

IN THE WAITANGI TRIBUNAL**WAI 2357
WAI 2358****WAI 1627
WAI 1632
WAI 1631
WAI 108****IN THE MATTER**

of The Treaty of Waitangi Act 1975

AND**IN THE MATTER OF**An application for an urgent hearing by Sir
Graham Latimer, Tom Murray, Taipari
Munroe, Kereama Pene, Rangimahuta
Easthope, Peter Clarke, Jocelyn Rameka,
Eugene Henare, Nuki Aldrige, Ani Martin,
Ron Wihongi, Eric Hodge, Walter Rika,
Emily Rameka, Maanu Paul, Charles White
and Whatarangi Winiata

MEMORANDUM OF COUNSEL**Dated 13 April 2012**

RECEIVED

Waitangi Tribunal

13 Apr 2012Ministry of Justice
WELLINGTON

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E NGA RANGATIRA O TE ROPU WHAKAMANA I TE TIRITI O WAITANGI

- 1 The following claimants wish to be fully participating parties to the urgent application:
 - 1.1 Tahorakuri A130 Trust – Ohaaki Marae
 - 1.2 Hari Benevides (Wai 1632)
 - 1.3 Brigitte Te Awe Awe and others (Wai 1627)
 - 1.4 Tama I Uia Ruru (Wai 108)
 - 1.5 Charles Rudd (Wai 1631)

INTRODUCTION

- 2 Through their counsel the abovementioned claimants support the urgent application of the New Zealand Maori Council in both the Wai 2357 and Wai 2358 claims. In support of the NZMC urgency hearing the claimants recognise that the sale of the relevant SOEs is a matter of urgency and of national importance to all Maori.
- 3 The claimants' rights in river, aquifers, springs and other manifestations of water are of significant importance to all Maori and is also a matter of national importance.

NATIONAL IMPORTANCE

- 4 The urgency has been granted because the Crown wish to begin selling shares in the Power generating plants in the third quarter of this year 2012. The Crown and the Prime Minister have indicated that "no one owns the water."
- 5 The claimants say the Crown's position is in direct contradiction to Maori rights in water.
- 6 The claimants will challenge this assertion and maintain their position to argue Maori proprietary rights in water, alongside the NZMC.
- 7 The actions of the Crown to dispose of SOE power generating assets and the Crown's dealing with other matters regarding water, without the participation of Maori people in an informed way has now created serious concerns among Maoridom.

ALL MAORI HAVE RIGHTS IN WATER

- 8 The claimants noted above and others who have a direct interest in water and who are currently outside of this inquiry are concerned that they are not privy to these hearings under urgency. The claimants want full participation in any hearings to do with water either through urgency or otherwise.
- 9 Like many claimants or Maori parties with water interests, the above claimants are not represented by the Iwi Leaders Group (ILG). Any national water plan should be subject to open and public hearings and not held behind closed doors.
- 10 Past settlements, current settlements or pending settlements with Maori tribes will be directly affected by the current Crown decision to dispose of SOE power generating assets therefore meaningful consultation with Maori must be carried out ensuring that Maori representatives are fully informed and fully engaged in any decision making regarding water or interests therein.
- 11 The claimants state that integral to their interests in water are the following key principles:

- 11. 1 Rangatiratanga over water
- 11. 2 Kaitiakitanga over water
- 11. 3 Manaakitanga over water

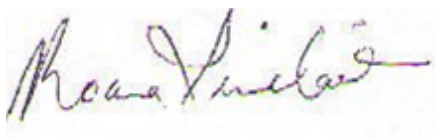
AN INQUIRY OF NATIONAL SIGNIFICANCE

- 12 Political parties and commentators have stated a national referendum should be held to indicate whether the Government has the level of public support to sell the publicly owned State assets. Current indicators show the Government lack a public mandate to pursue the selling of publicly owned power generating plants which suggests that the Crown has not only **not** informed and consulted properly with Maori but that they have not fully informed the general public of Aotearoa-New Zealand about their intentions to sell off water rights.
- 13 For those reasons our claimants agree with other counsel that parties with a direct interest in water should not be limited in participating in hearings for any reason. The arguments for Maori water rights should come from those claimants with water interests. With respect this is not to reduce in any way the substantive legal submissions which will be led by the NZMC in regard to the rights of all Maori for the benefit of all Maori.
- 14 The claimants agree that an expert group as put forward by NZMC would be of great assistance to the Tribunal. The claimants expect to contribute to the proposed expert panel.

THE HEARING TIME NECESSARY

- 15 Responding to paragraphs 23–26, the claimants submit the following programme:
 - a. The NZMC as lead claimant make the opening submissions on the substantive issues.
 - b. NZMC should stipulate the time required for opening.
 - c. A schedule of who will speak for their claims is to be circulated to all parties prior to the hearing.
 - d. An allocated time is to be given for each claimant (15 minutes) anything more should be submitted in writing to the Tribunal
 - e. Following the claimants would be the expert panel giving evidence.
 - f. Following this the expert panel would be the Crown submissions
 - g. The claimants would then respond to the Crown submissions
 - h. Then NZMC would give closing submissions.

DATED at Wellington this 13th day of April 2012



Moana Sinclair
Acting Counsel