

BEFORE THE WAITANGI TRIBUNAL

WAI 2357
WAI 2358

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

The Sale of Power Generating State-Owned Enterprises Claim and the National Fresh Water and Geothermal Resources Claim

MEMORANDUM OF COUNSEL

Dated the 18th day of May 2012

RECEIVED Waitangi Tribunal
18 May 2012
Ministry of Justice WELLINGTON

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May it Please the Tribunal

1. In our memorandum of counsel dated 9 May 2012, we advised the Tribunal that at least six case studies would be submitted on behalf of the claimants we represent in this inquiry.
2. To facilitate efficiency, we have revised the case studies and the following accompany this memorandum:

(a) **Hokianga whanau and hapu**

This case study relates to the abstraction of water from Ramaroa Mountain. Ms Filia will advise that while there was initial recognition rights of hapu to water in the development of the Rawene township, these have been eroded with the breach of agreements. She will then explore, the impact that this has had on local whanau and hapu.

(b) **Ngati Manu**

This case study relates to the sale of water by Pomare of Ngati Manu/ Te Uri Karaka, and the economic sanctions placed over their waterways as a means of regulating their water resources both before and after the signing of Te Tiriti o Waitangi. Mr Hamilton will advise that in signing Te Tiriti o Waitangi, it was Pomare's belief and expectation that he would be able to continue to exercise these rights on behalf of Ngati Manu and Te Uri Karaka over their water resources.

(c) **Ngati Unu/Ngati Kahu**

This case study relates to the imposition and control over waterways within the rohe of Ngati Kahu and Ngati Unu, including the Waipa, Puniu and Waikato rivers, the draining of Te Kawa swamp; and the abstraction of water from Pirongia. In doing so, Mr Te Ruki will advise that there was a complete disregard to the interconnected relationship between Ngati Unu/ Ngati Kahu and their water resources, and the severe impact that this disregard has had on the identity, viability and well being of his people.

(d) **Ngati Hinemanu and Ngati Paki**

The statement tendered on behalf of Ngati Hinemanu and Ngati Paki will focus on the assertion of authority in their awa through enduring whakapapa, the placement of mokai in their awa to act as pou tapu and to protect the mauri of the waters, and also on the traditional use of the waterways to foster tikanga in the minds of their young and to heal their physical and spiritual illnesses. From there the focus draws on the failure of the Crown to uphold the mana and rangatiratanga of Ngati Hinemanu and Ngati Paki despite the guarantees within Te Tiriti and the subsequent Crown action that poisoned and polluted not only the waterways but the mauri of the water and its people with the imposition of a flawed sewage treatment plant, the diversion of water for the Tongariro Power Development Scheme all in the face of vehement opposition and protest by tangata whenua as the customary owners.

(e) **Mokau ki Runga**

This case study outlines the process of development of rivers and tributaries in the Mokau Ki Runga Rohe and the significant opposition by hapu since the process of colonisation. Modern opposition has included objections as part of Resource Consent processes for new Hydro dams on Mokau River in 2006 and 2011 and ongoing objections to land fills and sewage schemes and proposals by Waitomo District Council. The claimants have been vigilant in opposition to NIWA and MAF proposals also for commercialisation of Tuna and other fish life. Evidence also shows there has been no remediation, or compensation for the change of water flows and effects of pollution which has resulted from process of modernisation in the context of energy extraction, gas line development and hydro electricity generation.

3. With regard to Lake Omapere and the vesting of waters in Ngapuhi tribal members in the Lake Omapere Trust, while no case study is submitted, we refer to the evidence filed by Rudolph Taylor on 9 March 2012. We also refer to the Brief of Evidence filed by Jane Kelsey, and in particular document Wai 2357, #A24, being Chapter 7 of the Ben White report filed in the Rangahaua Inquiry.

4. With regard to Whatitiri Springs (also known as Poroti Springs), our clients support the evidence of the claimant Taipari Munroe as it relates to the Stage One issues, in so far as it pertains to the rights of Maori and the recognition of these rights. However we signal that there may be a divergence during the Stage Two process regarding where the underlying authority and rights sit, where Te Tiriti o Waitangi protects the rights of hapu.

Dated at Rotorua this 18th day of May 2012



Annette Sykes



Jason Pou



Terena Wara