

WAITANGI TRIBUNAL

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IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of a claim by David Leonard, David Higgins, Te Mahana Walsh and Yvonne Enoke of the Oamaru Maori Committee and the Ngaitahu Maori Trust Board relating to a proposed sewage scheme at Kakanui

Minister of Maori Affairs  
Parliament Buildings  
WELLINGTON

Dear Minister

1. On 12 March 1987 a claim was received from Mr Bernie Walsh and others of the Oamaru Maori Committee and Ngaitahu Maori Trust Board in respect of the granting of a water right to the Waitaki County Council for the disposal of effluent from a proposed sewage scheme at Kakanui into Te Moananui a Kiwa (Pacific Ocean).
2. The claimants alleged that the granting of the water right was contrary to the principles of the Treaty of Waitangi, and in particular article 2 of the Treaty which guaranteed, in the English version, full exclusive and undisturbed possession of their fisheries. The claimants asserted that 'undisturbed' equates with 'unpolluted'.
3. The claimants did not give further particulars in their original application, and as permission was later sought to withdraw this claim, further particulars were not obtained. We presume however that the claim concerned not the grant of the water right itself by the Otago Catchment Board to the Waitaki County Council, but the legislation or policies of the Crown which allowed the issuance of such a water right.
4. On 16 February 1987 the Standing Tribunal of the Otago Catchment Board granted the water right (number 3115) sought by the Waitaki County Council.

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5. Within the constraint of the Water and Soil Conservation Act 1967 the Standing Tribunal (OCB) believed that they could not address cultural and spiritual problems raised by the claimants, and held that in their jurisdiction they could only address the physical and environmental aspects of the application.

6. Despite this ruling, the Waitaki County Council made it clear that they respected the claimants' views and did not want to proceed with a scheme offensive to Maori in the district. The Maori claimants for their part realised the acute need for a modern sewage treatment plant in the area. Consequently, the Waitaki council's own consulting engineers, in consultation with the local Maori committee and other council members, set out to devise a modified scheme.

7. As a result of these discussions, agreement was reached on the major issues outstanding.

8. On 11 June 1987 the Oamaru Maori Committee wrote to the Ngaitahu Maori Trust Board confirming the settlement reached and asking the board to withdraw the claim before this Tribunal.

9. On 18 June 1987 the Ngaitahu Maori Trust Board wrote to this Tribunal seeking leave to withdraw the claim.

10. The Tribunal notes with approval the constructive and cooperative approach adopted by the solicitors and representatives of the Waitaki County Council and their engineering consultants, and also by the claimants, which made it possible to advance the proposals now accepted, without the expense and effort of public hearings.

11. Please be advised that leave has been given to withdraw and the Tribunal will not be inquiring further into this claim.

12. The claimants may file a fresh claim in respect of the same subject matter if the need arises.

13. Copies of this report are being sent to the claimants and the Waitaki County Council.

Dated at Wellington this 20th day of February 1990

Judge A McHugh  
Deputy Chairperson  
on behalf of the Waitangi Tribunal