IN THE WAITANGI TRIBUNAL	Wai 2357
IN THE MATTER OF	The Treaty of Waitangi Act 1975
AND	A claim by Sir Graham Latimer on behalf of himself, the New Zealand Maori Council and 11 others

INTRODUCTION

Ko Huakaiwaka te rangatira
Ko Whau te maunga
Ko Waitemata te moana
Ko Huatau te tangata
Ko Matukutureia te tumu whakarae
Ko Manukau te waiora
Ko Waikato te awa
Ko Te Ata I rehia te wahine
Ko Puketapu te karangaranga
Ko Rehua te waihohonu
Ko Ngati Te Ata te iwi
Ko Ngati Kahukoka te hapu

1. When Maori introduce them-selves but do not mention their name, one should not be offended. For in our custom and ceremonies Maori introduce themselves through those things most sacred and treasured to them. In this regard, every Maori will mention the waterway within their tribal territory. So from a Maori perspective they are actually introducing themselves, they are the embodiment of that river, lake or mountain. It is who they are, their identity; culturally, spiritually and inextricably connected.
2. My name is Roimata Minhinnick. This paper is lodged in my individual capacity as a kaitiaki of Ngati Te Ata Waiohua. In support of this undertaking my lawyerhas undertaken to lodge a contemporary claim tomorrow.
3. In our creation story, roimata represents the teardrops or rain of Ranginui our sky father who was separated from Papatuanuku our earth mother, and hence the tears. From that rain flow the rivers and are enshrined our lakes, water giving life to all things on earth. Water resources are thus very much part of a holistic embracement of the total environment to our people and its value well understood.
4. The rohe of Ngati Te Ata is surrounded by water, the Waikato River to the south, Nga Waihohonu o Rehua (The Tasman) to the West, the Waitemata to the East and Manukau harbour on our doorstep. Our rohe encompasses several lakes, streams and puna and is in effect a miniature scale of iwi/waka placement throughout the motu. This reflects the significant value that Maori place on its waterways, certainly in our case, a reliance on these waterways more so than the land for survival. Water uses include drinking water, bathing, healing, a means of communication and its abundance of fish, shelf fish and plant resources.
5. I fully support the Statement of Claims lodged by Donna Hall and Martin Taylor on behalf of Sir Graham Latimer, the New Zealand Maori Council and others seeking an urgent hearing to address the Crowns proposal to sell power generating SOEs. Further I acknowledge the similar issues that impact on geothermal resources and entirely support this aspect of the claim although no further mention of this issue is made here.
6. The Crown intends to sell power generated shares that derive, among other things, from the Waikato River water resource.

7. I consider this move will irreversibly prejudice the Treaty of Waitangi interests of Ngati Te Ata in this Waikato River water resource.

OVERVIEW

8. Ngati Te Ata has an outstanding claim to the Waikato River. The relevant registered claims are:
   - Wai 08 Manukau Claim, lodged by Nganeko Minhinnick (taking of Water from the Waikato River and discharging it into the Manukau harbour)
   - Wai 31, lodged by Nganeko Minhinnick (specific claim relating solely to the Waikato River)
   - Wai 508, lodged by the late Whiti Te Ra Kaihau (Comprehensive Claim including the Waikato River)
   - Wai 1231, lodged by Nganeko Minhinnick and myself (Tamaki Makaurau urgency claim which includes the Waikato River)
   - Wai 1476, lodged by Nganeko Minhinnick (Waikato River Urgency Claim)
9. Ngati Te Ata opposed the settlement of the Waikato River before the Maori Affairs Select Committee subject to its land and interests in the River being protected.
10. The Select Committee recommended that "Waikato-Tainui, the Crown, and Ngati Te Ata work to ensure that Ngati Te Ata's interests are protected". On that basis they recommended no further amendments to the Waikato River Settlement bill.
11. The Crown's proposal to sell power generated SOE's (State Owned Enterprises) fails to protect the interests of Ngati Te Ata to the Waikato River.
12. Waikato -Tainui do not represent Ngati Te Ata so they cannot possibly protect the interests of Ngati Te Ata particularly since Ngati Te Ata has been excluded from the Waikato River Statutory Board and Guardians Committee that manages it.
13. Importantly, Ngati Te Ata is mandated to settle its own claims, including its interests in the Waikato River.
14. This mandate derived from the Ngati Te Ata Wai 2230 urgent hearing in which the Waitangi Tribunal considered the issues between Waikato-Tainui and Ngati Te Ata and thereby recommended and facilitated the Ngati Te Ata Treaty Claims mandate hui held on 3rd July 2010.

BACKGROUND

15. The following summary demonstrates that Ngati Te Ata has long held a meaningful cultural relationship to the Waikato River which continues to be ignored.
16. Ngati Te Ata traditional and cultural relationship to the Waikato River has been in place "mai ra ano". Sign posts include traditional Ngati Te Ata pa at Maioro, Kauritutahi, Kaeaea, Te Awaroa, Te Nihinihi, Te Auaunga; fishing villages; fishing reserves; waka landing places; burial grounds; battle grounds; wahi tapu; ceremonial places; cultivations on the islands and healing places located along, beside and within its waters from Meremere to Te Puaha (the mouth).

17. On 11 April 1840, 3 Ngati Te Ata chiefs sign the Treaty of Waitangi at Waikato Heads reaffirming the significance of the Waikato River as a place of importance. A further 4 Ngati Te Ata chiefs sign on 26 April 1840 on the Manukau.
18. In 1842, 5 rangatira of Ngati Te Ata submit a list of 102 Kainga to "Te Karere o Niu Tireni" the first government news-paper requesting those Kainga not be sold and that Ngati Te Ata hold on to them for ever and ever" kia mau tonu ai matou mo ake ake ake". Many of those Kainga (some of which are traditional pa sites) lie directly adjacent the Waikato River namely Maioro, Huarau, Kaeaea, and Whiriwhiri.
19. The awarding of exclusive rights over islands in the Waikato River to Ngati Te Ata chiefs Ahipene Kaihau and Hori Tauroa from the River mouth to Meremere in 1870 by the Native Land Court reaffirms Ngati Te Ata pre-existing Treaty of Waitangi rights, cultural interests, property rights and the fact that the Iwi literally lived on the River. The islands are: Motukakaho (the first island located at the mouth of the Waikato River), Te Matukurua, Kokoputahi, Tauanui, Te Kapa o Nukutere and Motutawa (located opposite Meremere).
20. The fishing reserve and waka landing place set aside in the NZ Gazette for such purposes at the Waikato River mouth (Maioro) in 1910 supports Ngati Te Ata on-going traditional and customary use of the River.
21. In 1978 Nganeko Minhinnick on behalf of Ngati Te Ata opposes New Zealand Steel Water Rights Application seeking to increase water rights from 4300 cubic meters per day from the Waikato River to 40,000 cubic metres and discharge unwanted water into the Manukau harbour. Mrs Minhinnick's application stated: "We cannot lose the Waikato River" and "Water discharges will kill sea food".
22. In 1980 Nganeko Minhinnick lodges Submission to the Commission of Environment which includes the impact of pollution on the Waikato River.
23. In 1981 the Planning Tribunal decision acknowledged the concerns raised by Mrs Minhinnick but found they were outside the jurisdiction of the Water and Soil Act 1967.
24. In 1981 Mrs Minhinnick appeals the Planning Tribunal Decision because as stated in her submission "Maori traditional cultural and spiritual values as they relate to the Waikato River were ignored" commenting that legislation does not recognise Maori values and spiritual issues and it would be another form of raupatu. The appeal is disallowed in December 1981.
25. In 1982, Nganeko Minhinnick lodged the Manukau Claim which included the mixing of waters from the Waikato River into the Manukau harbour.
26. In 1983, Nganeko opposed an application by NZ Steel to take 40 million litres per day and discharge 34 million litres into the Manukau harbour.
27. In 1984, the Waitangi Tribunal heard the Manukau claim. One of the key issues for the claimants was that their status as kaitiaki was not recognised and that they had never relinquished their rangatiratanga over these taonga. Another issue which

remains to be the case today has been the marginalization of Ngati Te Ata from all decision making matters relating to the Waikato River.

28. In 1985, the Waitangi Tribunal recommended in regard to the mixing of waters that:

> "the relationship of Maori people, their culture and traditions to the natural waters is relevant to…the principles of the Treaty of Waitangi"
>
> "Maori values ought to be provided for in planning legislation"
>
> "a change to the law to admit of Maori values and the appointment of Guardians to give the tribes status in the affairs of the region"

29. In 1986, Nganeko Minhinnick opposed a license to discharge animal waste from a farm into a tributary of the Waikato River. The Planning Tribunal disallows the claim on the basis that Maori cultural and spiritual values are not recognised in the relevant legislation.
30. In 1987, Nganeko Minhinnick appealed the Planning Tribunal decision to the High Court based on cultural and spiritual values guaranteed under the Treaty of Waitangi in the case of Huakina Development v Waikato District Authority & Bowater. The High Court ruled that Maori cultural and spiritual values were recognised under the Treaty of Waitangi despite not being mentioned in legislation whilst also commenting on the Treaty of Waitangi as the founding document of NZ and part of the fabric of NZ society. The application to discharge animal waste into the Waikato River is disallowed.
31. Between 1987-1996, Ngati Te Ata made an array of submissions regarding water rights, land and other related matters to various bodies within the United Nations, particularly the Working Group on the Rights of Indigenous Peoples seeking to raise these issues of concern before the international community. The year 1996 was the last year indigenous peoples made any changes to the Declaration. The Declaration was adopted by the General Assembly of the United Nations in September 2007. I draw the Tribunal's attention to the following provisions I think are applicable to the circumstances of Ngati Te Ata and other Maori.
    a. Articles 3, indigenous peoples right to self-determination and to freely determine their political status and freely pursue their economic, social and cultural development which is akin to tino rangatiratanga;
    b. 18 right to participate in decision making affecting their rightsi.e. the Waikato River Statutory Body, Guardians Committee and arguably the power generating SOEs,
    c. 19 state obligation to consult with indigenous peoples through their own representative structure before adopting legislative measures that affect themi.e. Ngati Te Ata not just Waikato-Tainui and other groups;
    d. 20.2right to fair and just redress i.e. return of proprietary interests in water

e. 21.2 where appropriate, special measures to ensure continuing improvement of their economic and social conditions i.e. allow redress the grant of shares in power generating SOE's to claimants;
f. 26.2-3 the right to own, use, develop and control resources and for states to give legal recognition and protection of these resources;
g. 28 right to redress and restitution and just, fair and equitable compensation for resources confiscated, taken occupied, used or damaged without their free prior and informed consent;
h. 32 right to be consulted prior to any project particularly with the development, utilization and exploitation of mineral, water or other resources.

32. In 1996, Nganeko Minhinnick lodges a specific claim to the Waitangi Tribunal to include the Waikato River which was registered as Wai 31.

33. In 1997 Nganeko Minhinnick opposes the resource consent application of Water Care Ltd. Waikato-Tainui join the appeal. The decision is disallowed. Nganeko Minhinnick seeks an appeal. Waikato Tainui withdraws and make a deal with Watercare effectively negating any further appeal. Watercare takes 332 million litres of water per day from the Waikato River.

34. In 2001, Ngati Te Ata joined the Maori land Court application regarding the bed of the Waikato River lodged by Ngati Raukawa and also soughtdetermination of the issue of ownership over the water. The application was simply ignored.

35. In 2003, I represented Ngati Te Ata on the Auckland Water Review Board, concerned about regional water management issues and future water supply.

36. The same year I attended the Third World Water Conference in Kyoto Japan tabling 1) paper on cultural and spiritual values to water including "Case study of Waikato River" and 2) paper on the effects of commercialisation of water. There was also unanimous support in written form from the Indigenous representatives that prepared the Indigenous Peoples Kyoto Declaration on Water Rights, to the Ngati Te Ata claim before the Maori Land Court.

37. In 2009, Ngati Te Ata opposed the Waikato River settlement before the Maori Affairs Select Committee on the basis that its land and River interests were not protected and its capacity to exercise rangatiratanga and kaitiakitanga over the river would be undermined.

38. In 2010, the Select Committee's report stated that they were anxious that Ngati Te Ata's land and interests in the Waikato River be protected and recommended that:

> Waikato-Tainui, the Crown, and Ngati Te Ata work to ensure that Ngati Te Ata's interests are protected. On this basis they recommended no further amendments to the bill.

39. In summary, the interests of Ngati Te Ata to the Waikato River remain unprotected. Ngati Te Ata is excluded from the Waikato River Statutory Board and Guardians

Committee. I understand there has been no specific consultation with Ngati Te Ata regarding the proposed sale of SOEs and how it might affect the interests of Ngati Te Ata to the Waikato River.

ISSUES

40. The key issues are:
- whether, there is irreversible prejudice to Ngati Te Ata (Maori) claims by the Crown's current proposed sale of shares in SOEs?
- whether it is consistent with the principles of the Treaty of Waitangi that the Crown's proposal to sell shares derived from SOE interests in rivers, streams and geothermal activity before determining whether Maori have interests and the extent of those interests?
- whether Ngati Te Ata (Maori) will ever be able to access its water resources
- whether Ngati Te Ata (Maori) ought to be redressed and compensated for past loss and the future use of water.
- whether there is a remedy that would be appropriate to Ngati Te Ata (Maori) claimants.

TE TIRITI O WAITANGI

41. Ngati Te Ata (Maori) were guaranteed "te tino rangatiratanga o nga taonga katoa" Article II, Maori version, and at the very least "the full exclusive undisturbed possession of their most prised possessions" Article II Pakeha text. Water is clearly a taonga and a prised possession that Ngati Te Ata indeed Maori have long guarded and seek to have restored. This includes the ability to meaningfully participate in the use of those resources for any purposes, power generation in particular. And it includes the ability to access and use its resources according to its own cultural preferences.

BREACHES OF TE TIRITI O WAITANGI

42. I say in breach of the Treaty the Crown has in the settlement of Maori historical grievances, refused to recognise Ngati Te Ata rangatiratanga or full exclusive undisturbed possession over fresh water resources of the Waikato River and consequently failed to provide any redress or compensation for breaches in relation to that rangatiratanga.
43. As a result Ngati Te Ata:
    a. continue to be aggrieved by the lack of recognition of our relationship to the Waikato River
    b. continue to be denied any participation in the control and management of the Waikato River water resources
    c. continue to be denied access to water resources that derive from the Waikato River

d. continue to be denied the right to benefit from the uses of the Waikato River water resource, which includes charging rentals or other fees for use of this water for purposes including the generation of power, and consequently;
e. continue to suffer the belittlement of having no status with regard the Waikato River, and continue to suffer the degradation of our part of the River through pollution, overuse and the lack of protective mechanisms concerning our particular interests, values and cultural proprietary rights thereto

ADDED IRRIVERSIBLE PREJUDICE

44. I understand the Crown as saying it has consulted with Iwi to uphold its Treaty obligations and are addressing claimants claimed rights to water in negotiations.
45. I consider the Crown has approached the negotiating table with a pre-determined mind-set. Their main priority (for some time now) has been to sell SOEs. Whilst they have consulted Maori, their mind has not changed and they have not consulted Ngati Te Ata specifically. In my view, this type of approach leaves very little room for Ngati Te Ata to truly negotiate its claims.
46. I consider the Crown ought to have consulted directly with Ngati Te Ata. This is exactly what the Maori Affairs Select Committee recommended in regard to protecting our interests in the Waikato River. Article 19 of Declaration on the Rights of Indigenous Peoples further reaffirms the view that the Crown is obligated to consult Ngati Te Ata through our own representative structure (not another Iwi structure) before adopting legislative measures that affect us.
47. I understand the Crown seeks to sell the SOE shares to lift the economy. This balance of convenience is not a relevant Treaty consideration. The protection of Maori rights to water resources is relevant to the Treaty particularly since many Maori certainly Ngati Te Ata have been deprived any participation, protection, partnership and subsequent political, cultural and economic development in regard water resources.
48. On the above regards I consider Ngati Te Ata will be irreversibly prejudiced if the sale of SOEs goes ahead as proposed.

REMEDY SOUGHT

49. The return of rangatiratanga to Maori which would itself provide the ability of Maori to access water resources, to recognise their status of kaitiaki and their relationship to their waterways and to directly charge resource rentals for any on-going use of water resources.
50. Allow redress by the grant of shares in power generating SOEs to claimants.

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