The Registrar
Waitangi Tribunal
DX SX 11237
Wellington

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15th August 2012

Tena Koe,

NOTES: Summary of Freshwater claim Wai 740

1.1. **Taonga (Freshwater example)**

Te Atiawa Iwi, Taranaki Whanui and the claimants submit to the Waitangi Tribunal to hear our **freshwater Taonga grievances.**

Taonga were protected, and the rights to develop Taonga existed under Tiriti o Waitangi Article Two.

Te Atiawa derives our ancestral hereditary rights from our Tupuna.

"Nga Atua, the interconnections, Whakapapa of each Kaitiaki (without Nga Atua you have no Taonga), Mauri, the integrity of all Taonga, Kaitiakitanga, the body of wisdom for guardianship and custodianship relating to all things Maori, **Taonga**, are all the treasures created on earth, and Tikanga, the practice of policies and procedures for implementation".

The Crown has a **fiduciary duty to protect freshwater Taonga known at 1840** or discovered later for the claimants.

The claimants submit to the tribunal, "**there is ownership of freshwater Taonga**", when the Crown says," there is no ownership in "freshwater Taonga"

The claimants also submit to the Tribunal to address the ambiguity of the Crown, to address the question and answer trail of "**The right to develop freshwater Taonga",** of which the claimants had **customary use, "prior to 1840"** as a development of Maori as a people.

Te Atiawa, Taranaki Whanui and claimants has the right under the partnership principle to "**The development of freshwater Taonga not known in 1840".**

The claimants contend that the Crown, having forcibly taken the claimants Kaitiaki rights and interests away, being the claimants rights to Kaitiaki the Mauri of freshwater Taonga, The Crown has proven beyond doubt to be failing in management as surrogate kaitiaki, and the claimants petition the Waitangi Tribunal to determine whether the claimants should fully supervise the whole Crown environmental framework of their rohe in the mean time, to give our partner a rest, to take stock of where they are at in management, until balance is restored again, whence the joint partnerships of kaitiaki and management, as guaranteed under the principles of Tiriti o Waitangi., the management leadership may be returned to the Crown, so as to continue again a new genuine partnership for both parties, for the first time since 1840.

1.2**. Te Atiawa and Ngati Tama Taonga Freshwater Grievance**

"**Freshwater is an esteemed Taonga**", from the body of the seen to the unseen, elements, minerals and organisms.

The claimant's Te Atiawa Whanau wish the Waitangi Tribunal hearing to be at Waiwhetu Marae, Whanganui A Tara, for the Kaumatua and Kuia to Kaitiaki for their Taonga Te Awakairangi and Waiwhetu stream. "I am the Awa, and the Awa is me", and to karakia and grieve for their dying Taonga Te Awakairangi River and Waiwhetu Stream before the Waitangi Tribunal at the commencement of this claims "hearing".

The claimants submit to the Tribunal, that the Crown and its agents are failing sustainable management of the claimants Whanganui A Tara **Taonga**, **Te Awakairangi** and **Waiwhetu stream**, and the Crown has alienated the Waiwhetu Te Atiawa claimants who Kaitiaki Maori Values, by using their (the Crown's) rights of management being statutory mechanisms, to alienate the claimants, even though the claimants rights to Rangatiratanga, Kaitiakitanga and Mana are guaranteed under Tiriti o Waitangi.

The **Taonga, freshwater** harvested from the catchments within Whanganui A Tara, has been alienated from the customary rights and interests of the Maori guardians and by the **existence of no statutory partnership etc,** our Taonga has so deteriorated and "**diminished in "Mauri" as to be dying".**

Te Atiawa attempt to kaitiaki Taonga river systems of Te Awakairangi, Wainuiomata Orongorongo Rivers and the Waiwhetu aquifer.

Te Atiawa Iwi, Hapu and the claimant have "**special interests**" over concerns of **over allocation to over use** of this taonga, freshwater, in their rohe.

We believe "**Tribal interests are above those of the general public**".

The claimants wish the Tribunal to also consider whether Te Atiawa Iwi and Hapu hold the "right and interests to development of" this Taonga, customarily harvested before and after 1840, "Crown duty of active protection" entitled to under the "right to development" (unless activities were incompatible with the interests of other users).

Te Atiawa believes Te Atiawa can do a better job than the Crown agents to monitor the "Mauri" and nurse our Taonga Te Awakairangi River and Waiwhetu stream sustainably back to health.

The claimants wish the Tribunal to determine "**Rights to Development of Taonga".** "**A Right to Develop a Right",**

A statutory partnership with Taonga freshwater, incorporating Maori Values will ensure Te Atiawa Taonga the right to development of Taonga, including the right to develop economically existed under Tiriti o Waitangi Article Two, also the principle to have a right to share in new Taonga that were not known or used at 1840.

The Tiriti o Waitangi supports the right for development as Iwi and Hapu, and the right to choose development along customary or western systems (or combinations of both). "**A choice to walk in two worlds**".

Te Atiawa's esteemed **Taonga Te Awakairangi** (Hutt River) is some 54 kilometres long (without calculating the major tributaries and smaller streams), our Taonga **the Wainuiomata** and **Orongorongo** rivers are also substantial river systems and the **Waiwhetu Taonga aquifer** are all combined to drain **9000**

hectares. (All this land was **confiscated from Te Atiawa of Whanganui A Tara** by the Crown under the "**Waste Land Act**")

The **water "take" is 150 million litres of water per day for 380,000** people whom each day takes 400L per day per resident.

Te Atiawa Iwi are further **alienated** from their special "Taonga"freshwater, **under the Port Nicholson Block Settlement Act**, which being birthed from the "English" version of the Crown's "Treaty of Waitangi", does not address this alienation, or the alienation of this Iwi, Hapu and claimants Tikanga, Matauranga Maori, Taonga, Rangatiratanga, Kaitiakitanga, Mauri, Mana, Manakitanga, Rongoa and Whakapapa of Taonga freshwater guaranteed by Article Two of the signed Maori Tiriti o Waitangi.

The "Port Nicholson Block Settlement Act", may be a "full and final settlement" of the Treaty of Waitangi, "unsigned English version", however it does not have any relation to the" Signed Maori Tiriti o Waitangi" of which Article Two does guarantee the Te Atiawa Iwi and Taranaki Whanui, Rangatiratanga, Kaitiakitanga and Mana of Taonga freshwater quality, allocation and access, with the Crown's agent.

The Claimants wish the Waitangi Tribunal to determine freshwater as Taonga imbued with Mauri and also who has the rights to development of "Taonga freshwater"

Te Atiawa wish to enter into an initial immediate agreement with the Crown to be immediately fully funded by the Crown to monitor the monitors of our Taonga freshwater, to later be recognized as a statutory partnership for a combination of freshwater rights and interests, recognition for the Te Atiawa Iwi and Taranaki Whanui, for participation as a statutory partner to monitor the monitors, and for the "customary rights of development" of Taonga freshwater in Te Atiawa Rohe.

1.3. **Resource Management Act (Freshwater)**

The claimant's believe that the RMA as it is, is not a mechanism to address the breaches of the Tiriti o Waitangi Article Two

The RMA Act deals with co-management, but does not deal with **customary rights and interests**, and fails to establish a framework to deal with the issues of freshwater resources.

The "**Rangatiratanga effect"** in the RMA removes the ability to exercise Rangatiratanga.

The effect is an automatic affront to **"Mana"** as separation from freshwater resources breaches "Mana", as access to "**Taonga"** is deprived, it is alienation, destructive of enjoyment of "Taonga" and infringing and impacting on customary rights and interests.

The RMA is an extreme mechanism where the Crown has given over unilateral control to TLA's to co-ordinate management and seizes control of freshwater "Taonga", when it is the role of the Crown to resolve management issues.

The RMA analogy is, a Maori family living in their house, and the landlord, rents the lounge out regardless of their protests, to strangers, and gives the strangers permission to drill big holes through the floor into the soil inside the lounge.

Does a nexus for breaches exist or not between the Crown, the RMA and Taonga?

At the Maori RMA Practitioners Hui (hosted by TPK) held at the Wharewaka Building Wellington held during the National Town Planners Conference, it was unanimous that "**the RMA does not work for Maori**", and that "**the RMA reinforces alienation of the Maori people from Kaitiaki"**

The claimants submit to the Waitangi Tribunal, to hear the evidence and determine whether the findings direct the Tribunal to recommend to the Crown, that it is necessary to extensively amend the RMA or **replace it with a new Act.**

We submit to the Tribunal, to recommend that the claimants receive from the Crown, restitution of "Rights and Interests" by way of compensation, total control to exclude activities in special circumstances (Tapu) and statutory co- management of freshwater Taonga.

The Crown may or may not recognize "Freshwater Ownership", but proprietary interests (royalties) and statutory co-management is an essential element of recognition for redress.

1.4. **Territorial and Local authorities (freshwater)**

Te Atiawa Iwi, Taranaki Whanui and the claimants submit to the Tribunal to determine whether a statutory **co-management framework,** is required for redress, to redirect Regional and Local authorities (TLA's) to enable Te Atiawa Iwi and Taranaki Whanui to enter into agreements for a broad sweep of **recognition** measures for their **freshwater customary rights and interests**.

This redress recognized throughout all relevant Acts so as to return "Mana" to Te Atiawa Iwi, Taranaki Whanui and claimants, and provide statutory **co-management** for the sustainability of freshwaters.

For example; **Recognition of customary rights and interests** by way of statutory elected "Maori Boards" or appointed "Maori Committees of Council" to be fully funded by TLA's and whose statements for **sustainability of Taonga freshwater resources** are included throughout Regional Plans, District Plans and Long Term Council Community Plans and policy.

Due to the independent water policies of the TLA's, whilst there is some synergy due to the TLA trading enterprise 'Capacity' and also there being a Lower Hutt and Upper Hutt 'cross council' committee, overall the evidence indicates a 'whole of catchment' and 'whole of freshwater management' is required to deliver genuine environmental benefits to the 'Mauri' of freshwater.

Specifically the GWRC model of Iwi representation and participation with local government 'Upoko Taiao' is the best model available in New Zealand. (So said the National Maori Network members present at the EPA Maori Environmental Management Hui 2012)

We therefore submit to the Tribunal that part of redress is a single unitary TLA incorporating 'Upoko Taiao'.

1.5. **Redress**

(a).The Crown Barrister has said in the Wai 2358 Hearing "it is ready to increase Maori management roles in Kaitiakitanga to Taonga", Crown, "ready to recognize interests varied and complex", Crown said," Crown

ready to commence dialogue with no pause, no standard template to grant rights and interests, allow all the different interests to be recognized against a set of principles on a case by case basis".

(b). At the Wai 2358 Hearing the Crown Barrister also said,"Crown ready for new framework for the inclusion of the language of Rangatiratanga, Kaitiaki and Mana concepts to form the dialogue, by choice of words, of public servants".

(c). **Redress of co-management without sufficient appropriate statute, maintains perpetual cycles of justice denied across all grievances in this claim** ie, policy decisions, new frameworks, recognition, funding, new organizations, visible profiles to public, compliance to sectors ie planning, standards, delivering services, and the destabilizing processes start again ie policy decisions lack of funding, withholding funding, roll over organisations and policy decisions again.

(d). **Redress summary being** minimum standards, safeguards, legal agreements, regulation of public purposes, not excluded to commercial compensation, no restrictions on the types of measures available, executive determination, to be better defined as they are now, national Kaitiaki/environmental taxes ie national water charge.
Judge Issac described the process in Wai 2358 Hearing as "Dynamic, real and living context of this enquiry, not a full stop, but a lens on, how useful advancing can be beneficial for processes during change to the partnership".

Naku Noa Na

Fredrick C. Allen