

WAITANGI TRIBUNALWai 2357
Wai 2358**CONCERNING**

the Treaty of Waitangi Act 1975

ANDthe Sale of Power Generating
State-Owned Enterprises Claim**AND**the National Fresh Water and
Geothermal Resources Claim**MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER**

1. In my memorandum-directions of 11 April 2012, I directed that the Tribunal would hold a judicial conference on 20 April 2012 to determine a hearing plan for this urgent inquiry (Wai 2357, #2.5.17; Wai 2358, #2.5.17).
2. The purpose of this direction is to set out a proposal as to the hearing plan for the inquiry, for which we seek responses from parties. As we wish parties to have a full opportunity to consider this proposal and for counsel to seek instructions from their clients, the judicial conference scheduled for 20 April will now instead be held **at 10am on Tuesday, 24 April 2012** at the Waitangi Tribunal offices.

Inquiry Proposal

3. On 28 March 2012, an urgent hearing was granted for the Wai 2357 and Wai 2358 claims on the basis that the Tribunal would attempt to issue a report before the commencement of the sale of shares in Mighty River Power. As noted in the urgency decision, such a report might have to be interim in nature (Wai 2357, #2.5.13; Wai 2358, #2.5.13).
4. In preparation for the conference, the Tribunal has received submissions on the proposed scope, issues, and timeframe from the claimants (Wai 2357, #3.1.71; Wai 2358, #3.1.71) and the Crown (Wai 2357, #3.1.77; Wai 2358, #3.1.77), as well as a number of submissions from interested parties. In brief, the claimants have proposed a timetable that will result in the commencement of hearings in July 2012. The Crown, on the other hand, submitted that 'the latest a Tribunal Report could reasonably be given is July 2012'. In addition, the parties disagree about the scope and focus of the issues for the inquiry.
5. In order to concentrate discussion of these matters at tomorrow's judicial conference, we note that there were three proposed Crown policies or actions which resulted in the grant of an urgent hearing. The first was the proposal to sell up to 49 per cent of shares in the mixed ownership model power companies, with the earliest sale scheduled to commence in the third quarter of 2012. The second was the Fresh Start for Fresh Water programme and the proposed reform of freshwater management and governance, with decisions scheduled for late 2012. The third was the resource management reforms in respect of geothermal resources, with a process scheduled to begin in 2013.
6. In order to focus the inquiry in such a way as to enable a timely report on matters relevant to the first proposed Crown action (the sale of shares in Mighty River Power), the Tribunal suggests that the inquiry should proceed in stages. The first stage would focus on the following issues:

- 1) What rights and interests (if any) in water and geothermal resources were guaranteed and protected by the Treaty of Waitangi?
 - 2) Does the sale of 49 per cent of shares in power-generating SOE companies affect the Crown's ability to recognise these rights and remedy their breach, where such breach is proven?
 - 3) Is such a removal of recognition and/or remedy in breach of the Treaty?
 - 4) If so, what recommendations should be made as to a Treaty-compliant approach?
7. The Tribunal is providing the parties with this proposal in advance of Tuesday's conference so that they may have an opportunity to consider it and make submissions on it at the conference. In particular, we would like to hear from parties as to how such issues might be heard and reported on by July 2012.
8. We should note that if we proceed in the staged manner suggested above that, having regard to the deployment of Tribunal resources, we would expect the first stage of the inquiry to require no more than two weeks of hearing and that a report on this stage would be available in July.
9. We still expect, however, to hear from the parties on the full scope and issue questions for the remainder of the urgent inquiry, should the decision be made to expedite matters in this way.

Conference Procedure

10. The conference will proceed as follows:

- i. We will call for appearances.
- ii. The claimants will then present submissions to the Tribunal.
- iii. The Crown will respond.
- iv. Interested parties will be given the opportunity to make submissions on the proposed inquiry scope and process, and the extent to which they seek to participate in the inquiry.
- v. The claimants will respond.

The Registrar is directed to send a copy of this direction to counsel for the claimants, Crown counsel and all those on the distribution list for:

- Wai 2357, the Sale of Power Generating State-Owned Enterprises Claim; and
- Wai 2358, the National Fresh Water and Geothermal Resources Claim.

DATED at Wellington this 19th day of April 2012



Chief Judge W W Isaac
Presiding Officer

WAITANGI TRIBUNAL