OFFICIAL

IN THE WAITANGI TRIBUNAL
KEI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

IN THE MATTER OF	the Treaty of Waitangi Act 1975
AND	
IN THE MATTER OF	Te Rohe Potae Inquiry
AND	
IN THE MATTER OF	**The Ngati Tuwharetoa Comprehensive Claim**, a claim filed by Te Ariki Tumu Te Heuheu on behalf of Nga Hapu o Ngati Tuwharetoa

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AMENDED STATEMENT OF CLAIM OF NGATI TUWHARETOA (WAI 575) TO THE TE ROHE POTAE DISTRICT INQUIRY

Dated 9 May 2008

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KO NGA KAIHONO - THE CLAIMANTS

1. WAI 575 was filed in 1996 by Te Ariki, the late Te Heuheu Tukino VII Hepi, and the Tuwharetoa Maori Trust Board for and on behalf of nga hapu o Ngati Tuwharetoa.

2. Nga hapu o Tuwharetoa are the descendants of Tuwharetoa and Tia and other tupuna who have occupied the Taupo region continuously since the arrival of the Te Arawa waka. Ngati Tuwharetoa are linked by whakapapa to their lands and their taonga. This connection establishes their mana whenua, kaitiakitanga and tino rangatiratanga, including their right to establish and maintain a meaningful and sustainable relationship between hapu, whanau and their ancestral taonga.

3. Ngati Tuwharetoa's relationship with their land and taonga is confirmed by the maintenance of ahi kaa. These associations are reflected in waiata and other forms of Ngati Tuwharetoa custom that relate how their ancestral maunga, awa, moana and other taonga are connected through whakapapa with all entities from the beginning of time or Te Ao.

4. Claims have also been made in the Whanganui District Inquiry, National Park District Inquiry and the Central North Island District Inquiry by the WAI 575 claimants.

5. Ngati Tuwharetoa have filed the Wai 575 claim to support the claims by Ngati Waewae, Ngati Manunui and Ngati Hikairo in the Te Rohe Potae Inquiry. Wai 575 supports the Statements of Claim filed by those hapu.

TE ROHE - THE CLAIM AREA

6. At the commencement of the Taupo-nui-a-Tia sitting in the Native Land Court on 14 January 1886, Te Heuheu Tukino Horonuku defined the claim as being over the following lands:

> ...I commence at Ruapehu, hence northerly to Wanganui River, thence to Petania thence to Taringamotu stream and goes along eastern slope of the Tuhua range to Pakihi thence to Tuhingamata, thence to Maraeroa, thence to Turi-o-Hinetu, thence to Tomotomoariki thence by Waipapa stream to the Waikato River to Atiamuri and there joins the boundary of the Kaingaroa, from Kaingaroa thence to Paeroa in an easterly direction to Ngatiwhakaweawe, thence to the Rangitaiki River

> and there joins the boundary of Ngati Manawa from there to Mohaka River, thence up the Mohaka River and joins on to the boundary of Oruamatua block and from there to Waitangi, the boundary of Rangipo, thence to Makahikatoa, thence to the commencing point Ruapehu...[1] [Taupo Minute Book No. 4:34]

7. The areas underlined above provides a general outline in which Ngati Tuwharetoa have ancestral interests located on the eastern side of the Te Rohe Potae district.

8. Ngati Tuwharetoa's traditional ancestral interests extend beyond the boundaries given by Te Heuheu Tukino and others such as Matuahu Te Wharerangi and Paurini Te Karamu. Those boundaries reflected political accommodations that were reached with neighbouring iwi on intersecting areas of ancestral association including Ngati Maniapoto and Ngati Raukawa.

9. Ngati Tuwharetoa have customary interests in the Maraeroa, Rangitoto-Tuhua and Ketemaringi land blocks and many of the adjacent land blocks bordering the Rohe Potae inquiry district. Those interests are derived from whakapapa and alliances with hapu within the Rohe Potae inquiry district.

10. The contemporary hapu of Ngati Tuwharetoa with mana whenua in the Te Rohe Potae district include Ngati Hikairo, Ngati Waewae, Ngati Turamakina, Ngati Te Maunga, Ngati Ha, Ngati Te Koreha, Ngati Parekawa, Ngati Tutetawha and Ngati Hinemihi.[2]

TE PUTAKE O TE KEREME – THE CLAIM

11. This Statement of Claim identifies the past and continuing breaches of the principles of the Treaty of Waitangi by the Crown, which have caused and continue to cause prejudice to nga hapu o Ngati Tuwharetoa.

12. The claimants say that all of the Acts, Regulations, Orders, policies, practices and actions taken, omitted or adopted by or on behalf of the Crown referred to are and remain a breach of the terms and principles of the Treaty of Waitangi.

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1 Taupo Minute Book, No. 4:34.

2 This list is provided for the assistance of the Tribunal, and should not be regarded as a comprehensive statement of the ancestral interests of nga hapu o Ngati Tuwharetoa.

13. The claimants further say that they have been prejudicially affected by the Ordinances, Acts, Regulations, Proclamations, Notices and other statutory instruments, and the policies, practices, acts or omissions of the Crown, the referenced particulars of which are set out in this Statement of Claim.

NGA HARA O TE KARAUNA – THE GRIEVANCES

POLITICAL ENGAGEMENT

Ko te Tuatahi – First Cause of Action: Undermining Tino Rangatiratanga of Ngati Tuwharetoa

14. In breach of the guarantees made in Article II and the principles of the Treaty of Waitangi, the Crown failed to respect the autonomy and te tino rangatiratanga of Ngati Tuwharetoa, and actively sought to undermine the tribal leadership of Ngati Tuwharetoa.

    14.1. The rangatira of Ngati Tuwharetoa, including Te Ariki Te Heuheu Tukino II Mananui, Te Heuheu Tukino III Iwikau and Te Heuheu Tukino IV Horonuku, sought to prevent the encroachment of colonisation on lands under their mana and to prevent the loss of land, but the Crown actively opposed their efforts.[3]

    14.2. The Crown refused to respect te tino rangatiratanga of Ngati Tuwharetoa in its opposition to movements such as the Kingitanga and Rohe Potae alliance.

    14.3. The mana and authority of chiefs was undermined and social cohesion diminished through Crown policies and actions, including in particular:

        14.3.1. the individualisation of title;

        14.3.2. the Crown's actions in failing to recognise the authority of traditional leaders in favour of those friendly chiefs with whom it could deal; and

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[3] Angela Ballara, *Tribal Landscape Overview, c1800-c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts*, #A65, section 4.3.2, p431.

14.3.3. the failure to respect te tino rangatiratanga of Ngati Tuwharetoa, including by ignoring or undermining Ngati Tuwharetoa decision-making processes and leadership.

COMPACTS AND RELATIONSHIPS WITH THE CROWN

Ko te Tuarua – Second Cause of Action: Rohe Potae Compact

15. In breach of the guarantees made in Article II and the principles of the Treaty of Waitangi, the Crown failed to honour the promises contained in the Rohe Potae Compact, a compact born out of the ideals of the Kingitanga and exemplified by the 1883 petition to Parliament. The Crown also failed to protect Maori interests in pursuit of its own interests resulting in devastating outcomes for the hapu and iwi associated with the Compact.

16. Ngati Tuwharetoa claim that the Crown has breached the Treaty in the following respects:

16.1. that the Crown's decision to bypass King Tawhiao and the Kingitanga movement amounted to an act of bad faith on the part of the Crown, and a rejection of the tino rangatiratanga of the Kingitanga movement, and its tribal constituents;

16.2. that the Crown actively sought to undermine the authority of the King by creating division between the Kingitanga and other rangatira associated with the Rohe Potae alliance in order to achieve its own objectives, objectives that were in direct conflict with its Treaty guarantees, including the obligation to actively protect the interests of King Country Maori;

16.3. that the Crown failed to honour the agreement reached with the Rohe Potae alliance, which included rangatira of Ngati Tuwharetoa hapu who had supported the Rohe Potae Compact;

16.4. that the Crown's aggressive tactics in opening up the Rohe Potae had serious ramifications for Ngati Tuwharetoa, as the

Crown's manipulation of the King Country leadership and active fostering of Native Land Court applications ultimately led Te Heuheu to submit the Taupo-nui-a-Tia application.

NATIVE LAND COURT

Ko te Tuatoru – Third Cause of Action: Native Land Court

17. In breach of the guarantees given in Article II of the Treaty of Waitangi, and in breach of the principles of active protection and of partnership, the Crown established the Native Land Court and enacted related legislation, including the Native Land Acts 1862 and 1865, and pursued policies that had the effect of extinguishing Maori customary ownership and rights and replacing them with individual title, thereby facilitating fragmentation and alienation of the land and resources of nga hapu o Ngati Tuwharetoa.

    17.1. The Native Land Court sittings occasioned considerable inconvenience to Ngati Tuwharetoa, requiring them to attend multiple and lengthy hearings in order to defend their interests in their lands. The timing and location of the Native Land Court hearings was often prejudicial, being in a different location, or at times of the year when food was short or the failure to attend crops had a detrimental impact on the agricultural production of Ngati Tuwharetoa,[4] thus contributing to the debt cycle;

    17.2. The costs of the Native Land Court process, including in particular survey charges, court costs, legal fees, food and travel expenses, resulted in debts that could only be paid off through the sale of land;[5]

    17.3. The process of individualisation of title imposed by the Native Land Acts had a severely prejudicial effect on Ngati Tuwharetoa society, including:

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[4] Stirling, *Taupo-Kaingaroa 19th Century Overview Project*, Vol 2, #A71, pp896-897, relating to the timing of the Taupo-nui-a-Tia block hearing in January when food was scarce.

[5] Stirling, p923.

17.3.1. undermining the tino rangatiratanga and traditional communal authority of Ngati Tuwharetoa, and the traditional system of land tenure;

17.3.2. the loss of customary rights to and ownership of land;

17.3.3. rapid and large-scale alienation of land, as the individual shares of owners were purchased;

17.3.4. increasing fragmentation of title over succeeding generations;

17.3.5. damage to the social structure and organisation of Ngati Tuwharetoa.

17.4. The Native Land Court system was incapable of recognising and reflecting the complex and overlapping customary rights to land. The division of land into blocks and the award of exclusive title within those blocks resulted in:

17.4.1. Ngati Tuwharetoa losing their customary rights in border areas of multiple and overlapping interests (such as the Rangitoto-Tuhua block); and

17.4.2. costly appeals and rehearings.

WATER

Ko te Tuawha – Fourth Cause of Action: Water

18. In breach of the principles of the Treaty of Waitangi, including in particular the guarantees in Article II and the principle of active protection, the Crown:

18.1. has failed to recognise and protect the mana and te tino rangatiratanga that Ngati Tuwharetoa held over their tributaries in the Te Rohe Potae district, including customary

rights that entitled them to use and control the use of the waters.

NATURAL ENVIRONMENT/ HERITAGE

Ko te Tuarima – Fifth Cause of Action: Natural Environment

19. In breach of the principles of the Treaty of Waitangi, including the principles of partnership and active protection, the Crown failed to maintain the integrity of the natural environment within the Ngati Tuwharetoa rohe.

    19.1. The Crown failed to ensure that the lands of Ngati Tuwharetoa were not severely eroded or flooded, that the habitats for indigenous plant, fish and bird life were not devastated, degraded, depleted or made extinct and that Ngati Tuwharetoa did not suffer from the deterioration or disappearance of their traditional housing, food gathering and land resources.

    19.2. Much of the remaining significant indigenous habitat is in the hands of the Crown (through its agents the Department of Conservation, and local and regional authorities) or in private hands.

    19.3. The failure of the Crown, through its agents the Department of Conservation, and local and regional authorities, to control noxious exotic pests, weeds and diseases has detrimentally impacted on the commercial and conservation value of whenua still retained by Ngati Tuwharetoa.

PREJUDICIAL EFFECTS

20. The prejudicial effects suffered by Ngati Tuwharetoa include (but are not limited to):

    20.1. the desecration of the mauri of Ngati Tuwharetoa's taonga tuku iho;

20.2. the desecration and destruction of waahi tapu and other significant sites and the severance of Ngati Tuwharetoa from those areas;

20.3. the erosion of their cultural, spiritual, economic and political resource base;

20.4. loss of life;

20.5. the derogation of mana and the consequent loss of economic, cultural and political autonomy through the continuing erosion of rangatiratanga;

20.6. the loss of customary fisheries in the Ngati Tuwharetoa rohe;

20.7. the loss of economic independence and potential prosperity;

20.8. the destruction of the traditional system of tenure;

20.9. being left with fragmented and individualised land holdings that are manifestly insufficient for the present and future needs of Ngati Tuwharetoa;

20.10. the exclusion of Ngati Tuwharetoa from active participation in the protection, utilisation and management of their taonga for their future well being.

20.11. being left with insufficient land and resources to actively participate in the economy and enjoy the benefits of European settlement as contemplated by the Treaty of Waitangi and in particular, the principle of development;

20.12. the damage to the natural environment of Ngati Tuwharetoa rohe and its abundance of natural resources caused by the pollution of the lands, waterways, and air;

20.13. the arousal of division, dissenion and conflict between the people of Ngati Tuwharetoa, and between Ngati Tuwharetoa and other iwi leading to a breakdown of their traditional structures;

20.14. poor health, wealth and education as a direct or indirect result of the prejudice and losses referred to;

RELIEF SOUGHT

21. The claimants have long anticipated the recommendations of the Tribunal on their claims. Ngati Tuwharetoa seek the following recommendations in terms of the Treaty of Waitangi Act 1975:

    21.1. That the Crown offer a full apology for the actions and omissions that were in breach of the Treaty of Waitangi;

    21.2. Pursuant to ss.8A-8H(j) of the Treaty of Waitangi Act 1975 with the return to the claimants of all relevant Crown land, Crown forest land, land held by any State Owned Enterprise, land held by any institution under the Education Act 1989 and land vested under the New Zealand Railway Corporation Restructuring Act 1990 or any interest in any such land and together with improvements thereon;

    21.3. That all land owned by the Crown within the claim area and any improvements thereon including Crown forests, reserve and conservation land be returned to the claimants;

    21.4. That the Crown compensate the claimants for the prejudicial effects as a result of the Crown's legislation, acts, omissions, policies and practices as identified in their Statement of Claim;

    21.5. That the Crown restore the mana and mauri of Ngati Tuwharetoa through Crown acknowledgment of their ancestral, customary and historical interests within their rohe through various mechanisms and processes to be agreed between the parties;

    21.6. That the Crown takes all steps necessary to restore the appropriate names to sites and landmarks of importance within the rohe of Ngati Tuwharetoa;

    21.7. That the Crown pay the full costs to Ngati Tuwharetoa for the preparation and presentation of their claim and the costs

of recovering any land recommended to be returned or other costs incurred in securing the implementation of recommendations;

21.8. That the Crown provide sufficient compensation to Ngati Tuwharetoa for lands compulsorily taken for public works;

21.9. That the Crown provide Ngati Tuwharetoa with ownership of sites of significance, urupa and waahi tapu (that are not returned or already in the ownership of Ngati Tuwharetoa);

21.10. That the Crown recognise and provide for the tangata whenua status of Ngati Tuwharetoa at local government level;

21.11. Such other recommendations that the Tribunal deems appropriate.

This Amended Statement of Claim is filed by **PRUE KAPUA,** Solicitor for the Claimants, of Tamatekapua Law, Auckland. The address for service of the claimants is at the offices of Tamatekapua Law, 17 Albert Street, Level 10, Auckland City.

Documents for service on the plaintiff may be left at that address for service, or may be-

- Posted to the solicitor at PO Box 106 454, City, Auckland;
- Transmitted by facsimile to 09 336 1841;
- Emailed to prue@tamatekapua.co.nz