resources;
- 15.3. Maori have been and will continue to be prejudiced by failure to provide proper compensation, economic redress and return of rights and recognition of control and rangatiratanga.

## **PART 2 – GEOTHERMAL RESOURCES**

### **Background - Maori Customary Ownership of Geothermal Resources**

16. Prior to the execution of Te Tiriti o Waitangi / the Treaty of Waitangi, Maori controlled all of the resources of Aotearoa New Zealand according to their own usages and concepts of title.
17. In accordance with the above, Maori controlled the geothermal systems, fields, resources and lands ("**Geothermal Resources**") of Aotearoa prior to Te Tiriti as separate Taonga and entities.

### **Particulars**

- 17.1. Geothermal Resources were a Taonga of Maori;
- 17.2. Geothermal Resources were relied upon heavily by Maori for their cultural, spiritual, sustenance and economic needs, including cooking, heating, medicinal purposes and bathing;
- 17.3. Maori of the Central North Island in particular identify a cosmological connection between themselves and Geothermal Resources through

their ancestor Ngatoroirangi in bringing Geothermal Resources to Aotearoa;

17.4. The attribution of mauri and mana to Geothermal Resources generally.

17.5. Maori had and have complex customary rules pertaining to their rangatiratanga, management, and use of Geothermal Resources.

18. Pursuant to te Tiriti, Maori continued to control and had guaranteed to them all of their resources, properties and other Taonga, including Geothermal Resources.

**Background – Previously Recognised Historical Breaches of Te Tiriti - Removal of Rangatiratanga and Control Rights over Geothermal Resources from Maori**

19. In breach of the Treaty, the Crown has unilaterally acted and legislated to remove rangatiratanga and control over Geothermal Resources from Maori, without consent or compensation.

**Particulars**

19.1. The Crown instituted a system of conversion of Maori customary rights to a European land title system which failed to grant to Maori any or any adequate right of rangatiratanga in their Geothermal Resources.

**Sub Particulars**

19.1.1. The European titles granted were neither tribal nor resource based in accordance with Maori Rangatiratanga over Geothermal Resources;

19.1.2. To the extent that English common law was otherwise left to regulate Geothermal Resources, it allowed land owners unfettered access to use and abstract, partially or wholly, that part of the Geothermal Resource below their land without

reference to Maori control, rangatiratanga, use rights or compensation;

19.2. The Crown has continued to remove to itself further core rights inherent in the rangatiratanga over Geothermal Resources, through at least the following legislation:

#### **Sub Particulars**

19.2.1. The Geothermal Steam Act 1952, by which the Crown vested in itself the sole right to take, use and apply geothermal steam for generating electricity, together with ancillary rights;

19.2.2. The Geothermal Energy Act 1953, by which the Crown vested in itself the sole right to take, tap, use and apply geothermal energy, together with ancillary rights including the right of the Crown to secure resource rentals for certain uses.

20. Although Geothermal Resources have been alienated, Maori have not willingly sold either rangatiratanga of or control over those Geothermal Resources.

#### **Particulars**

20.1. Maori recognise Geothermal Resources as separate Taonga and entities distinct from land resources;

20.2. Consequently, Maori retain rangatiratanga of the Geothermal Resources:

20.2.1. where Maori retain ownership of land surrounding Geothermal Resources;

20.2.2. where there has been limited sale or unwilling alienation of that land;

20.2.3. where there has been wider alienation of that land in the case of other Geothermal Resources;

and in all cases the alienation of surrounding land has been limited to the grant of reasonable and foreseeable domestic use rights of related Geothermal Resources, always subject to the ongoing rangatiratanga and control of Maori;

20.3. Contrary to this, the above statutory and common law rules have divested Maori of rangatiratanga and control rights to Geothermal Resources, all without the consent of Maori.

### **Breaches – Crown Acts and Settlement Policy**

21. Maori rangatiratanga and control over Geothermal Resources, together with Crown breaches in regard to that rangatiratanga and control, have been previously recognised a number of Waitangi Tribunal reports.

22. In breach of the Treaty, the Crown has, in the settlement of Maori historical grievances, refused to recognise Maori rangatiratanga and control over Geothermal Resources, and consequently failed to provide any or any adequate redress or compensation for breaches in relation to that rangatiratanga and control.

### **Particulars**

22.1. The Crown's Red Book (p 94, 119-120):

22.1.1. refuses to offer return of legal rangatiratanga of Geothermal Resources to Maori;

22.1.2. does not provide for compensation for any past use and interference with Maori rangatiratanga rights in Geothermal Resources.

22.2. In spite of previous Tribunal recommendations, the Crown has failed to ensure that the Resource Management Act 1991, its accompanying regulatory regime and other relevant statutes provide

(either adequately or at all) for the ongoing exercise of Maori Rangatiratanga over Geothermal Resources, either through adequate Maori regulatory control, imposition of resource rentals in favour of Maori, or otherwise.

### **Prejudice – Geothermal Resources**

23. As a result of the above breaches of the Treaty, Maori:

23.1. Continue to be denied their moral right to recognition of their rangatiratanga and guardianship over Geothermal Resources;

23.2. Continue to be denied the right to control the use of Geothermal Resources in accordance with their own systems of resource management;

23.3. Continue to be denied the right to profit from the rangatiratanga over Geothermal Resources, including through charging resource rentals or other fees for use of water for purposes including power generation, commercial, industrial and municipal usage;

23.4. Consequently continue to suffer severe cultural, social, spiritual and economic adverse effects through degradation of Geothermal Resources through over use, unauthorised alteration of the natural state of Geothermal Resources, lack of protection of significant cultural features and values associated with Geothermal Resources, and similar effects;

23.5. Continue to have a strong sense of grievance related to the denial of their proper relationship with Geothermal Resources.

24. As a result of the Crown's failure to acknowledge the validity of Maori claims to rangatiratanga and control over Geothermal Resources during the negotiation of Treaty settlements:

24.1. claimant groups who have yet to settle the historic grievances will not receive any or any adequate compensation for prejudicial breaches of their rights in Geothermal Resources;

24.2. claimant groups who have settled their historic grievances to date have not received any or any adequate compensation for prejudicial breaches of their rights in regard to Geothermal Resources;

24.3. Maori have been and will continue to be prejudiced by failure to provide proper compensation, economic redress and return of rights and recognition of control and rangatiratanga.

### **PART 3 - REMEDIES**

25. As a result of the above breaches of the Treaty of Waitangi and the prejudice suffered by the claimants and those represented, the Claimants seek the following findings and recommendations:

25.1. that the above claims are well founded;

25.2. that amendments are required to the Resource Management Act 1991 and any other relevant legislation required to provide for future Maori rangatiratanga and control over Fresh Water and Geothermal Resources;

25.3. that Maori require compensation for past use of Fresh Water and Geothermal Resources, compensation for loss of rights or the ability to profit from economic use of those Fresh Water and Geothermal Resources (for example power production) and payment for future use of the proprietary interest in those Fresh Water and Geothermal Resources;

25.4. that the Crown failure to provide compensation for past, present and future use and/or appropriation of water resources (both in respect of yet to be settled and previously settled historical grievances) requires a remedy;

25.5. binding recommendations under section 8A of the Treaty of Waitangi Act 1975 for the return of all available land or interests in land which are used or have been used for or in connection with the generation

or transmission of hydro-electricity or geothermal electricity and are memorialised under section 27B of the State-Owned Enterprises Act 1986, the return of which is necessary to remove the above prejudice to Maori and/or recommendations that the claimants be granted a substantial shareholding interest in the Crown's Power Generating State Owned Enterprises.



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**Donna MTT Hall**  
Counsel for the Claimants

This document is filed by Donna Marie Tai Tokerau Hall, solicitor for the claimants, of the firm Woodward Law Offices. The address for service of the claimants is 19 Myrtle Street, Lower Hutt 1040, New Zealand.

Documents for service on the filing party may be left at that address for service or may be—

- (a) posted to the solicitor at PO Box 30 411, Lower Hutt 5040, New Zealand;  
or
- (b) transmitted to the solicitor by fax to +64(4) 560 3681; or
- (c) emailed to the solicitor at [info@mokoia.co.nz](mailto:info@mokoia.co.nz).