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Waitangi Tribunal Division  
WELLINGTON  
06 APR 1995

c/4  
4 April 1995

The Registrar  
Waitangi Tribunal  
Dept of Justice  
PO Box 5022  
WELLINGTON

Acknowledgement letter sent

Reply follows

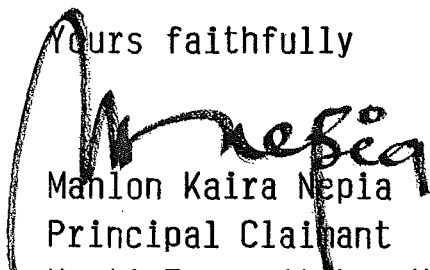
Thanks for information

Dear Sir/Madam

Please find herein an application to be filed on the claim register for the Waitangi Tribunal.

It may be possible to allocate this application with others connected to the claimants under Wai 84, and if so we ask that this be done.

Yours faithfully

  
Manion Kaira Nepia  
Principal Claimant

Ngati Turangitukua Hapu Ki Ngati Tuwharetoa Iwi

I, MAHLON KAIRA NEPIA of the NGATI TURANGITUKUA HAPU of NGATI TUWHARETOA IWI, hereby make application to the WAITANGI TRIBUNAL under the TREATY OF WAITANGI ACT 1975 and TREATY OF WAITANGI ACT 1985; and claim to have been prejudicially affected by the Crown in respect of the TONGARIRO NATIONAL PARK containing the pre-dominant peaks known as TONGARIRO, NGAURUHOE and RUAPEHU, along with other landforms within the boundaries of the said PARK.

STATEMENT OF CLAIM

1. INTRODUCTION

- 1.1 The peaks of Tongariro are synonymous with the mana of Ngati Tuwharetoa since being kindled by the fires for Ngatoroirangi, eponymous ancestor of the tribe.
- 1.2 Over the centuries Ngati Tuwharetoa established the peaks of Tongariro as the visible expression of the tribe's mana.
- 1.3. European intrusion during the early colonial period was steadfastly resisted by Ngati Tuwharetoa and these are well documented.

- 1.4 The peaks of Tongariro held the principal position as being the ultimate waahi tapu for Ngati Tuwharetoa.
- 1.5 Despite the best efforts by Ngati Tuwharetoa to resist intrusions on the peaks of Tongariro by pakeha explorers, graziers and government surveyors; this pressure mounted steadily over the years.
- 1.6 Eventually the partition system serviced by the Land Court resulted in undue pressure by creating boundary disputes with competing tribes, and the breaking up of the land into blocks.
- 1.7 In 1884 Ngati Tuwharetoa was forced to 'fight for its life' by defending against challenges from outside tribes. Despite surviving the day in the Land Court it became clear that further challenges would be made for the peaks of Tongariro.
- 1.8 At the same time government politicians also considered the peaks of Tongariro and other outlying areas be made a public domain.
- 1.9 In 1884 the taking over of the peaks of Tongariro was raised by the politician Alfred Newman in the House.

2. THE GIFT

2.1 In 1886 Ngati Tuwharetoa reached a crisis point in the Land Court when their lands came under challenge from several tribes. The hearing lasted several months as chiefs from challenging tribes sought to claim Tuwharetoa lands for their respective tribes.

Included in the challenges were the peaks of Tongariro.

2.2 The pressure created at this time put Ngati Tuwharetoa under duress because simply put, the tribe was in danger of having its most sacred waahi tapu partitioned up and used by outsiders-Maori and Pakeha.

2.3 In a last ditch attempt to retain the peaks of Tongariro as one block, and to preserve their tapu, a Deed of Gift was affected containing the peaks of Tongariro, Ngauruhoe and Ruapehu.

2.4 The intention of the gift was to preserve the tapu for the peaks of Tongariro forever, and thereby preserve the mana of Ngati Tuwharetoa accordingly.

2.5 It cannot be claimed that Ngati Tuwharetoa hapu were in complete agreement to proceed with the gift.

2.6 The Crown extended its ownership through mechanisms of acquisition and purchase.

3. GENERAL

3.1 The Land Court system pursued by the Crown was a breach of the tino rangatiratanga guarantees for Ngati Tuwharetoa under Article 2 of the TREATY.

3.2 The Crown therefore created the situation whereby Ngati Tuwharetoa would be placed under duress and challenged for their lands.

3.3 Article 2 of the TREATY guaranteed to Ngati Tuwharetoa the retention of their taonga but instead the Crown failed to exercise its obligation under responsible kawanatanga, by ensuring the safety of Ngati Tuwharetoa.

3.4 The overriding factor in the Deed Of Gift was the preservation of tapu by the Crown.  
The Deed is therefore not a gift of ordinary land or commodity, but rather contains a set of

responsibilities to be met by the Crown.

3.5 The Deed Of Gift ceases to exist when the recipient TREATY PARTNER (the Crown) fails to meet its responsibilities by preserving the tapu and thereby the mana of Ngati Tuwharetoa.

3.6 The Crown does not know what its responsibilities are.

Ignorance is not a defence.

#### 4. BREACH OF THE GIFT DEED

4.1 Ngati Tuwharetoa made it very clear that its ultimate waahi tapu had to be preserved and that this was an overriding factor in completing a Deed.

It therefore became the Crown's responsibility to ensure that all aspects connected to preserving the waahi tapu had to be met 100%

It is claimed that the Crown has breached the conditions under which it accepted the peaks of Tongariro, and the examples are many.

(a) The Crown has taken the view of using the Park as a

commodity by utilising it on a user pays basis.

- (b) The Crown has failed to treat the waahi tapu as such, by allowing serious problems to develop over the years such as inadequate sewerage systems, ski field pollution and litter.
- (c) The DEED OF GIFT did not wipe out the treaty partnership created in 1840. The recipient of the gift is still obligated to ensure the other partner—Ngati Tuwharetoa, still retains its mana.

It is claimed that the Crown is therefore required to ensure Ngati Tuwharetoa are full and active kaitiaki and this should have commenced from the start by developing a 50/50 joint management.

4.2 The DEED OF GIFT placed an emphasis on the treaty partnership by virtue of the reasons given by Ngati Tuwharetoa in 1886 and because of the enormity of that gift. The partnership roles were necessary to preserve the tapu and mana of Ngati Tuwharetoa while under the care of the Crown.

The Crown failed in meeting its partnership obligations by restricting the tribe to gratuitous references in visitor publications and the odd performance for the public.

4.3 Ngati Tuwharetoa remains marginalised in respect of the peaks of Tongariro. Of all parts to the Park, the most tapu were the peaks themselves making up the original Deed.

The importance of the peaks was clearly expressed for many years up to, and including 1886.

Today Ngati Tuwharetoa finds that the Crown has permitted development to cut into the original gift boundaries in several instances. This has been in the form of ski tows and chairlifts and buildings, including ablutions.

The Crown's failure to perform its responsibilities means the Deed comes to an end.

## 5. REMEDIES SOUGHT

5.1 The DEED OF GIFT is defunct by way of the Crown allowing the tapu to be broken.

5.2 The land affected in the DEED OF GIFT is returned to Ngati Tuwharetoa.



- 5.3 Lands acquired to make up the remainder of the Tongariro National Park be investigated and where TREATY breaches are identified, the lands returned to their respective hapu.
- 5.4 Compensation to rectify any identified damages suffered by Ngati Tuwharetoa as a result of failures by the Crown.
- 5.5 Monetary compensation for the costs of bringing this claim to the Waitangi Tribunal.
- 5.6 Such further relief as the Tribunal considers appropriate.