The Waterways of the Central North Island

Summary

The Brief of Evidence relates to the following Central North Island waterways which came to be involved in the Tongariro Power Scheme (TPD).

- Whanganui and Whakapapa Rivers and tributaries
- The Whangaehu and Wahianoa Rivers and tributaries
- The Moawhango and Rangitikei Rivers
- The Tongariro River and tributaries
- Lake Rotoaira

The evidence presents a record of the proprietary interests held in these waterways by a number of iwi and hapu (Whanganui, Ngati Tuwharetoa, Ngati Hikairo, Ngati Rangi, Ngati Hauiti). These rights stem from originating ancestral relationships, an on-going cultural and spiritual relationship with the waterways and the ways in which the resources of the waterway have sustained their people over time. The origins of these waterways are linked to the deities of Maori creation who in turn are the ancestors of local tangata whenua groups. The waterways are recorded as being tupuna to the local iwi and hapu and as living entities with their own mauri. This means that all components of a waterway, including of course the water, are viewed holistically as being part of the one entity. The waterways are viewed as taonga, the holders of whakapapa and the memories of tribal history. The people are indivisible from their taonga. As such, iwi and hapu are charged with the responsibility of protecting and caring for their taonga. The mana of an iwi or hapu is tied up with its ability to fulfil kaitiaki responsibilities. In return, the people drew spiritual and physical sustenance from their waterways.

The Brief of Evidence describes the TPD and how it came to modify the waterways of the Central North Island through damming and water diversion. Given the proprietary interests noted, it is of no surprise that these radical actions brought impact to the waterways and their iwi/hapu. These impacts have been noted to include: the diminution

This is the exhibit marked "**TW-1**" referred to in the affidavit of Tony Walzl and sworn at Wellignton this 18th day of May 2012 before me:

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A barrister of the High Court of New Zealand

of mauri and mana of the waterways; the resulting changes in appearance and feel of these waterways; the alteration of the spiritual and cultural relationships between the waterways and their people; the undermining of the ability of tangata whenua to fulfil their kaitiaki responsibilities; the loss of food and other resources; and the loss of mana from all these effects.

The nature of the proprietary interests of tangata whenua in the waterways of the Central North Island and the impacts caused by the TPD Scheme, have been described by iwi and hapu before a number of forums constituted to assess the operational management of the Scheme. The ability of tangata whenua groups to represent the waterways and provide information of impacts further demonstrates the proprietary interests they hold in the waterways. A series of administrative and judicial bodies to which this information has been presented have accepted the integrity and substance of the evidence presented by tangata whenua. These bodies have all reached findings recording cultural impact, and, in several cases, have made orders for amelioration of these impacts. The proprietary rights have in essence been recognised although they have then been set alongside existing management regimes. As a result, the rights often are relegated to a position that is subsidiary to or incompatible with other considerations.

The material considered

The central region of the North Island, encapsulating the three volcanic peaks of Ruapehu, Ngaurahoe and Tongariro, is the source for a number of waterways which flow in all directions off the southern Volcanic Plateau. These waterways flow through the takiwa of a number of iwi and hapu. This brief compiles evidence that has previously been brought forward by these groups to demonstrate the proprietary interests which they held in these waterways.[1] The evidence was presented within the context of these groups seeking to exercise control in response to the use of their waterways by the state in the production of hydro-electricity. The groups not only sought to demonstrate their proprietary interests

[1] This evidence was presented to the following fora: Minimum Flows Tribunal for the Whanganui River (1988); Planning Tribunal on Appeal over Whanganui River Minimum Flows (1990); Documents generated during Genesis' Resource Consents consultation process (1991-2000); TPD Hearing Committee (2001); Environment Court on Appeal over decision of the TPD Hearing Committee (2004); Waitangi Tribunal Tongariro National Park Inquiry (Wai 1130); and Waitangi Tribunal Central North Island Inquiry (Wai 1200).

but to describe the harm that had been done to their waterways and themselves as a result of the Tongariro Power Development (TPD) Scheme being brought into place. The brief will also show that the evidence of the iwi and hapu of the central North Island in relation to their proprietary interests and the harm to their waterways has been widely acknowledged in several administrative and judicial forums.

The waterways considered

The waterways being considered include:

- Whanganui River system including the Whakapapa River and Mangatepopo Stream
- The Whangaehu and Wahianoa Rivers and tributaries
- The Moawhango and Rangitikei Rivers
- The Tongariro River, its tributaries and the Pouto stream
- Lake Rotoaira

These waterways draw all or much of their water from the volcanic mountains of the Central Plateau.

- To the northwest, the source of the Whanganui and Whakapapa Rivers are the central volcanic cones. Tributaries that flow into the Whanganui River include the Mangatepopo, Ongarue, Ohura, Retaruke, Tangarakau and Taurewa. The Whanganui runs towards Taumaranui before turning to the south and reaching the western sea coast by flowing through the city of Whanganui.

  To the southwest, the Whangaehu and Wahianoa Rivers are sourced in the permanent ice areas near the summit of Ruapehu and are feed by tributaries that drain the eastern slopes of the mountain. The Whangaehu, flows to the south and enters the sea on the western coast by the small settlement of Ratana.

  Drainage from the central mountains contributes to the catchment of the Moawhango River but the waterway itself rises in the Kaimanawa Ranges and flows south until it enters the Rangitikei River which continues to run south where it enters the sea at the coastal settlement of Tangimoana.

- The Tongariro River is feed from tributaries that drain the western flanks of the Kaimanawa range as well as the eastern high country of the volcanic peaks.

Tributaries include the Upper Waikato, Waipahihi, Mangatoetoenui and Waihohonu Streams all of which are sourced on Ruapehu or Ngaurahoe. The Tongariro River flows in a north-easterly direction to empty into the southern shores of Lake Taupo

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- The high altitude Lake Rotoaira (564m asl) lies to the immediate north of Mount Tongariro which originally supplied water to the Lake as did nearby Mount Pihanga. Originally, the Mangatipua and Tahurangi streams brought the water into the Lake at its southern end. The natural outflow of the Lake was the Poutu Stream.

Iwi and Hapu Proprietary Interests

Commentators from the iwi and hapu the southern Volcanic Plateau, have frequently recorded their intense associations with and their possession of their waterways. They have recounted the originating ancestral relationships, their ongoing cultural and spiritual relationship with the waterway and the ways in which the resources of the waterway have sustained their people over time.

Ancestral Relationships with the Waterways

The connections of the Central North Island waterways to the maunga of the Central Plateau have been related many times. The account of the epic battle between the tupuna Tongariro and Taranaki over the affections of Pihanga is well-known. The result of this conflict was that Taranaki was vanquished and travelled away from the centre of the island to the western position that the maunga now occupies. As he travelled to the coast, he left in his wake a deep gorge. Although there are a number of variations in the accounts, they all record that to heal the scar left on the land water was sent either from Tongariro or by Rangi the sky deity.[2] In all accounts the emphasis is on the tapu origin and healing nature of

[2] See for example, teaohou.natlib.govt.nz/journals/teaohou/issue/Mao39TeA/c25.html.or www.nzetc.org/tm/scholarly/tei-Gov14_03Rail-t1-body-d19.html

the waters that came to form the Whanganui River is clear.[3] The Whanganui River is the Te Awa Tupuna of Whanganui iwi.[4]

Another narrative associated with these same events has been told in relation to Rotoaira. The current site of the lake was the former location that Taranaki had occupied. After Taranaki had departed, Tongariro was advised by Rangi that to prevent any possibility of return he should let the "essence" from his wounds fill the basin occupied by Taranaki.[5] Rotoaira, and all the waterways of Ngati Hikairo, are seen as their tupuna and part of their whakapapa."[6]

The ancestor Tongariro is also closely associated with Te Awa o Tongariro with the river having been described as a physical and natural embodiment of this ancestor."[7]

Following the creation of Rotoaira, Tongariro created from within himself a spiritual kaitiaki "to tend to the mauri of the lake to ensure its prosperity and to extinguish forever Taranaki's occupationary rights." The guardian that Tongariro placed in Rotoaira during an eruption was named Aorangi. Sometimes seen in the form of a totara log,[8] Aorangi remains in the lake today. It is said that Aorangi travelled on a spiritual pathway through the wairua of the spring water that came from the mountains.[9] Aorangi, who is viewed as a tupuna of the people of Rotoaira, always has been a kaitiaki for them.[10]

On the eastern side of the central maunga, the waterways Whangaehu, Tokiahuru, Wahianoa, Makahikatoa and Moawhango are viewed as tupuna awa of Ngati Rangi.[11] Whangaehu is particularly special with its waters originating in Te Wai-a-Moe (Crater

[3] See for example Submission from T. Rangiwhakateka Sept 1988 in "Planning Tribunal decision on Wanganui River minimum flow appeals, 1990" p.6, see Tony Walzl "Environmental Impacts of the Tongariro Power Development Scheme", Jul 2006, WAI-1130, p.118
[4] Archie Taiaroa Submission before the Environment Court 2003, see Walzl op cit, p.467
[5] 20 Apr 2005, Evidence of Chris Tamihana Winitana, WAI-1200 para 36
[6] 22 Apr 2005, Evidence of Jock Barrett, WAI-1200 paras 10.7 -10.8
[7] "Ngati Tuwharetoa Position Statement", 2000, see Walzl op cit, pp.371-2 See also 23 Nov 2000, Evidence of Tuatea Smallman
[8] 20 Apr 2005, Evidence of Chris Tamihana Winitana, WAI-1200 para 36
[9] 4 May 2006, Patumoana Tahi, hui at Turangi see Walzl op cit, p.444
[10] Mar 2006, Evidence of Taina Tahi, see Walzl op cit, p.444
[11] 18 July, 2003, evidence of Keith William Paetaha Wood to the Environment Court, paras 4.2 and.4.11 see Walzl op cit, p.472

Lake) and the springs that rise from the ancestor maunga Ruapehu.[12] Whangaehu has been described by Ngati Rangi as a gift given to them from Ranginui and Papatuanuku.[13]

Ngati Tuwharetoa are often on record as recording their waterways as living beings with their own special mauri (life force) and mana.[14] An identical view is held by other iwi and hapu in relation to the waterways of the Central North Island. Whanganui has often been described in this manner.[15] Ngati Hauiti have recorded that the Whangaehu and Mangawhero Rivers are living entities.[16] Ngati Rangi also have recorded this in relation to their waterways. In the case of Whangaehu, they firmly reject the Pakeha view espoused through scientific indicators, which hold that the mineral content of this tupuna awa make it a 'dead river'. To the contrary, Ngati Rangi see Whangaehu as "a unique living entity."[17]

As living entities, the waterways of the Central North Island each possess their own mauri or life essence. Their water is viewed as a treasured gift from Ranginui. The water from Rangi has its own mauri prior to its falling to Papatuanuku.[18] As T. Rangiwhakateka of Atihaunui has noted, the Whanganui River can only maintain its mauri with a plentiful supply of this water.[19]

The waters flowing from the mountains of the southern Volcanic Plateau are particularly viewed as wai tapu as they maintain the mauri in the purest water from Ranginui which does not come into contact with human or animals before flowing into the surrounding waterways.[20] In the Whanganui tradition, the mountains were also gifts directly from Ranginui and this adds to contention that the waters off the maunga are tapu.[21] As Colin Richards of Ngati Rangi has noted, his iwi's old people spoke of the streams and springs that flowed from Ruapehu as toto (blood).[22] Similarly, James Hemi Biddle has noted that Ngati Tuwharetoa viewed the waterways that flowed from their maunga as being like "the

[12] Ibid, para.4.9 see Walzl op cit, p.471
[13] Evidence of Richard Pirere, 2000, p.8, EW Archives 60 01 99E see Walzl op cit, pp.272-3
[14] 23 Nov 2000, Tuwharetoa Submission to the TPD Hearing Committee, , EW Archives 60 01 99E see Walzl op cit, p.363
[15] Sept 1988, Submissions in "Planning Tribunal decision on Wanganui River minimum flow appeals, 1990", p.6.
[16] Evidence of Neville Lomax as noted by 30 August 2001, TPD Hearing Committee Decision, p.37
[17] Evidence of Richard Pirere, 2000, p.8 see Walzl op cit, p273
[18] Evidence of Richard Pirere of Ngati Rangi, 2000, p.8, see Walzl op cit, pp.272-3. Oct 2000, Gerrard Albert, Cultural Issues Report for the TPD Resource Consent process, pp.3-4.
[19] Sept 1988, Submissions in "Planning Tribunal decision on Wanganui River minimum flow appeals, 1990", p.6
[20] Albert, op cit, pp.8-9
[21] Albert, op cit, pp.8-9 See also Evidence of Richard Pirere, 2000, p.8 see Walzl op cit, pp.272-3
[22] 10 Feb 2006, Evidence of Colin Richards, WAI-1130 A63, paras 4-8

arteries of Papatuanuku."[23] Of the Whanganui River, George Habib has noted: "The water which moves in the river and its tributaries is not just water but also the blood of the ancestors" [24] The tapu nature of the maunga headwaters of these waterways has been noted by Neville Lomax of Ngati Hauiti. When speaking about the Whangaehu he recalled that the old people would not go there while others were afraid to look at this tapu area.[25]

The iwi and hapu of the Central North Island view their waterways in a holistic manner. Firstly, as a living entity, it has been noted that the waterway must been seen in its entirety – from its source to its mouth. [26] This means that the spiritual or physical health of a river or lake cannot be examined in certain locations, but in relation to the whole living entity in the same way as any living beings.[27]

Secondly, as noted by Napa Otimi in relation to Ngati Tuwharetoa waterways, in the Maori world view there is no differentiation between land, water and air.[28] This concept is well summed up in Archie Taiaroa's remarks on the Whanganui River "It is the river in its wholeness: Te Mana, Te Mauri, Te Ihi, Te Tapu, Te Wehi. It is its waters, its fish, its bed, its tributaries and its life force." [29]

Waterways and Iwi/Hapu

As noted above, all of the waterways of the Central Plateau are viewed as tupuna to the surrounding iwi and hapu. These waterways, therefore, not surprisingly are viewed as taonga.[30] Rotoaira has been described as taonga tuku iho.[31] The importance of the presence and possession of these waterways as taonga has been described by many. The waterways are recorded as being and holding the whakapapa of iwi and hapu.[32] They are said to hold

[23] 26 Apr 2005, Evidence of James Hemi Biddle, WAI-1200 para 31
[24] Sept 1988, Planning Tribunal decision 1990, op cit, p.6
[25] Evidence of Neville Lomax as noted by 30 August 2001, TPD Hearing Committee Decision, op cit, p.37
[26] 2 May 2000, Tuatea Smallman, hui at Hirangi marae, see Walzl op cit, p.368. Also "Ngati Tuwharetoa Position Statement", 2000, see Walzl op cit, p.371-2
[27] Albert, op cit, pp.3-4.
[28] Napa Otimi, hui at Tapeka marae, 16 September 1999, see Walzl op cit, p.355
[29] Submission before the Environment Court 2003, see Walzl op cit, p.467
[30] 23 Nov 2000, Tuwharetoa Submission to the TPD Hearing Committee, p.3 , EW Archives 60 01 99E, see Walzl op cit, pp.375-6
[31] 23 Nov 2000, Trustees of Lake Rotoaira, EW Archives 60 01 99E, see Walzl op cit, p.439,
[32] Chris Winitana, hui at Tapeka marae, 16 September 1999, see Walzl op cit, p.355

the memory of people's history.[33] The following quote from George Habib was noted regarding the Whanganui River but would equally apply to all of the Central Plateau waterways: "....the River is many things, both present and past, both physical and metaphysical, both real and unreal, at once a precious possession and a source of sustenance, a means of communication with the Gods, the Tipuna, The Kaitiaki and the Taniwha, and a manifestation of Wairua, Mana, Tapu and Noa." [34]

With such an intense and integral connection between the waterways and tangata whenua, it is not surprising to encounter expressions which reflect the indivisibility of the people and their taonga. As Mandie Brown of Ngati Te Maunga noted at a hui in 1999: "The water is us. We are not separate."[35] Arthur Grace added: "For our whanau we contend that for each of us, 'I am the River'."[36] Archie Taiaroa has said of the Whanganui River: "We are the river and the river is us."[37] George Habib agrees: "Whanganui Maori – they are part of the river and the river is part of them."[38] Michael Potaka has said of the Whanganui River "I would say that the awa possesses us, rather than we possessing it."[39] The reason for this is explained by Colin Richards of Ngati Rangi: "There is no separateness of the life force of the natural world and the life force of people." [40] Therefore, as Piripi Haami has noted: "If the water dies, my people will die."[41]

Therefore the tangata whenua of the Central North Island are charged with the responsibility of protecting and caring for their taonga.[42] Their role as kaitiaki is to cherish and protect the mauri and mana of their waterways.[43] These kaitiaki responsibilities are seen as obligations to both atua and tupuna and future generations.[44] The life-sustaining mauri of waterways is seen as inextricably linked to the pride, dignity and mana of the

[33] Sept 1988, T. Rangiwhakateka in Planning Tribunal decision 1990, op cit, p.6
[34] Sept 1988, Planning Tribunal decision 1990, op cit, p.6
[35] Hui with Ngati Te Maunga, 16 October 1999, see Walzl op cit, p.359
[36] 4 Aug 2005, Evidence of Arthur Lancaster Te Takinga Grace, WAI-1200 para25
[37] Submission before the Environment Court 2003, see Walzl op cit, p.467
[38] Sept 1988, Planning Tribunal decision 1990, op cit, p.6
[39] Submission before the Environment 2003, see Walzl op cit, p.466
[40] 10 Feb 2006, Evidence of Colin Richards, WAI-1130 A63, paras 4-8
[41] 30 Aug 2001, TPD Hearing Committee Decision, op cit, pp.62-6
[42] 23 Nov 2000, Evidence of Tuatea Smallman, p.1, to the TPD Hearing Committee
[43] Evidence of Neville Lomax as noted by 30 August 2001, TPD Hearing Committee Decision, op cit, p.37
[44] Rosette Moerangi Falaoa, hui with Ngati Te Maunga, 16 October 1999, see Walzl op cit, p.359

people.[45] Kaitiakitanga is maintained through the exercise of tikanga which recognises the interconnectedness between humankind and the natural world.[46] Rituals are performed to honour the mana and wairua of the awa.[47]

The tangata whenua of the Central North Island have often described their ongoing cultural and spiritual relationship with their waterways. It has often been said that their past, present and future development, both physically and spiritually, depended on the health of their waterways.[48] Commentators have spoken of gathering spiritual sustenance from the passage of these waters through their land[49] with the mauri of the water providing sustenance to the wairua.[50] The Whanganui River has been described by its people as being "essential for our spiritual cleansing and sustenance of mind and body...." [51] For other groups, the story is the same. Te Awa o Tokaanu has been described as the "life-sustaining awa" for Ngati Kurauia, Ngati Turangitukua, Ngati Turumakina and Ngati Rongomai.[52] Referring to Rotoaira and other waterways, Jock Barrett of Ngati Hikairo has noted: "Our ancestors got food and spiritual sustenance from these waterways."[53]

The other side of the life-sustaining abilities of waterways is their capacity to provide food for the people. The food producing capabilities of the Whanganui River are well-recorded.[54] The Moawhango was traditionally an important fishing ground" [55] Food was even gathered from the Whangaehu catchment. Although the mineral enriched waters of Whangaehu often would not support life, its tributaries were a source of kai with the river being an important food basket for Ngati Rangi.[56]

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[45] "Ngati Tuwharetoa Position Statement", 2000, see Walzl op cit, p.371-2. Albert, op cit, p.9. See also Michael Potaka, re the Whanganui River, Submission before the Environment 2003, see Walzl op cit, p.466
[46] Albert, op cit, p9
[47] Re the Whangaehu see Evidence of Richard Pirere, 2000, p.8 see Walzl op cit, pp.272-3
[48] Sept 1988, T. Rangiwhakateka, Planning Tribunal decision 1990, op cit, p.6
[49] Re the Whangaehu see Evidence of Richard Pirere, 2000, p.8 see Walzl op cit, pp.272-3
[50] Albert, op cit, p.11
[51] Submission before the Environment 2003, see Walzl op cit, p.467
[52] "Ngati Tuwharetoa Position Statement", 2000, see Walzl op cit, p.371-2
[53] 22 Apr 2005, Evidence of Jock Barrett, WAI-1200 paras 10.7 -10.8
[54] Waitangi Tribunal, The Wanganui River Report, 1999, pp.59-66
[55] 18 July, 2003, evidence of Keith William Paetaha Wood to the Environment Court, para.4.11 see Walzl op cit, p.472
[56] Evidence of Richard Pirere, 2000, p.8, see Walzl op cit, p.272 Also 18 July, 2003, evidence of Keith William Paetaha Wood to the Environment Court, para.4.9 see Walzl op cit, p.472

Whilst all waterways of the Central Plateau produced food, Rotoaira has been recorded as a waterway of especial importance - a kete kai (food basket).[57] According to Te Rangihouhiri Asher, Te Moana o Roto Aira was known throughout Maoridom as Te Pataka Kai o Ngati Tuwharetoa.[58] In the view of Te Rangihouhiri Asher, it was a better fishery than Lake Taupo.[59] The Lake maintained an indigenous fishery an important component of which were koaro[60] which were said at one time to be the main food supply of Ngati Hikairo.[61] The Lake also supported an abundant trout fishery.[62] Taina Tahi remembered growing up and eating trout every day.[63] Paranapa Otimi has written of Ngati Tuwharetoa kai rangatira - the delicacies that Tuwharetoa and their rangatira Te Heu Heu were famous for. These included koura, kokopu (native trout), kakahi (fresh water mussels), koaro, inanga and the morihana (carp). For many of these foods, Lake Rotoaira was the major source for the tribe.[64]

The waterways similarly maintained the physical health of their people. Lake Rotoaira was a "place of restoration and healing"[65] The waters and shores of the Whanganui River were said to assist healing and provide medicines[66] The Tongariro River was said to have "amazing healing powers" with immersion in its icy waters curing many ailments.[67] Finally, the highly mineralised water of the Whangaehu carried a distinct mix of health giving qualities. Rituals involving the use of the waters of the Whangaehu had been practised by Ngati Rangi for centuries.[68]

In addition to all of the connections between the waterways and iwi and hapu, there are several instances where these interests are further supported by contiguous landholding. Obviously prior to 1840, Maori landholding along and around the waterways was pre-eminent. In several of the districts in which the waterways of the Central North Island are

[57] "Ngati Tuwharetoa Position Statement", 2000, see Walzl op cit, p.371-2
[58] 23 Nov 2000, Evidence of Te Rangihouhiri Asher, p.5, EW Archives 60 01 99E, see Walzl op cit, p.439
[59] 15 October 1999 hui , see Walzl op cit, p.357
[60] 23 Nov 2000, Evidence of Te Rangihouhiri Asher, p.5, EW Archives 60 01 99E, see Walzl op cit, p.438
[61] 22 Apr 2005, Evidence of Jock Barrett, WAI-1200 para 11.2
[62] 23 Nov 2000, Evidence of Te Rangihouhiri Asher, p.5, EW Archives 60 01 99E, see Walzl op cit, p.439
[63] 4 May 2006, Taina Tahi, hui at Turangi , see Walzl op cit, p.449
[64] 23 Nov 2000, Evidence of Paranapa Otimi to the TPD Hearing Committee, p.1, EW Archives 60 01 99E,
[65] "Ngati Tuwharetoa Position Statement", 2000, see Walzl op cit, p.371-2
[66] 30 Aug 2001, TPD Hearing Committee Decision, op cit, pp.62-6,
[67] 23 Nov 2000, Evidence of Tuatea Smallman , p.1 EW Archives 60 01 99E, Walzl Doc Bnk, Vol.2, pp.762-764
[68] 18 July, 2003, evidence of Keith William Paetaha Wood to the Environment Court, para.4.9, see Walzl op cit, pp.471-2
See also Evidence of Richard Pirere, 2000, p.8 see Walzl op cit, pp.272-3

located, there has been sustained Crown and private land purchasing over the following 150 years. Nevertheless, a number of examples have continued of Maori landholding contiguous to the waterways:

- Whanganui River: a few small Ohura South B, Kirikau Opatu sections; larger partitions of Tawata, Maraekowhai A, Whitianga 2, Waimarino, Taumatamahoe, Ngaporo, Waharangi, Whakaihuwaka, Pukehika, Morikau 1, Tawhitinui, Ranana, Waipapa, Ngarakauwhakarara, and then smaller blocks of Matahiwi, Tauakira, Te Tuhi, Kaitangata, Pukekowhai, Pungarehu, Ramahiku, Omaru, Puketarata, Poutama, Kaiwhaiki, and various sections at Putiki.

- Whakapapa River: a few small Taurewa 5 West sections

- The Upper Whangaehu River: larger Murimotu 3 and 5, Rangiwaea 4, Otumauma B, Parapara 2 subdivisions.

- The Upper Rangitikei River: [from its headwaters to Taihape] along comparatively large stretches there are big partitions from the following parent blocks: Kaimanawa, Owhaoko, Oruamatua Kaimanawa, Awarua

- The Tongariro River: several partitions of various blocks about the River
    - [Between Lake Taupo and Turangi town] Hautu 3, Tokaanu B, Waipapa 1D sections
    - [Along small stretches just outside of Turangi] Ohuanga North and South sections
    - [South of Rotoaira and into the Rangipo Desert up to Headwaters] Some larger Rangipo North and Kaimanawa 3B sections

- Pouto stream: about half of the stream's banks on both sides are partitions of Rangipo North 2

- Lake Rotoaira: the bed of the Lake itself and almost all of the land that makes up the shoreline which consist of partitions of the Ngapuna, Waimanu 2, Rangipo North 2, Okahukura 8M blocks

(NB: As the above overview has been compiled within limited time, it has focused on major waterways. There has been less opportunity to closely analyse the tributary waterways with the catchment of the above Rivers.)

The Tongariro Power Development Scheme

Although, since 1840, there are many changes that would have impacted on the waterways of Central North Island iwi and hapu, this brief of evidence will record those associated with the Tongariro Power Development Scheme. The Scheme will be briefly described below and a summary of the changes made to the flow of the waterways will be recorded.

Prior to and in the first decades after the turn of the twentieth century, hydro electric power stations to supply a localised need had been built in several different places around New Zealand by private companies or local authorities. It was only after 1900 that the central government began to consider that it had a key role in hydro-electricity development. Significantly, in 1903, the Water-power Act was passed which reserved for the Government and the public the water resources of the country for the purposes of the generation of power.[69] Although a few local and single-station schemes came into existence, it was the Waikato River Hydro Scheme which first raised the idea of multiple stations being set along a single waterway. This scheme was to become the most intensive use of a waterway to generate power within the North Island. The first stations and a control gate to regulate the flow from Lake Taupo were built before 1945.

Despite the scope of the Waikato Scheme, the rapidly increasing levels of energy use after World War II meant that it was soon evident that further capacity needed to be

[69] John Martin, *People, Politics and Power Stations: Electric Power Generation in New Zealand 1880-1998*, ECNZ and Historical Branch, Department of Internal Affairs, Wellington 1998, p.41

created. The Tongariro Power Development scheme would by far the most ambitious electricity generation project to be undertaken in New Zealand at the time. To marshal the water capacity needed to drive the several new stations being built below Lake Taupo and to support several others planned to built along the Waikato, a system of river and stream diversions were put in place over a catchment of more than 1,000 square miles.[70]

Components of the scheme

After years of planning, the Scheme was to be introduced in a series of components:

- Western Diversion: Stage 1 of the project would be constructed between 1964 and 1971. This part of the scheme would divert water from five tributaries and the headwaters of the Whanganui River through several tunnels linking the Whakapapa and the Wanganui Rivers and three canals into the Wairehu Stream and Lake Rotoaira. Two dams were constructed at Te Whaiau and Otamangakau to create two artificial lakes.[71]

- Rotoaira Section: In addition to Stage 1 of the Scheme bringing additional diverted water into Lake Rotoaira via the Wairehu Stream, Stage 2 of the Scheme (1966-1973) brought more water into the Lake through the Poutu Tunnel and the Poutu Canal. Water in the Lake was to be extracted through a surge chamber down to the Tokaanu power station.

- Tongariro Section: This Section encompassed structures on the Tongariro River, as well as the Waihohonu and Poutu intakes. During Stage 2 of the Scheme (1966-1973) construction resulted in water from the Tongariro River being conducted through the Poutu Tunnel and the Poutu Canal into Lake Rotoaira. The Tongariro section was added to during the fourth stage of the Scheme (1974-1983) which diverted the Waihohonu Stream into the Rangipo Dam built over the Tongariro River and down a surge chamber to the underground Rangipo powerhouse.

[70] Ibid, p.221
[71] Ibid, p.222

- Eastern Diversion: Stage 3 of the project was constructed between 1969 and 1979. The Moawhango River was diverted through the Wahianoa aqueduct into the Mangaio tunnel and the Mangaio Stream, to end up in the Moawhango Dam. The tributaries of the Whangaehu River and other southern Ruapehu streams were also to be diverted through the Wahianoa aqueduct. Due to the high sulphuric acid content of the Whangaehu River this waterway was excluded from the scheme. The Moawhango-Tongariro tunnel took the water from the reservoir to the Tongariro River and the Rangipo Dam.

Changes to Waterways Flow

With such a massive construction scheme involving the diversion of water, naturally the waterways were physically altered.

- The Western Diversion takes water from a catchment of 320 square kilometres - almost 5% of the Whanganui River catchment. The Diversion reduces mean flows on the Whakapapa River by 67% up river. It completely removes water from the other four small tributary streams. This affects water flows on the **Whanganui River**.

- Rotoaira Section: Originally Lake Rotoaira had a natural flow rate of 6.9 cubic meters with an average water residence time of 247 days. The lake has completely changed with no natural outlet and new inlets. The lake level had increased by at least 500 mm and water flows through the lake at a swifter flow.[72]

- Tongariro Section: The mean flow of the **Tongariro River** at Turangi is just over half of its pre-TPD rate with variations along different points of the waterway.[73] Flows in the **Poutu Stream** have decreased from a natural mean flow of 7.3 cubic meters[74] to a modified mean flow of 1.3 cubic meters.

[72] 30 Aug 2001, TPD Hearing Committee Decision, op cit, p.25,
[73] July 2000, Genesis Power Ltd, Tongariro Power Development: assessment of environmental effects , p 201
[74] Henderson 1998b as noted in July 2000, TPD AEE, Genesis, op cit, p 398,

- Eastern Diversion: All three substantial waterways have been affected to various degrees. The Wahianoa Aqueduct takes water from 22 tributaries of the **Whangaehu River**. As a result there has been a 36% reduction in the mean pre-diversion flow.[75] The damming of the **Moawhango River** has reduced the mean flow 30 km downstream by two thirds.[76] The mean flow in the **Rangitikei River** has been reduced from 11 to 17% at different points.

Impacts of Changed Waterways

Considering the intensity of the relationship of Central North Island iwi and hapu to their waterways, and the extent of change resulting from the introduction of the TPD, it is not surprising that local tangata whenua have experienced great impacts. These have been presented in a number of forums and are summarised below.

Mauri and Mana

All affected iwi and hapu have complained that the various interventions of the TPD scheme – the damming, diverting and mixing of waters – have impacted on the mauri and the mana of the waterways.

The damming of water by the TPD has been described as "an obstacle that clots the flow of blood through the arteries of mother earth."[77]

For some waterways, it is the diversion – the taking away of much of the water – which is said to have severely impacted on the mauri of the tupuna awa. This is the case with the Whangaehu, for example.[78] The Whanganui is another where the effect has been described by Archie Taiaroa as "a gross weakening of the strength of our awa" arising from "trampling" on the mauri of the river.[79] The Tamahaki Incorporated Society also

[75] July 2000, TPD AEE, Genesis, op cit, p 323
[76] Henderson 1998s as noted in July 2000, TPD AEE, Genesis, op cit, p 345
[77] 26 Apr 2005, Evidence of James Hemi Biddle, WAI-1200 para 31
[78] Evidence of Richard Pirere, 2000, pp.8-9 see Walzl op cit, p.273
[79] Submission before the Environment 2003, see Walzl op cit, p.467

complained about the diminished mauri of the River and its resulting inability to maintain its former natural balance.[80]

Of the Moawhango River, which both has been dammed and had water brought in from another catchment, Colin Richards of Ngati Rangi has said: "The life-giving sustenance of our tupuna awa has been desecrated." [81] This statement also applies to all of Ngati Rangi's waterways impacted by the Scheme.[82]

Ngati Tuwharetoa have recorded the same perspectives in relation to their waterways. In the case of Te Awa o Tokaanu, much of the waterway, in addition to being diverted from its natural course, is also artificially carried through an aqueduct. This is seen as disrupting all of its natural life-supporting and self-cleansing processes.[83] The River is said to now inhabit "an alien concrete environment." [84] Te Awa o Tongariro is viewed as having been dismembered bringing destruction in Maori spiritual terms and an irrevocable weakening of the mauri of the waterway.[85] The Tongariro has been dammed and its waters forced through artificial tunnels and canals, until much of its waters leaves their "true path" to be sent to Lake Rotoaira.[86]

The mixing of waters affects a number of Central Plateau waterways. For Ngati Hauiti the bringing of the waters from the Whangaehu catchment by the Wahianoa Aqueduct into the Mangawhero Rivers has diminished the mauri and mana of these natural waterways.[87] As for the removal of Whanganui's waters over to Rotoaira, this has been described by J.E. Ritchie as putting Whanganui's waters into another spiritual domain – that of Tuwharetoa. As such, it is said to be a violation of spiritual integrity which disturbs the harmonious relationship between tribes.

[80] 13 November 2000, Tamahaki Submission, EW Archives 60 01 99E, see Walzl op cit, p.172
[81] 10 Feb 2006, Evidence of Colin Richards, WAI-1130 A63, paras 4-8
[82] 18 July, 2003, evidence of Keith William Paetaha Wood to the Environment Court, para.4.2
[83] see Walzl op cit, p.371-2
[84] 22 Apr 2005, Evidence of Dulcie Gardiner, WAI-1200 para 20
[85] "Ngati Tuwharetoa Position Statement", 2000, see Walzl op cit, p.371-2
[86] 23 Nov 2000, Tuwharetoa Maori Trust Board, pp1-2, EW Archives 60 01 99E, see Walzl op cit, p.376
[87] 7 Aug 2000, Huwyler to Hutchinson, EW Archives 60 01 99E, , see Walzl op cit, p.256

As noted, Rotoaira has experienced massive hydrological changes which are seen as having "severely diminished" the mauri of this taonga tuku iho.[88] The bringing of water into the Lake from both western and eastern catchments has been described as bringing strangers into the district.[89] Te Rangihouhiri Asher named this water as ngawaiowaho (foreign water). He has added: "These foreign waters from the Rangitikei and Moawhango [and Whanganui] have a mauri of their own. Their tikanga and kawa are different." [90]

In these circumstances it is not surprising that the kaitiaki taniwha of Rotoaira has been impacted. As Patumoana Tahi has noted, with the mauri of waterways being mixed, the spiritual pathway along which Aorangi travelled is also mixed up.[91] Aorangi has been found in places where he has never before been seen and he has been getting beached along the shore which had never happened before. [92] As Chris Winitana has noted in 2005: "Aorangi is ill, and has been for a long time. ....Aorangi became withdrawn and unwell. ....he continues to be tended." [93]

For many, the loss or undermining of mauri has manifested in a change in appearance in their waterways. On the Whanganui River, tangata whenua have noticed erosion, silting and stagnation of water in places where this was said never to have occurred before.[94] It has been noted that Ngati Tamawhiti mourned the loss of the blue and clean waters of Te Awa o Moawhango which was now reduced to a trickle. The Whakapapa is said to have been subdued and tamed and the change was mourned by the hapu of Te Runanga o Te Tutewha. The upper reaches of the Whanganui were no longer recognisable and this too was mourned by Ngati Waewae, Ngati Hikairo and Ngati Manunui. [95] As for Te Awa o Tongariro, it was noted: "Where is our ancestor. His mighty voice has been silenced. In the roar of the river he spoke to us, expressing his many moods. Now there is only one mood, one quiet voice. Tongariro roars no more."[96]

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[88] 23 Nov 2000, Trustees of Lake Rotoaira, EW Archives 60 01 99E, see Walzl op cit, p.439
[89] 22 Apr 2005, Evidence of Jock Barrett, WAI-1200 paras 10.7 -10.8.
[90] 23 Nov 2000, Evidence of Te Rangihouhiri Asher, p.5, EW Archives 60 01 99E, see Walzl op cit, p.440
[91] 4 May 2006, Patumoana Tahi, hui at Turangi, see Walzl op cit, p.444
[92] Mar 2006, Evidence of Taina Tahi, see Walzl op cit, p.444
[93] 20 Apr 2005, Evidence of Chris Tamihana Winitana, WAI-1200 para 37
[94] Re evidence of Petara (Pestal) Pauro and Merenia Karauria 30 Aug 2001, TPD Hearing Committee Decision, op cit, pp.62-6
[95] Walzl op cit, p.371-2
[96] Ibid

Whereas for the above waterways, the mauri has been impacted by taking water away, in Rotoaira the impact of the mauri has arisen by the mixing of waters. The formerly slow moving Lake is now said to run as a river. Sand beaches have been eroded as well as some of the land and there has been an increase in ugly marshes and crumbling earth banks.[97] The water is said to be colder and heavier as there is little oxygen in it. As Taina Tahi has said: "This gives the Lake a different feeling."[98] There has been an increase in the growth of weeds that are not indigenous to the Lake. This weed is not just at the margins but is also thick in the middle of the lake.[99] The weed traps the sediment and builds up. In high winds, this weed gets ripped and collects around the shore where it rots and lets off odours.[100] In addition, the number of swans has increased leaving a noticeable smell of faeces in the air.[101]

Impacts on Tangata Whenua

The TPD modifications have been recorded as affecting the waterways themselves. Not surprisingly, this has resulted in impacts being described on the people who possessed these waterways.

The diversions and mixing of waters are seen as going against tribal or hapu tikanga.[102] The integral connections noted previously between the waterways and their people means that any harm to the river and its environs was felt personally, not only as a hurt to the physical being, but as a slight to the emotions, the prestige, and the tribal mana.[103] As Arthur Grace noted: "When the river is sick, we are sick."[104]

Ngati Tuwharetoa reported that the TPD works altered their relationship with their taonga and therefore with their ancestors.[105] They lamented that future generations would not be

[97] Mar 2006, Evidence of Taina Tahi, see Walzl op cit, p.444
[98] Mar 2006, Evidence of Taina Tahi, see Walzl op cit, p.443
[99] Mar 2006, Evidence of Taina Tahi, see Walzl op cit, p.446
[100] 4 May 2006, Taina Tahi , hui at Turangi, see Walzl op cit, p.446
[101] Hui for Ngati Kurauia 7 May 2000 Tokaanu marae. see Walzl op cit, p.369
[102] George Asher 17 October 1999 hui with Ngati Kurauia held at Tokaanu marae see Walzl op cit, p.360
[103] Sept 1988, Planning Tribunal decision 1990, op cit, p.6
[104] 4 Aug 2005, Evidence of Arthur Lancaster Te Takinga Grace, WAI-1200 para25
[105] George Asher 21 November 1999 hui at Tokaanu marae see Walzl op cit, p.363

able to experience a full spiritual and cultural relationship with those taonga.[106] Ngati Tuwharetoa recorded that the hapu were in mourning over the loss of mauri and the resulting changed appearance of their taonga tuku iho Tongariro, Tokaanu, Poutu and Rotoaira.[107] The changes to the Mowhango River were felt to have diminished Ngati Hauiti's cultural and spiritual relationship with their tupuna awa.[108]

It has been noted that when the mauri of the water is disrupted, it is unable to provide sustenance to the wairua and the people connected to the waterways are not able to draw sufficient spiritual sustenance from their waters.[109] Ngati Rangi especially noted the feeling of being deprived of the wairua that formerly had been available to their ancestors.[110] Neville Lomax of Ngati Hauiti has commented that the diverted water from the Whangaehu headwaters made the Moawhango water "noa" or bad for the health and well being of the Ngati Hauiti people.[111]

Ngati Hikaro have felt that they cannot discharge their kaitiakitanga responsibilities if the mauri of their waters has been diverted and discharged to another catchment.[112] It is felt that kaitiakitanga had been taken out of their hands: "We do not understand the new lake with its alien processes and altered inflows and outflows, its damaged tributaries. It is a stranger to us."[113]

The loss of mauri and the resulting changed appearance and feel of the waterways has been said to have had ongoing impacts on kaitiakitanga. Taina Tahi has written of these in relation to Rotoaira and the impacts on the next generation. It has been noted that the changed look and feel of the lake have meant that the children no longer wish to go there for swimming. They prefer to go through to Taupo: "Our kids look at it in a negative way. Which causes them to not concentrate on looking after the kaitiakitanga. ....Why should they look after that taonga now when it's in a big mess." [114]

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[106] 23 Nov 2000, Tuwharetoa Maori Trust Board, op cit, pp.3-4, EW Archives 60 01 99E see Walzl op cit, p.376
[107] "Ngati Tuwharetoa Position Statement", 2000, see Walzl op cit, p.371-2
[108] 7 Aug 2000, Huwyler to Hutchinson, EW Archives 60 01 99E, see Walzl op cit, p.256
[109] Albert, op cit, p.11
[110] Evidence of Richard Pirere, 2000, pp.8-9, see Walzl op cit, p.273
[111] 30 August 2001, TPD Hearing Committee Decision, op cit, p.37
[112] Albert, op cit, p.11
[113] "Ngati Tuwharetoa Position Statement", 2000, see Walzl op cit, p.371-2
[114] Mar 2006, Evidence of Taina Tahi, see Walzl op cit, p.450

Many groups have felt that they have had to bear the responsibility of being blamed for the damage to their taonga. As Ngati Tuwharetoa noted that they would have difficulty explaining what has occurred to their ancestors: "They would ask us how it is that we have allowed these things to happen. We did not allow these things to happen. They happened in spite of us. But still, we feel we have failed them."[115] As such, they have felt that their mana has been diminished.[116]

Whanganui kaumatua J.Te Turi Ranginui has spoken of the role of the river in the transfer of knowledge between generations and feels that their reduced relationship with their tupuna awa because of the TPD impacts could threaten the retention of this knowledge.[117] T. Rangiwhakateka, also of Whanganui, saw this loss as a threat to retention of the people's history and a danger to the past, present and future development of the people physically, mentally and spiritually.[118] Tuwharetoa have pointed out how the loss of food resources (see below) also means a loss of knowledge of the rituals and protocols surrounding the collection and preparation of food which embodied the most central cultural themes of their people. This loss of knowledge further diminishes their kaitiakitanga capacity and will diminish mana.[119]

Loss of Resources

In some cases, the resources lost to iwi and hapu from the bringing in of the TPD scheme had strong spiritual associations. In places of long and intense habitation it is not surprising that when a waterway is dramatically altered it would result in the destruction of wahi tapu. The changes in Tongariro River meant the loss of several wahitapu.[120] Similarly, the raising of the water levels of Rotoraira meant the drowning of several natural springs on the margin of the Lake which were considered to be wahi tapu by tangata whenua.[121]

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[115] "Ngati Tuwharetoa Position Statement", 2000, see Walzl op cit, p.371-2
[116] 23 Nov 2000, Tuwharetoa Maori Trust Board, op cit, pp.3-4, EW Archives 60 01 99E see Walzl op cit, p.376
[117] Sept 1988, Planning Tribunal decision 1990, op cit, p.6,
[118] Sept 1988, Planning Tribunal decision 1990, op cit, p.6,
[119] 23 Nov 2000, Evidence of Paranapa Otimi, p.2, EW Archives 60 01 99E, see Walzl op cit, p.377
[120] 2 May 2000, Arthur Grace hui at Hirangi marae see Walzl op cit, p.368
[121] 22 Apr 2005, Evidence of Jock Barrett, WAI-1200 paras 10.7 -10.8.

Changes in the hydrology of waterways also altered their ability to provide water with healing qualities. The dilutions of natural mineral compounds in the Whangaehu River that enabled the cure of many ailments had been significantly affected by the TPD extraction of water.

The greatest claimed impact on resources was in relation to food. Ngati Tuwharetoa have noted that the foods with which all tribes particularly associated them – koura, kokopu, kakahi, koaro, morihana – has completely or almost disappeared.[122] As Paranapa Otimi has commented: "...our mana has been diminished because we can no longer provide the types of food that our visitors would consider to be the food of chiefs." [123] He has added that the loss of those food resources is considered to be the fault of the people as the kaitiaki of those taonga.

All waterways involved in the TPD are said to have been affected. The reduced volume of water in the Moawhango meant the river ran a lot swifter and that therefore there were no backwaters for inanga and other fish to live in. Te Rangihouhiri Asher remembered that Ngati Waewae were renowned for their smoked tuna and their inanga but that these things were no longer seen. Tame Taite noted that they no longer could get flounders in the Rangitikei River.[124] The loss of fisheries on the Whanganui River has been noted by several commentators. Smelt are no longer present in the Whanganui River.[125] The Tamahaki Incorporated Society has complained about the diminished ability of the River to supply kai.[126]

In areas of long and dense population it is not surprising to find that dramatic changes to waterways would alter people's relationship with their waterways. The Tokaanu stream, which was moved from its course and run through concrete aquifers, impacted on fishing. Previously, mahinga kai rights had been so intensive on the Stream that each whanau had

[122] 23 Nov 2000, Evidence of Paranapa Otimi, p.1, EW Archives 60 01 99E, see Walzl op cit, p.377
[123] 23 Nov 2000, Evidence of Paranapa Otimi, p.1, EW Archives 60 01 99E, see Walzl op cit, p.377
[124] 3 May 2000. hui at Te Tikanga marae, see Walzl op cit, pp.368-9
[125] 30 Aug 2001, Evidence of Te Turi (Julie) Ranginui as noted in TPD Hearing Committee Decision, op cit, pp.62-6
[126] 13 November 2000, Tamahaki Submission, EW Archives 60 01 99E, see Walzl op cit, p.172

their own stretch of water in which to fish.[127] As Ringakapo Payne had noted of the Tokaanu River: "Today it is just a water flow. ...There is no fish of any kind left."[128] The waterway was no longer a prime hatchery for trout.[129] Hirangi stream had been renowned for koura and watercress but these foods were said to have gone from that waterway. Fishing pools around the Tongariro delta mouth had been ruined. [130]

As noted the hydrology of Rotoaira has been drastically changed from a lake with slow moving current to a waterway that is more akin to a river. This of course has had an impact on the tribal fisheries in the water. [131] It is said that "the food cupboard for the whole of Tuwharetoa" is gone.[132] Indigenous fish such as koaro were not able to fight the new currents[133] with the result of several commentators noting that the whole koaro fishery was swept down into Lake Taupo.[134] As Te Rangihouhiri Asher has noted: "the Tongariro Power Development has "robbed Tuwharetoa of that particular taonga."[135] The trout fishery in the Lake is also said to have been affected. Spawning grounds were said to have been destroyed and the number of fish in the lake dropped.[136] The trout were also said to be generally smaller in size[137]

Complaint and Findings

The TPD was built during a time of changing perspectives among many groups within the community in relation to the environment and the use of natural resources. From the beginning the scheme was seen as controversial and it remained so over the more than two decades it took to build and bring all components of the Scheme into effect. Public opinion had to be carefully managed by the Government with publicity on how essential the Scheme and assurances that there would be minimum impacts. Nevertheless, a residual

[127] 23 Nov 2000, Evidence of Te Rangihouhiri Asher, p.5, EW Archives 60 01 99E see Walzl op cit, pp.368-9
[128] 26 Apr 2005, Evidence of Ringakapo Tirangaro Asher Payne, WAI-1200 para 43
[129] see Walzl op cit, p.371-2
[130] 2 May 2000, Arthur Grace, hui at Hirangi marae see Walzl op cit, p.368
[131] 23 Nov 2000, Evidence of Te Rangihouhiri Asher, p.5, EW Archives 60 01 99E, see Walzl op cit, p.439
[132] 3 May 2000. hui at Te Tikanga marae, see Walzl op cit, pp.368-9.
[133] see Walzl op cit, p.369
[134] 2 May 2000, Arthur Grace, hui at Hirangi marae: see Walzl op cit, p.355. 4 May 2006, Taina Tahi, Patumoana Tahi, hui at Turangi, see Walzl op cit, pp.447-8; 22 Apr 2005, Evidence of Jock Barrett, WAI-1200 para 11.2
[135] 15 October 1999 hui held with Genesis officials see Walzl op cit, p.357
[136] Waaka Eruera Konui submission to the TPD Hearings Committee, see Walzl op cit, pp.438-9; See also 4 May 2006, Taina Tahi, Patumoana Tahi, hui at Turangi see Walzl op cit, pp.448-9
[137] Mar 2006, Evidence of Taina Tahi, see Walzl op cit, p.449

discontent remained and was maintained as the Scheme became fully operational and the full effects of water diversions and damming were observed. The first vehicle for public protest came when a Tribunal was established in 1988 to fix minimum flows on the Whanganui River. This Tribunal received evidence on the impact of the TPD on the River from a wide range of groups including tangata whenua. There was little scientific evidence heard. The submissions from public groups, however, led to a decision from the Tribunal to restore the natural flow of the Whanganui River and to increase the water flowing through the Whakapapa River. On receipt of the Tribunal's findings, the decision was appealed by the Electricity Corporation. A 1990 decision of the Planning Tribunal cancelled the concessions made by the minimum flows Tribunal and maintained the hydrological status quo of the Scheme.[138]

The passing of the Resource Management Act in 1991 meant that new resource consent applications for the TPD did not need to be made until 2001. A consultative approach was adopted for the process of seeking resource consents for the whole of the TPD. This began as early as 1991 and consisted of public meetings, the production of a newsletter and targeted consultation with key groups including tangata whenua. This was begun under the Electricity Corporation of New Zealand and continued after 1999 under the State Owned Enterprise Genesis Power. The aim of the consultation was to reach agreement with groups where possible. On 30 June 2000, Genesis lodged resource consent applications with the Waikato Regional Council and the Manawatu Regional Council for the on-going operation of the Tongariro Power Development Scheme. The Committee set up to hear the Resource Consent applications by Genesis regarding the Tongariro Power Development convened during November 2000. The September 2001 decision resulted in the 58 resource consent applications being granted with a list of conditions which essentially had been proposed by the Scheme operator. Some of these were based on a package of mitigating actions proposed by the electricity operators as a result of their analysis of the evidence on environmental impacts. In response, more than a dozen appeals against several of the Resource Consents were brought by several parties. Before the hearing, these were either withdrawn or settled leaving the Environment Court to hear only the appeals of the Whanganui River Maori Trust Board, Ngati Rangi and Ngati Tamahaki. As a result of the

[138] see Walzl op cit, pp.136-47

Court's sitting, although the resource consents that had been awarded were not changed, the appeals of the tangata whenua applicants were allowed to the extent that the term of the consent was reduced from 35 years to 10 years. In June 2004, Genesis Energy lodged an appeal of the decision in the High Court which was heard in July 2005. In 2006 the High Court found the Environment Court had given undue weight in favour of iwi and referred the matter back to the Environment Court. Before this could occur, the High Court's decision was appealed. The Court of Appeal has heard the case but the decision is not yet available.

As indicated above, much of the litigation that has occurred has originated with iwi and hapu challenges against the current operation of the Scheme. The ongoing conflict, however, has not been as to whether the evidence presented by Maori is correct and accepted but as to what weight it should be given in setting operational consents in relation to the Scheme.

This Brief of evidence has already presented the evidence given by tangata whenua groups for almost two decades as an indication of the proprietary interest they hold in their waterways. The judicial forums in which this evidence has been presented have not been focused on this matter but on ascertaining whether there has been impact and ongoing harm and whether anything could or should be done about this vis-a-vis the operating of the Scheme. Nevertheless, as will be noted below, the willingness of all forums to acknowledge impact has generally reflected that the evidence received, which has contained elements demonstrating proprietary interests, has been generally accepted.

The Minimum Flows Tribunal for the Whanganui River had received tangata whenua evidence which has been reproduced within this Brief. The Tribunal expressed its concern "that in the past the river tribes were not properly consulted and their special relationship with the river was not given due consideration."[139] When presenting a finding supporting the restoration of the natural flow of the Whanganui River, it was said to have been recommended in "recognition of the spiritual, cultural and traditional fishing value of the Wanganui River". In fact, it was noted that the restoration of flow "would allow the main

[139] Sept 1988, "Planning Tribunal decision on Wanganui River minimum flow appeals, 1990", p.20

artery of the river to flow without impediment, along the flight path of Taranaki, from its source to the sea." [140]

Although the 1990 Planning Tribunal overturned the 1988 decision, it did not do so on the basis of rejecting the tangata whenua perspectives but noted that the law, as it was then, did not impose any particular obligation on the Electricity Corporation in respect of tangata whenua.

When the same type of evidence was presented before the TPD Hearing Committee, members noted that it was "...in no doubt that the past effects of the TPD at the time of its construction were significant and adverse to these people."[141] The Committee was in no doubt "that the river resources harnessed by the TPD are of great cultural and historical value and importance to iwi of the area." [142]

The Environment Court went further and it is worthwhile considering its views which were stated at some length in its decision. The Court acknowledged that the effect of the diversions had both a spiritual and physical dimension and that the spiritual dimension "underlies the genealogical and ancestral ties of the people to their river and tributaries, from their ancestral mountains to the ocean." Concepts such as mana, mauri, kaitiaki and tapu were acknowledged and were said to be linked to such physical concepts as the form and ecology of the river.[143] The Environment Court accepted the findings of the Waitangi Tribunal regarding the Whanganui River "as a taonga - as an ancestral treasure handed down, as a living being related to the people of the place."[144] The constant use of the phrase "tupuna awa" by witnesses before the Court was noted in its decision as an indication that the basis of the Maori relationship with their waterways was genealogical.[145] The Court drew from the Whanganui River report of the Waitangi Tribunal to reach an understanding that 'mauri' was "the essential essence of all being"[146] and that it represented

[140] Ibid, pp.22-23
[141] 30 Aug 2001, TPD Hearing Committee Decision, op cit, p.125
[142] Ibid, p.71
[143] 18 May 2004, Environment Court Decision, see Walzl op cit, p.485-96
[144] Ibid
[145] Ibid, p.28.
[146] Ibid, p.30.

"interconnectedness of all things."[147] The Environment Court acknowledged the responsibility of kaitiakitanga.

Despite having heard evidence which challenged tangata whenua evidence over the effects associated with the mixing of waters, the Court again deferred to the Waitangi Tribunal Whanganui River findings on tikanga Maori issues which noted the narrative of Rangi and Papa and concluded: "The life-giving water is founded upon a deep quality of sentiment that, to Maori, puts it beyond the realm of a mere useable commodity and places it on a spiritual plane."[148] The Court also noted the Tribunal's Manukau report which accepted descriptions it had received regarding the cultural problems caused when modern public works mixed water regimes.[149]

Despite having received evidence from Genesis witnesses that had seriously challenged matters of tikanga presented in the Whanganui and Ngati Rangi cases, the Court felt it did not need make a determination on the matter as they were "certain" that the customary evidence they had heard from iwi appellants showed that they:

> ....had, and still have, a special cultural empathy with their rivers by reason of their ancestral links. Their tupuna awa were considered by them to be sacred in the fullest meaning of that word - they have a close physical and spiritual association to the river.[150]

Considering this, the Environment Court acknowledged that the TPD had brought impact on iwi and hapu. The most damaging effect, in the Court's view, had been on the wairua or spirituality of the people. It was noted that people were grieving for their rivers. The saying "ko au te awa, ko te awa, ka au"[151] was noted by the Court to show how deeply ingrained was the connection to the river. The Court then noted: "...to take away part of the river (like the water or river shingle) is to take away part of the iwi. To desecrate the water is to

[147] Ibid.
[148] Ibid, p.37.
[149] Ibid, p 45.
[150] Ibid, p.32
[151] Ibid, p.89.

desecrate the iwi. To pollute the water is to pollute the people."[152] The Environment Court added: "Clearly the loss of the headwaters of their rivers by foreign management has been a scythe that has partly decimated the very central essence of their cultural being." The Court also noted that the Tongariro scheme was implemented in a "peremptory and arbitrary manner".[153]

After careful consideration of an extensive amount of evidence the Environment Court came to a clear conclusion that "...the diversion of the waters by both the Western and Eastern diversion has had and continues to have deleterious effects on the cultural and spiritual values of the Maori people." [154] The Court also found these effects were considerable.

As noted above, the appeals of iwi were allowed to the extent that the term of the consent was reduced from 35 years to 10 years. The Court recorded that the reason this was being done was due to the magnitude of the effects on Maori as reflected by "the immense depth of feeling apparent from the Maori witnesses."[155] It was believed that the reduced term would provide time before the next resource consent application was due for there to be developed some accommodation by way of mitigation, to address the effect on Maori. This was necessary, in the Court's view, to ensure sustainable management of the Scheme. As far as making any decisions of the appropriate levels of minimum flow, the Court stated that it did not have the necessary evidence from which it could "...make a principled assessment of the quantitative nature of any restored flows that should be imposed for cultural reasons."[156] Instead, this matter needed to determined by Maori. The Court acknowledged the need to reach a sustainable balance between the effects on Maori and national interest factors.[157] To do this the necessary process envisaged by the Court was "first identifying, with specificity, an inventory of Maori values and then, assisted through the application of technical methods, to formulate appropriate mitigation methods." [158] These methods would

[152] Ibid
[153] Ibid, pp.89-90.
[154] Ibid p.93
[155] Ibid, p.134.
[156] Ibid, p.119.
[157] Ibid, p.124.
[158] Ibid, pp.126-127.

involve "practical ways for Maori to exercise their rangatiratanga and discharge their responsibilities as kaitiaki."

Commentary

This Brief of evidence deals with the waterways which flow in all directions off the southern Volcanic Plateau and which came to be involved in the TPD Scheme. These waterways flow through the takiwa of several iwi and hapu.

Using material evidence which the groups have themselves presented in recent forums evaluating the Scheme, this Brief has presented the tangata whenua viewpoint on the proprietary interests that are held in the waterways of the Central North Island. The origins of these waterways are linked to the deities of Maori creation who in turn were the ancestors of the local tangata whenua groups. The water in the awa and roto of the southern Volcanic Plateau has been especially noted as wai tapu. In addition to water generally being viewed as a treasured gift from Ranginui, the waterways considered in this Brief are fed from water running off tupuna maunga.

The record of the waterways that came into existence as tupuna to the local iwi and hapu and as living entities with their own mauri has been noted. This means that all components of the waterways, including of course the water, are viewed holistically as being part of the same entity.

Aside from the ancestral relationship, other relationships of the iwi and hapu to their waterways have been noted. The waterways are viewed as taonga, the holders of whakapapa and the memories of tribal history. The people are indivisible from their taonga. As such, iwi and hapu are charged with the responsibility of protecting and caring for their taonga. The mana of an iwi or hapu is tied up with its ability to fulfil its kaitiaki responsibilities. In return, the people drew spiritual and physical sustenance from their waterways.

The Brief has described the TPD Scheme and how it came to modify the waterways of the Central North Island through damming, water diversion and by mixing the water in natural and artificial structures. Given the proprietary interests noted, it is of no surprise that these radical actions brought impact to the waterways and the iwi/hapu. These have been noted to include the diminution of mauri and mana of the waterways; the resulting changes in appearance and feel of these waterways; the alteration of the spiritual and cultural relationships between the waterways and their people; the undermining of the ability of tangata whenua in fulfilling their kaitiaki responsibilities; the loss of food and other resources; and the loss of mana from all these effects.

The nature of the proprietary interests and the impacts on these has been described by iwi/hapu before a number of fora. The presenting of this information further reflects the existence of proprietary interests. In no forum was the information presented by tangata whenua rejected. Although some evidence on the loss of food resource from or the change in appearance in waterways was challenged by scientific information, the evidence which had provided support for findings of cultural impact was accepted within each forum. Within this evidence was a record of the existence of proprietary interests. Furthermore, the impacts to iwi/hapu were acknowledged and, in several cases, ordered to be ameliorated.

By far the greatest consideration of the information brought forward by iwi/hapu was given by the Environment Court. Although the Court was not intending to make a decision on whether iwi and hapu had proprietary interests in the waterways, it accepted and endorsed all of the evidence put forward by iwi/hapu appellants on their ancestral, spiritual and cultural relationships with their waterways.

Since the Environment Court, the Waitangi Tribunal has come forward with findings on Treaty claims for the Central North Island, Although the TPD was not included within this hearing district, (it being heard within a National Park hearing district instead), nevertheless, the Waikato Power Scheme was dealt with. During these hearings Ngati Tuwharetoa had presented similar information regarding concepts associated with

waterways and impacts caused by a modern public work which drew on utilisation of the water resource.

Notably in reaching findings on the Treaty breaches associated with these waterways, the Tribunal was relieved of having to espouse basic findings on the relationship between tangata whenua and waterways. This was due to an acknowledgement that came from the Crown during the hearings:

> It has agreed with all claimants ...that lakes and rivers are taonga, highly significant to Maori well-being and ways of life. The Crown has also accepted that the relationship between Maori and their taonga 'exists beyond mere ownership, use, or exclusive possession; it concerns personal and tribal identity, Maori authority and control, and the right to continuous access, subject to Maori cultural preferences'[159]

Significantly, despite this acknowledgement, the Crown did not explicitly recognise that the waters were a part of a taonga like Lake Taupo, and it was not accepted that iwi/hapu had a proprietary interest in water.[160]

In assessing whether a waterway was a taonga to any particular group, the Tribunal took into account the intensity of the Maori association with the waterway including the originating ancestral relationship and the ongoing cultural and spiritual relationship with the waterway; the use of resources associated with the waterway; the exercising of control and authority over the resources; and the fulfilment of obligations to conserve, nurture and protect the waterway.[161] Within this test, Lake Taupo and other waterways of the Central North Island hearing district were shown to be taonga. As taonga were created by tupuna as living beings for their descendants, they were viewed as indivisible entities.[162] Water was an integral component of these taonga which had been put into the possession of an iwi or hapu. As the Tribunal has noted, in Maori terms, the taonga would meaningless without water.[163]

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[159] Waitangi Tribunal, He Maunga Rongo: Report on Central North Island Claims: Stage One, Legislation Direct, 2008, p.1281
[160] Ibid
[161] Ibid, pp.1286 and 1332
[162] Ibid, pp.1252 and 1282
[163] Ibid, p.1282

> Maori native or customary title to a water regime that falls into the category of taonga – and their Treaty interest in it – extends by necessary implication to the water of that regime or system. The water is as much a part of the taonga as the bed, the adjoining banks or shores, the fisheries, and the aquatic life. [164]

If a waterway was seen as a taonga, possessed by an iwi or hapu as at 1840, then according to the Central North Island Tribunal, the Crown had a duty to actively protect both the taonga and the rangatiratanga being exercised over the taonga. That rangatiratanga would consist of the possession of the taonga, the authority over the taonga, the cultural and spiritual relationship with the taonga and the responsibility to care for the taonga.[165]

[164] Ibid, p.1261
[165] Ibid, p.1286