KEI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

IN THE WAITANGI TRIBUNAL **Wai 2358**
Wai 700

I TE TAKE O (IN THE MATTER OF)	the Treaty of Waitangi Act 1975(as amended)
AND	
I TE TAKE O (IN THE MATTER OF)	Wai 2358 National Water and Geothermal claim
AND	
I TE KAUPAPA O (IN THE MATTER OF)	Wai 700 the Whirinaki Maori Committee on behalf of Nga hapu o Whirinaki and others

---

MEMORANDUM OF COUNSEL FOR WAI 700 IN SUPPORT OF AN APPLICATION FOR URGENCY WAI 2358 NATIONAL FRESHWATER AND GEOTHERMAL RESOURCES CLAIM

Dated this 16th day of March 2012

Counsel Acting:
Tony Shepherd
Kotuku Chambers
151-153 Broadway
P.O Box 147
Kaikohe, Northland
AOTEAROA
Tel: (09) 405 3999 Fax: (09) 405 3991

MAY IT PLEASE THE TRIBUNAL:

1. Introduction

1.1. This memorandum is filed on behalf of the Whirinaki Maori Committee o Nga Hapu o Whirinaki and Others ('the claimants') of Hokianga Northland. The primary claimant hapu is Te Hikutu and within their rohe flows forth the following rivers:

- Whirinaki River;
- Oue River; and
- Motutoa River and all associated tributaries and natural watersheds.

1.2. In particular the following waterfalls:

- Okopako,
- Wairingiringi,
- Whatua,
- Tuwhateroa,
- Kiripapapa and
- Reretemaku

1.3. The claimants are inextricably linked to water by virtue of whakapapa.

1.4 The claimants continue to exert their *'tino rangatiratanga'* over all terrestrial and subterranean waters[1] within their rohe.

1.4. Water is considered by the claimants as '*taonga'* protected and guaranteed under Article 2 of Te Tiriti o Waitangi 1840.

Refer to Statement of Claim in Respect of the Ngawha Geothermal Resource 8 September 1992 Auckland filed by JV Williams

2. Purpose of the Memorandum

2.1 The claimants fully support the Wai 2358 application for urgency on a secondary basis[2] where counsel respectfully seeks leave of the Tribunal if granted urgency to participate as an interested party.

3. Te Hikutu proprietary interests over water

3.1 It is the Crown view that Maori property rights in water have not been clearly established.[3]

3.2 Te Hikutu disputes this assertion and say such proprietary interests over water have clearly been established in the past in particular two localised examples are mentioned below:

A. Waireka Cordial Factory Hokianga

(i) During the mid-1870's, the former Whirinaki hotel site was located on what is today State Highway 12 at the north side of Whirinaki Bridge. The hotel proprietor was stopped by the hapu from selling Waireka Cordial Factory products (bottles of water infused with a cordial mix) to the general public

A small quantity of this water was locally sourced from the Whirinaki River where the infusion of cordial was seen by the hapu to alter the mauri of the water rendering it not fit for human consumption.

B. Wai Te Hikutu Water Company

(ii) More recently a whanaunga of the claimants Mr Stensness formed a company 'Wai Te Hikutu Water' ('the company') a commercial venture to extract and bottle water sourced from the Whirinaki River.

---

[3] Wai 2357 & 2358, #3.1.3 paragraph 25

A large quantity of this water was gifted by the company as koha during the Stage One Te Paparahi o Te Raki Hearings to the Waitangi Tribunal, counsel and claimants.

In 2011, the company was forced to close down and upon the insistence of the Northland District Health Board ordered the removal of all company products from local retailer shelves.

3.3. The claimants wish for an extension of time to further particularise their pleadings regarding water.

4. Claimants reserve the right to file further submissions

4.1 If the Tribunal is mindful to grant leave to participate if urgency is granted then counsel reserves the right to file further submissions as directed by the Tribunal.

Dated at Kaikohe this 16th day of March 2012

Tony Shepherd
Counsel Acting