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**OFFICIAL**

**Wai 2357 & 2358, #A16**

**IN THE Waitangi Tribunal**

**WAI2357 & 2358**

**IN THE MATTER OF**

**The Treaty of Waitangi Act 1975**

**AND**

A claim by Sir Graham Stanley Latimer of Kaitia, retired farmer, on behalf of himself And the New Zealand Maori Council and All Maori and Mr Tom Kahiti Murray, Deputy Chairperson of the Tai Tokerau District Maori Council on behalf of himself and all Maori supported by the following claimants in regard to Maori proprietary interests and rights to access and use of water and geothermal resources in Aotearoa

First Claimants

Taipari Munro, Chairperson of Whatitiri Maori Reservation situate at Poroti Springs, Northland in the rohe of Ngapuhi nui Tonu

Second Claimants

Kereama Pene and Rangimahuta Easthope for themselves as owners in Lake Rotokawau, situate in the rohe of Ngati Rangiteaorere o Te Arawa

Third Claimants

Continued...

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**AFFIDAVIT OF PHILIP DEAN FRANCES TAUEKI**  
**Dated: 6TH MARCH 2 012**

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<b>RECEIVED</b> Waitangi Tribunal
<b>6 Mar 2012</b>
Ministry of Justice WELLINGTON

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I, **Philip Dean Frances Taueki**, am a beneficial owner in Lake Horowhenua and claimant to the Waitangi Tribunal (Wai 2306) and, declare:

1. I am a direct descendant of Tauheke/Taueki who signed the Treaty of Waitangi as Ariki on behalf of Mua-Upoko. I am providing this affidavit on my own behalf and I wish to appear in support of the New Zealand Maori Council. I will speak for myself in this matter.
2. Lake Horowhenua ("the Lake") is and always will be the most precious taonga of Mua-Upoko.
3. Since the Crown effectively acquired control of Lake Horowhenua purely through statute, the quality of the lake waters has deteriorated to such an extent that recent newspaper headlines report: *Damaged lake could 'kill'* and in the Dominion Post: *Warning lake water toxicity could be deadly to children*. These articles are based upon a presentation by Dr Max Gibbs, a scientist from NIWA, to the Horizons Regional Council's environmental committee in Palmerston North on Wednesday 8 February 2012.
4. Lake Horowhenua is ranked by NIWA as 107 out of 116 New Zealand lakes in terms of water quality.
5. Prior to the involvement of the Crown, Lake Horowhenua was pristine. It was both a bounteous kai basket and a place of wondrous beauty, surrounded as it was then by native forestation and prolific birdlife. It is also the final resting place of many of my tipuna who fended off all those mighty warriors who coveted the taonga of Mua-Upoko.
6. Mua-Upoko has occupied Lake Horowhenua and environs since time immemorial; and although depleted in numbers due to threats of extermination, Mua-Upoko retains mana whenua.
7. Section 18 of the Reserves and Other Lands Disposal Act 1956 affirms that Horowhenua 11 (Lake) belongs to, and has always belonged to Mua-Upoko.
8. Horowhenua 11 (Lake) is Maori Freehold Land held in fee simple estate.
9. Horowhenua 11 (Lake) encompasses the dewatered area and chain strip that completely encircles the lake itself, and public access to the lake is possible only by crossing Maori Freehold Land.

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18. Throughout the past century or more, Mua-Upoko has been sidelined whenever important decisions have been made affecting the quality of the lake. For instance, when farmers wanted to drain neighbouring swampland, the Hokio Drainage Board obliged in 1926 by lowering the level of the lake, destroying the flax that grew along the lake's edge. Dredging the Hokio stream destroyed all of our eel pa.

19. In 1952, the Levin Borough Council built a wastewater treatment plant on the southern boundary of the lake, discharging treated effluent into the Lake from 1952 until 1987. Even though DOC believes this has been a major contributing fact to the state of the lake, Horizons Regional Council has confirmed that treated effluent still periodically overflows into the lake.

20. A cultural impact report by Gerrard Albert, as Manager of Iwi Relations for Horizons Regional Council for a hearing of an application made by Horowhenua District Council under Section 330A of the Resource Management Act for a retrospective resource consent when effluent spilled into Lake Horowhenua 1998 stated that *"the discharges which occurred between July and August 1998 seriously undermined, and continue to undermine, the cultural and spiritual relationship of Mua-Upoko with Lake Horowhenua, as provided for by section 6(e) of the Act"*. He referred to the spiritual affront as 'poke'. He stated that the ongoing adverse effects in which knowledge of the desecration or pollution of sacred waters continues to affect a person (or people) spiritually over time. *"These metaphysical effects are, in my experience, real and cannot be under-estimated."*

21. Despite these warnings from Mr Albert, ten years later Horizons Regional Council confirmed that Lake Horowhenua was contaminated by Levin's wastewater treatment plant during winter flooding in 2008. Compliance Manager Alison Russell said these results were not unexpected. *"Samples taken from the lake near the plant on September 4 showed high levels of E coli which confirms faecal contamination occurred."*

22. The Muaupoko Cooperative Society had informed Horowhenua's Mayor and Councillors in a letter dated 21 August 2001 that any sewage treatment adjacent to Lake Horowhenua is not acceptable, and that there had been no effective consultation between tangata whenua and Council with respect to the recommendations in the proposal. The Council was warned that: *"The political and legal risks are high if you persist with proposals to dispose of sewerage in a culturally inappropriate way. We will exercise our customary rights to protect and maintain taonga tapu and wahi tapu in the region; and where necessary seek remedy in other forums."*

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23. A major strategic water and wastewater review prepared for the Horowhenua District in November 2011 presented a range of options for the delivery of water and wastewater services. The total cost of this work was presented to the Horowhenua District Council at a workshop on Monday 27 February 2012, and although the draft Long Term Plan is not yet available to the public, the council's monthly meeting has been deferred to allow staff time to adjust funding in this Long Term Plan to defer the upgrade of Levin's Wastewater Treatment Plant until Year 13 (2025). The resource consent for Levin's waste water treatment plant had expired in 2008.

24. Ms Vivienne Taueki had e-mailed the Horizons on 9 February 2012 to ask why it was taking so long for Horowhenua District Council's resource consents to be processed and why submitters had not been kept informed of what is happening. Phillip Hindrup replied that the reason for the delay is that HDC have 4-5 large infrastructure applications currently being processed and very little resource to manage all of these at once.

25. Despite a request by the Lake Trustees in 2009 to filter or divert Levin's stormwater away from the Lake, the Horowhenua District Council continues to drain Levin's stormwater into The Lake. According to the Horowhenua District Council's current Asset Management Plan, "*The quality of stormwater in the first flush of a storm will typically exceed the levels considered safe for contact recreation*".

26. On 5 May 2011, I presented a written submission to the Horowhenua District Council's Draft Annual Plan, asking for Levin's stormwater to be diverted from Lake Horowhenua. Eight days later, counsel for the Horowhenua District Council filed a memorandum in the Environment Court objecting to the reinstatement of Lake Horowhenua in the water management zone in the Horizons proposed One Plan. This matter had not been debated in public, and I had been handed a copy of this memorandum shortly before I was due to present an oral submission to the Horowhenua District Council. For speaking longer than the allotted five minutes, I was asked to sit down. When I continued speaking, I was asked to leave the Council Chambers. I left of my own accord, but was later trespassed from the Council buildings for the next two years.

27. This trespass notice effectively prevents me from attending Horowhenua District Council meetings, and also Horowhenua Lake Domain Board meetings which are also held in this venue.

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28. In my submission to the Horowhenua District Council I had pointed out that Council had identified the need to review stormwater treatment requirements for discharged to Lake Horowhenua by the year 2009. During their deliberations on 22 June 2011, the Horowhenua District Council was advised by their CEO that this review would occur in conjunction with the One Plan. It is my understanding there is no provision for the stormwater to be diverted from Lake Horowhenua in the Horowhenua District Council's Long Term Plan.

29. Despite the Horowhenua District Council supporting a District Plan Change designating The Lake as an Outstanding Natural Feature, the Horowhenua District Council has made no provision in their draft Long Term Plan to relocate or upgrade Levin's wastewater treatment plant or divert stormwater away from Lake Horowhenua.

30. Run-off from marketing gardening and farming enters the Arawhata Stream and other waterways flowing into the lake. According to a Horizons Regional Council report prepared by Dr Jon Roygard as Science Manager and dated June 2011, *"The Arawhata Stream is the largest surface inflow and is the largest source of N to the lake. Recent data suggests that the stream may become anoxic at night and might enhance oxygen depletion in the lake. Monitoring data shows that the nutrient loads in some inflows have increased significantly in recent years, possibly attributable to increased dairy farming."*

31. In this report, Dr Roygard also reported that: *"Natural restoration processes are slow and it may take up to one hundred years for the lake to recover without management intervention."*

32. Although the Lake Domain Board and Horowhenua District Council encourages people to use the lake for boating, there are no wash-down facilities for boats. Horizons Manager Craig Mitchell says he is unsure how purple loosestrife, a major problem in South America, arrived in Lake Horowhenua. To eradicate this noxious weed, Horizons has embarked upon an expensive spraying programme, using toxic chemicals.

33. This spraying programme took place over sacred ground only 50 metres from my urupa where my mum was recently buried.

34. Over the years, the Horowhenua Lake Domain Board has failed to provide adequate facilities for the public using Lake Horowhenua, yet allows events to take place on the lake. The Rowing Club, for instance has no public toilets in their clubrooms, and whenever a regatta takes place on the lake, rowers urinate and squat on the ground from the site where Mua-Upoko rowed their dead across the lake to their final resting place.


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35. Despite the lack of adequate facilities for the public and wash-down facilities for boating, the Horowhenua Lake Domain Board and others have actively encouraged the public to use the lake; most notably promoting the use of Lake Horowhenua in a double page feature published in the December edition of the Horowhenua District Council's Community Distribution which is distributed to all ratepayers and residents in the Horowhenua district.
36. The owners are powerless to stop people organising events on the lake when there are inadequate public facilities to cater for a crowd, to prevent unwashed boats being launched on the lake and to enforce the statutory by-laws designed to protect our lake from exploitation.
37. Dr Max Gibbs, a scientist from NIWA made a presentation to the Horizons Regional Council's environmental committee on 8 February 2012 that the lake was so toxic, that a mouthful of water could kill a child. On 20 February, I asked the Lake Domain Board to erect signs warning the public of the risks because I did not want to be held liable for the death of a child. It was not until the 29 February that signs were eventually erected, but even so, boating was still allowed.
38. Since the Crown acquired control of Mua-Upoko's most-prized taonga in 1905, the lake has been exploited by the Lake Domain Board, local authorities and the general public to such an extent that it is now a health hazard, too polluted and contaminated for people to use for recreational purposes, let alone as a fishing easement for Mua-Upoko.
39. When the Horowhenua Lake Domain Board met on 20 February 2012, I sent them a written submission stating that as an owner, *"I am not prepared to be held liable for the death of a child. Children should be able to swim in the lake as I once did, and I am deeply disturbed to hear that the lake has become so toxic that a mouthful could kill a child."* Because there are health risks to the people using the lake, I felt it was perfectly reasonable as an owner to demand that the lake be closed. As the dewatered area and chain strip between Muaupoko Park and the lake itself is Maori Freehold land, I asked that this area be fenced off to prevent public access to the lake until it is safe to do so. This request was ignored.
40. Ironically, it is the very parties that have contributed to the desecration and degradation of The Lake who are now talking about a Lake Accord – the Lake Domain Board, DOC, Horizons, the Horowhenua District Council and the Lake Trustees. Once again, the Mua-Upoko owners have been excluded, as if we have no rights or interest in protecting our own taonga.
41. Not only has the quality of the water been degraded, but also all of the sites of significance to Mua-Upoko that are located around the Lake including our whanau's own urupa have been desecrated.

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42. These local authorities have been able to get away with this highly offensive behaviour, simply by cherry-picking those they consult, Maori who are kupapa, who do not have any spiritual connection to the ancestral lands and waterways of Mua-Upoko.
43. The Horowhenua District Council and Horizons have no immediate plans to actually stop the pollution of our taonga. Both Councils have opposed the Lake being protected in the One Plan. In fact HDC and Horizons have deferred any of the required work on the Lake until 2025 in their latest strategic plans.
44. Accordingly, I have been forced to apply to the Maori Land Court to co-erce these local authorities and the Lake Domain Board to recognise the rights of Mua-Upoko as owners, and put in place measures to protect our Lake from further contamination and pollution. This application had been filed in the Maori Land Court during January 2009, and is proceeding to a hearing in the Palmerston North District Court on 20 and 21 March 2012.
45. On 22 November 2011, James Hardy as counsel for the Director-General of Conservation, and Martin Taylor who was appointed by the Maori Land Court to represent me in this matter, filed a joint memorandum of counsel to the Maori Land Court. Amongst other matters, they acknowledged *that the Domain Board does not have the ability to offer a new lease or licence to the Sailing or Rowing Clubs, apart from the ability at section 53 of the Reserves Act to grant limited exclusive use rights*. The Rowing Club lease had expired in 2007 and the Sailing Club lease had expired in 2003.
46. Since the Crown acquired control of Lake Horowhenua purely by statute, it has allowed a lake that was once renowned for its beauty and as a kai basket to deteriorate to such a state that the water is so toxic that a mouthful could be enough to kill a child. By placing the control of the lake in the hands of a Lake Domain Board appointed by the Minister, the Mua-Upoko owners have been rendered powerless to do anything to protect our lake.
47. As an owner of Lake Horowhenua, I believe the stench needs to be recognised for what it is – a travesty of the Treaty of Waitangi.

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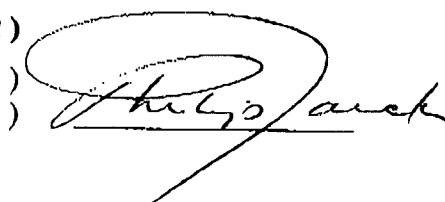
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48. I support the call for compensation for the way our lake has been mistreated and the Crown must pay for this.

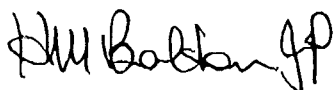
49. I therefore wholeheartedly support the New Zealand Maori Council claim because it allows Iwi like Mua-Upoko to hold the Crown to account for desecration and degradation of our most sacred taonga – Lake Horowhenua.

DECLARED AT Foxton Beach)

By the said Philip Dean Frances Taueki  
this 6th day of March 2012



Before me:



6/3/2012

Barrister/Solicitor of the High Court/Registrar/Justice of the Peace

**Heather M Bolton JP**

Retired  
13 Nash Parade  
Foxton Beach 4815

