OFFICIAL

IN THE WAITANGI TRIBUNAL

WAI 898
WAI 1977

IN THE MATTER of the Treaty of Waitangi Act 1975 and its amendments

AND

IN THE MATTER of Te Rohe Potae Inquiry District

AND

IN THE MATTER of A claim by Piko Davis for and on behalf of the tangata whenua of Ngati Maniapoto and the 23 Marae of Ngati Maniapoto.

Opening Submissions in Support of Claim

Dated this 8th day of November 2013

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Waitangi Tribunal
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Counsel Acting:
Moana Tuwhare
PO Box 1015
Kerikeri 0245
Northland
(09) 405 0715
(021) 331104

May it please the Tribunal:

1. These are the opening submissions for the Wai 1977 claim. The named claimant and witness to be called in support of this claim is Te Piko Davis who makes this claim for and on behalf of all descendants and rightful successors of Aporo Taratutu and the rangatira and people of Ngati Maniapoto.

2. The evidence to be called traverses a number of issues including the loss of mineral resources and the loss of lands through Crown acts and processes which sought to diminish and destroy the tino rangatiratanga of the hapu and Iwi of Maniapoto.

3. It also focuses on the denigration and undermining of the Kingitanga so that the aforementioned appropriation of taonga could be facilitated.

4. A further important focus of the evidence is the loss and distortion of some important Maniapoto oral histories and in particular the distortion of whakapapa.

5. The prejudice caused is clear in that as a result of Crown actions and omissions the mana and tino rangatiratanga of the claimant hapu has been compromised. They hold minimal individual shares in ancestral lands, and are alienated from the use and benefit of other lands that they are or ought to have been entitled to, they are similarly alienated from the use and benefit of their underground resources and many other taonga and suffer significantly from the loss of traditional knowledge and histories.

NATURAL UNDERGROUND RESOURCES

6. Mr Davis's evidence highlights claimant hapu tino rangatiratanga over their lands and taonga katoa at 1840, whilst relatively brief, it does demonstrate that there existed a rich and complex system of use rights governed by equally rich and complex systems of relationships and laws or tikanga which regulated the same. Maori

law enforcement occurred where conduct called for it and likewise Maori dispute resolution processes were also in place and operating effectively.

7. Mr Davis has chosen to focus much of his claim on the mana and rangatiratanga over underground resources located on or within their lands. These include precious and semi precious stones, metals and minerals such as diamonds and diamond particles, petroleum, oil, natural gas and condensate (in whatever state or form), iron sands, coal, magnesite, iridium, sulphur (including sulphuric gas emissions), lime and other natural resources.

8. The evidence identifies both some of the locations of some of these resources and some of the traditional uses of them demonstrating clear prior knowledge and use of the same pre 1840 such as:
    a. diamonds and diamond particles at old Hangatiki used to cut greenstone;
    b. Gas fields and oil surrounding Karewa Island and at Awaroa, the oil at Awaroa in particular being used for waterproofing waka; and
    c. the use of coal, deposits for which were located within forest lands including Pirongia Forest, Taumatotara, Taweroa, Tauerau and Kinohaku West.

9. In relation to the taonga that has been identified as having the same properties as diamond, - Te Whatu o Te Whenua - the oral history that Mr Davis carries is that this taonga is in fact a meteorite that fell sometime in the mid 1500's and landed on the Parianiwaniwa faultline close to Waitomo and in other parts of the Maniapoto rohe such as Haurua. Since that time, diamond dust or particles have been used by artisans in the shaping and polishing of greenstone taonga until these arts ceased to be carried out by traditional methods.

10. The law relating to meteorites in New Zealand is minimal to say the least. It was the Antiquities Act 1975, which defines an antiquity as

any meteoric or part of a meteorite recovered in New Zealand.[1] This Act has been repealed and replaced by the Protected Objects Act 1975[2] and a meteorite is also regarded as a Natural Science Object for the purposes of this legislation.[3] In the circumstances before this Tribunal the meteorite could also be categorised as a taonga tuturu.[4]

11. The legislation does not in and of itself appropriate the ownership and control of 'protected objects', rather it looks to control trade and the export of heritage items and enables New Zealand's participation in the UNESCO Convention[5] and the UNIDROIT[6] Convention[7] and does not relate specifically to ownership where ownership is not in dispute. The Crown claims prima facie ownership of any such taonga tuturu found after 1 April 1976. Where disputes do arise regarding ownership of taonga tuturu the Act contains provisions by which the Maori Land Court can determine ownership and custodianship.

12. This taonga which is currently hidden for safe keeping was not found after 1 April 1976 and is therefore arguably not an item the Crown could claim ownership or control of, prima facie or otherwise. The question might be asked as to why then does it form the subject of a claim before the Tribunal? Mr Davis' evidence in respect of this taonga has sought to achieve two things:

13. Firstly it highlights several issues relating to the Crowns efforts to obtain the land on which it was thought the taonga was located and provides a further motivation for various Crown Acts and Omissions in respect of such lands;

14. Secondly, in part, the bringing before this Tribunal, evidence in relation to the significance of this taonga has been to ensure its

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[2] which is administered by the Ministry for Culture and Heritage.
[3] under section 5 Schedule 4 of the Protected Objects Amendment Act 2006
[4] Taonga tuturu means an object that relates to Maori culture, history or society and amongst other things was or appears to have been used by Maori and is more than 50 years old. Refer section 2
[5] On the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.
[6] The International Institute for the Unification of Private Law.
[7] Convention on Stolen or Illegally Exported Cultural Objects.

ownership, possession and control is retained by its custodians of Ngati Te Whetu on behalf of Ngati Maniapoto, as there is real concern that now its existence has been made public again and once its value and significance becomes known that real threats or challenges may arise as to its ownership and control.

15. Other minerals and natural resources of the claimant hapu have been claimed and/or controlled by the Crown through legislation such as the Petroleum Act 1937, the Resource Management Act 1991, and the Crown Minerals Act 1991.[8] Which has, in effect denied Ngati Maniapoto the right to use these resources to create an economic base for their people as they see fit.

16. Under common law, minerals beneath the surface generally belonged to the owner of the land, and when the land was conveyed, so were the minerals, unless explicitly separated in the instrument of conveyance. The only exception to this was gold and silver, which was said to belong to the Crown.[9] However, this assumption, prior to enactments legislating Crown ownership, would have to be claimed against Maori rights and interests under any pre-existing Maori customary law.

17. In and around the 1850's exploration of New Zealand's mineral resources including coal resources, began to be undertaken in a systematic fashion.[10] Later legislation provided that all petroleum, gold, silver, and uranium in New Zealand's territory (being onshore and offshore to 12 nautical miles) is the property of the Crown.[11]

18. Crown ownership of other minerals located in foreshore and seabed areas such as ironsands and iridium are the Crowns

[8] The purpose of the Crown Minerals Act [8]provides:
(1) The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand.
(2) To this end, the Act provides for:
(a) the efficient allocation of rights to prospect for, explore for, and mine Crown owned minerals; and
(b) the effective management and regulation of the exercise of those rights; and
(c) the carrying out, in accordance with good industry practice, of activities in respect of those rights; and
(d) a fair financial return to the Crown for its minerals.
[9] Maori and the Forestry, Mining, Fishing, and Tourism Industries of the Rohe Potae Inquiry District, 1880-2000. Wai 898 #A25 pg. 195
[10] Wai 898 #A25 pg. 196-7
[11] Refer section 10 of the Crown Minerals Act 1991

property as a consequence of the land ownership. Crown assumptions regarding ownership of the entire foreshore and seabed prior to the legislation making it unequivocal in 2004[12] must render mining permits on foreshore and seabed areas claimed by Maori prior to 2004 to be tantamount to trespass and theft, certainly, the legally or illegally claimed right of the Crown is a breach as far as the claimants are concerned either way.

19. About half of the in-ground coal, metallic and non-metallic minerals, industrial rocks and building stones in New Zealand are also Crown Minerals as a consequence of the Crown's land ownership in which they are located. All these resources are referred to as the 'Crown mineral estate'. The Crown claims sovereign rights over, and manages, petroleum and mineral resources in the Exclusive Economic Zone (being offshore between 12 and 200 nautical miles) and the Extended Continental Shelf.[13]

20. In respect of Coal the technical evidence highlights that ownership of this is also an incident of ownership of the land noting that a 1975 Ministry of Energy Resources report on the coal industry noted that coal resources were not exclusively held by the Crown. The report commented that, in the case of privately owned coal reserves, 'the owners retained the right to their utilisation.' Though the Crown does not have an exclusive right of ownership over coal, it appears that it has secured ownership of considerable deposits of coal through land acquisition. Since the nineteenth century, the government has been involved in issuing prospecting and mining licenses for Crown-owned minerals, including coal. Legislative provisions relating to prospecting and licensing did not apply to privately owned coal without the owners consent[14]

[12] With the passing of the Foreshore and Seabed Act 2004 and the subsequent Marine and Coastal Area (Takutai Moana) Act 2011

[13] New Zealand Government publication, *Mineral Estate,* pg 1, http://www.nzpam.govt.nz/cms/pdf-library/folder.2007-05-17.4547411750/NZP-M%20Minerals%20Estate%20web%20version

[14] Today, the allocation of rights to prospect and mine minerals owned by the Crown is carried out under permits issued under the Crown Minerals Act 1991. Environmental issues concerning prospecting and mining are dealt with under the Resource Management Act 1991. However, neither a permit under the Crown Minerals Act or consent under the Resource Management Act give a right of land access, which must be determined by direct negotiation with the land owner. Statutory provisions have also existed in respect of the working of coal and other mines. These provisions and associated regulations set out numerous rules of operation, including matters relating to labour and safety. Provisions concerning the working of coal mines were included in legislation that related

21. Crown land purchasing does not appear from the evidence to have ever contemplated reserving to Maori the rights to the minerals. Although the Crown has given itself the right to reserve any minerals in any land it transfers ownership of. Mr Davis's evidence is that the Crown targeted certain Maniapoto lands for the resources they knew to exist within them.

22. The Crown has consistently failed to recognize Maori claims to these resources[15] and has never compensated Ngati Maniapoto after taking ownership of petroleum and other minerals within Maniapoto lands and continues to allow the exploitation of petroleum and minerals by third parties, with no recourse to or recognition of the ownership rights of the claimants. At most the claimant community is consulted on mining and extraction plans and is able to request the protection of certain land.[16]

FAILURE TO PROTECT TE TINO RANGATIRATANGA OF NGATI MANIAPOTO

23. Te Tiriti o Waitangi had little effect in Aotea Te Rohe Potae following the signing, and Ngati Maniapoto continued to exercise their sovereign power and authority. The Crown sought to usurp, denigrate and destroy the tino rangatiratanga of Ngati Maniapoto. Key points which can be drawn from the evidence of Mr Davis are, that the Crown:

24. Failed to recognize that Te Wherowhero's appointment as King as an assertion of the continuation of the sovereign independence of the hapu and Iwi of Aotea Te Rohe Potae which has never been

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specifically to coal mining, the earliest relevant statute being the Coal Mines Act 1886. With the passage of the Stone Quarries Act 1910, opencast coal mines were bought under legislation that applied to quarries. Under the Coal Mines and Stone Quarries Acts, coal mines and quarries were subject to annual inspection. The reports of the inspectors, published each year in the Mines Department report, provide valuable details of coal mining operations in the Rohe Potae district. Wai 898 #A25 pg. 196

[15] The only resource of this type that has been recognised as being significant to Maori has been Pounamu.

[16] Minerals Programme for Minerals excluding Petroleum 2013, Ministry of Business, Innovation and Employment;http://www.nzpam.govt.nz/cms/pdf-library/minerals-legislation/Minerals%20Programme%202013%20web

surrendered and which was declared in He Whakaputanga in 1839; and

25. Elected to deal with Rewi Manga Maniapoto and Wahanui Te Huatare and not the Ariki and Maori King, Tawhiao from 1884 in order to 'open up' the Rohe Potae; and undermine the sovereignty still held here *de jure* and *de facto*.

26. Pursued its agenda to open up Aotea Te Rohe Potae and overthrow the King's supporters on the basis of the 1883 petition which was only signed by 415 Te Rohe Potae Maori, or less than 10% of the Te Rohe Potae population.

WAR AND RAUPATU

27. That Ngati Maniapoto peoples suffered confiscation of their lands without any lawful or other justification is clear cut. Some Ngati Maniapoto peoples never regained their lands in the confiscation area nor were they compensated for their losses, by the Crown. Less clear cut but what forms a significant part of Mr Davis' evidence is that in effect any compensation that could be said to have taken place was by way of those that had land confiscated gaining land interests south of the confiscation line, thereby ensuring that those hapu whose lands were not within the confiscation area also lost land.

28. Ngati Maniapoto hapu were required to shelter those fleeing from the war including those expelled as 'kingites' from Auckland in June 1863.

29. Ngati Maniapoto men, suffered imprisonment on the Hulk 'Marion', and were deliberately allowed to escape from there carrying the smallpox virus on infected blankets causing the loss of entire whanau groups, and decimating hapu killing thousands who are said to have died as a result.

30. Intergenerational health effects on those who contracted the disease and their whanau also forms part of the evidence the Tribunal shall hear as well as the loss of whole villages and resources including the old Otorohanga village site which was burnt down to decontaminate the area which had housed people infected with smallpox and the bodies of those that had died from the disease on the Waipa River.[17]

31. A second small pox outbreak at Te Kumi, possibly caused deliberately by surveyors for the railway disposing of infected clothing to children at Te Kumi caused the death of hundreds of people and the maiming of many more, only prevented from worse effects by action taken by the prompt actions of quarantine and immunity from the prior outbreak.

FAILURE TO PROTECT LAND BASE - NATIVE LAND COURT

32. The evidence will show that the Native Land Court not only facilitated the individualisation and subsequent loss of lands but also facilitated the distortion and destruction of Aotea Te Rohe Potae Iwi whakapapa and the true history of Ngati Maniapoto, including by:

    a. Relying on evidence that sought to reduce the status and authority of the Kingitanga line; and

    b. Undermining and destroying the tino rangatiratanga of hapu who supported the Kingitanga and the Tariao Pai Marire religion and Hauhauism as a deliberate form of punishment; and

    c. Accepting evidence that Rungaterangi is the paramount line of descent within Ngati Maniapoto;

[17] Wai 898, # A3 Dr Robinson "Te Tinana: " p20 and 168

d. Accepting evidence of the Native Committee without hearing direct hapu evidence as to the whakapapa of various Ngati Maniapoto hapu and without ensuring the cross checks and balances that existed for reliable whakapapa were a normal part of the Court system or ensuring the legitimacy of that presented to the Court before awarding titles; and

e. Accepting excessive use of whakapapa whakaheke evidence which relied on the descent lines of a small number of people or a single individual and not the interrelationships revealed by whakapapa whakapaparanga.

33. The evidence also highlights further indictments on the Court process such as:

a. The partiality of the Native Land Court through the appointment of Judges who had fought against Ngati Maniapoto in the Waikato War - for example Major William Gilbert Mair also impacted greatly on the willingness or otherwise of certain people to participate in the Court processes.

b. The Crowns failure to ensure access to independent legal advice at Native Land Court hearings also played a large role in the manipulation of the process and evidence to ensure outcomes favourable to the Crowns agendas.

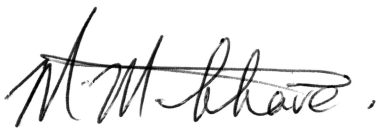
c. The lack of proper inquiry into the whakapapa of those with interests in land leading to distorted whakapapa evidence, which in turn led to incorrect Native Land Court decisions which removed and/or relocated many of the hapu with legitimate interests in the Waitomo and Haurua areas to facilitate an easy acquisition of these areas by the Crown;

d. Making inappropriate, incorrect and inequitable decisions, for example where a decision of the Court favoured the second born of a family of four and no one else in that family, or where the interests of women were not acknowledges or where trustees were appointed for minors in tead of their parents also facilitating land loss.

e. Denying the recognition of certain hapu by failing to record their existence in the hapu lists in Otorohanga Minute Book No.2 and forcing peoples to be listed under other hapu names.

34. The Native Land Court also facilitated the obliteration or alteration of named places of significance for Ngati Maniapoto peoples from their actual locations by accepting evidence that moved place names on cadastral maps particularly in the Orahiri Survey District. This caused great confusion and further loss of land because people were sometimes unaware the block they held interests in was before the Court. It has also caused the loss of knowledge and history in relation to certain significant places.

DATED this 8th day of November 2013



Moana Tuwhare
Counsel Acting