I MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

WAI 898
Wai 1500

UNDER	The Treaty of Waitangi Act 1975
And	
IN THE MATTER OF	Te Rohe Potae Inquiry District
And	
IN THE MATTER OF	a claim by **John Hone Arama Tata Henry** and **Tamauenuku Duane Tata Henry** as co-claimants on behalf of themselves, and on behalf of the Tuarau Te Tata Henare Whanau.

OPENING SUBMISSIONS OF COUNSEL FOR WAI 1500

Date: Monday 4 November 2013

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MAY IT PLEASE THE TRIBUNAL

1. These are the opening submissions of counsel for the descendants of Te Tuarau Te Tata Henare. These opening submissions focus in particular on the brief of evidence of Mr John Henry and the evidence the witness provides in support of the various claims being made.[1]

Insight into Wahanui Te Huatare

2. Wahanui Te Huatare has featured prominently throughout the hearings. In his brief, Mr Henry establishes his close relationship with his grandfather, Tuarau, who, in turn, was whangai'd and raised by Wahanui. As Tuarau's mokai, Mr Henry was privy to information that can provide this Tribunal with a rare insight into Wahanui's thoughts and actions.

3. The korero that Mr Henry was given is that Wahanui agreed to the railway because he did not want any more bloodshed. He did not want any more land to be confiscated by the Crown.[2] This evidence raises the spectre of the threat of war and/or raupatu by the Crown if Wahanui, the other leading chiefs and Te Rohe Potae Maori did not let the Main Trunk through.

4. We acknowledge that researchers such as Cleaver and Sarich and Cathy Marr do not refer to this situation of duress in their respective works but we submit that threats of war and raupatu in the context of negotiations over the Main Trunk are not likely subjects for the official record. The absence of evidence about threats and coercion on the official Crown record does not necessarily mean that this did not take place.

5. That having been said, it would be more than useful if some focused research on the spectre of duress could be carried out. If Mr Henry's evidence is correct and Wahanui was forced by the Crown to make way for the railway, the suite of Treaty grievances arising from the construction of the Main Trunk just got even more egregious. Should this evidence of coercion be held to be well-founded by the Tribunal, such coercion would be an aggravating feature of the Crown's conduct viz a viz Te Ohaki Tapu and the construction of the railway.

6. In his brief of evidence, Mr Henry moves to pour water on the alleged rift between King Tawhiao and Wahanui. His evidence is that although there were differences between the parties, they were short-lived.

7. Mr Henry also makes a clear statement about Wahanui's position with regard to mana motuhake. On the basis of his evidence, it can be submitted that Wahanui sought to preserve the sovereignty of the Kingitanga and Te Rohe Potae Maori. It can be adduced from this that

[1] Brief of Evidence of John Hone Arana Tata Henry, Wai 898, #O16

[2] Brief of Evidence of John Hone Arana Tata Henry, Wai 898, #O16, page 5, paragraph 17

according to Wahanui, the Treaty of Waitangi did not effect a cession of sovereignty.

Destruction of Taonga/Waahi Tapu

8. Mr Henry's evidence concerns the prejudicial activities of the Waipa Valley Authority, a government agent created by the Waipa Valley Authority Act 1956. His grievances here concern the destruction by the WVA of an historically important sandstone rock. The WVA was responsible for the desecration of Kaariki urupa as well.

9. Mr Henry's evidence about these Crown-sponsored activities highlights the lack of consultation by the WVA with local Maori. The requisite level of care, respect and regard on the Crown's part was non-existent and this severely affected the claimants' taonga and waahi tapu.

Crown purchasing – Harihari block

10. Mr Henry's evidence concerns the Crown's dealings over the sale and purchase of the Harihari block. We move to clarify that much of Mr Henry's evidence about this block is derived from the section in Leeann Boulton's report about Harihari.[3] That said, some of Mr Henry's evidence is supplementary to that which is already on the record of inquiry. In his evidence, Mr Henry highlights a clear discrepancy between the actual area of the block and the area paid for by the Crown.

11. It is clear that Rogan, the Crown's purchasing agent, considered that the block was 4000 acres in area and so he reduced the price paid from £500 to £400.[4] The survey map of the block is included in the power point presentation that will accompany the presentation of Mr Henry's evidence. The survey map shows that the actual area was 4734 acres. Accordingly the Crown should not have reduced the price paid by £100.

12. In his brief of evidence, Mr Henry states that Rogan claimed that the block was only 1000 acres in area.[5] It is acknowledged now that Rogan did not claim that the area of the block was 1000 acres. The reference by Rogan to 1000 acres is to a section of Harihari that was "part of the block near the coastline".[6]

13. In any event, a finding from the Tribunal is sought that the Crown failed to pay for all of the land purchased. Such a finding would, inter alia, greatly

[3] Boulton, *Hapu and Iwi Land Transaction with the Crown and Europeans in Te Rohe Potae Inquiry District, c.1840-1865*, #A70, page 306-314

[4] Boulton, *Hapu and Iwi Land Transaction with the Crown and Europeans in Te Rohe Potae Inquiry District, c.1840-1865*, #A70, page 309

[5] Brief of Evidence of John Hone Arana Tata Henry, Wai 898, #O16, page 11, paragraph 54

[6] Boulton, *Hapu and Iwi Land Transaction with the Crown and Europeans in Te Rohe Potae Inquiry District, c.1840-1865*, #A70, page 308

assist the claimants' negotiations with the Crown over the recognition of their rights and interests in the foreshore and seabed area adjacent to the Harihari block pursuant to the Takutai Moana Act 2011. A positive finding by the Tribunal would give the claimants leverage in any such negotiations.

Native Land Court – Taumatatotara

14. Mr Henry's evidence concerns the Native Land Court's title investigation for the Taumatatotara block but moreso the subsequent appeal to the Native Appellate Court.

15. It is claimed that the Native Appellate Court's decision to deny Haupokia any interest in the block was wrong and a breach of Treaty principle. We propose to take a judicial review-like approach to the Native Appellate Court's decision and this is why that decision is an exhibit attached to Mr Henry's brief of evidence.

16. The Native Appellate Court found that Te Rauparaha was not conquered and so Haupokia could not claim the land by right of conquest. Mr Henry's evidence is that Te Rauparaha was conquered and forced to leave the area. He is supported in this respect by evidence such as the following extract from the Ngati Maniapoto Mana Motuhake report:

> *Te Rauparaha and his Ngati Toa people were driven out of the Waikato by a confederation led by Te Rauangaanga and his son Te Wherowhero. In 1820, thousands of Waikato and Maniapoto warriors attacked Kawhia and defeated Ngati Toa during a major battle near Lake Taharoa.*[7]

17. We acknowledge that the Native Appellate Court decision attached as an exhibit to Mr Henry's brief of evidence needs to be supplemented by the hearing transcript for the Native Land Court's title investigation and by the transcript for the Native Appellate Court hearing. Neither of these hearing transcripts are on the record of inquiry and so leave is now sought from the Tribunal for the placement of these hearing transcripts on the record of inquiry.

Alienation of Claimant Lands

18. Mr Henry will provide evidence on the way that whanau and hapu lands have been alienated by way of the extreme fragmentation of title, public works legislation, the sale of uneconomic interests, private purchasing and land locked land.

19. With regard to the evidence concerning uneconomic interests, it is acknowledged that in his brief of evidence, Mr Henry refers to the Maori Affairs Amendment Act 1967 as the offending legislation. This is incorrect.

[7] Ngati Maniapoto Mana Motuhake, #A110, page 379-380

As set out on the relevant exhibits attached to Mr Henry's brief of evidence, the offending legislation was the Maori Affairs Act 1953 and the Maori Trustee Act 1953.

Education evidence

20. In his education evidence, Mr Henry compares his experiences at the Rakaunui Native School with the schooling he received at the Hauturu Primary School. This evidence provides a rare insight into the differences between Board Schools and the Native Schools as they were experienced by at least this witness.

21. Mr Henry's evidence outlines the significant difficulties he encountered when at school, such as the language barrier, corporal punishment, the lack of compulsion on him to attend, the Eurocentric curriculum and poor teacher quality. All of these difficulties combined to alienate Mr Henry from the school system.

22. It is significant that Mr Henry was selected by his grandfather to be the whanau's receptacle of knowledge and arguably he fulfilled a similar role for his hapu and iwi. Clearly he must have displayed certain qualities as a young boy that his whanau appreciated but that, it would appear, the local primary school teachers either ignored or were not alive to.

Dated at Auckland this 4th day of November 2013

Darrell Naden- Claimant Counsel