

Mohaka River Report 1992

Appendix 01 The Claim

1.1 The Claim received 29 January 1990

Appendix 1

THE CLAIM

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THE REGISTRAR

WAITANGI TRIBUNAL

1 I Ariel Whai Aranui

lay Claim to the Mohaka River and its Tributary Waters, under the Treaty of Waitangi Act 1975

2 FOR OURSELVES AND

"For myself and the descendants of Ngati Pahauwera of which I am one":

3 CLAIM WE are prejudicially affected by:

A Conservation Order on the Mohaka River, which making such an Order carries with it an assumption of rights of possession and control of those waters.

That assumption of possession and control of the river and its waters is one that has no standing in the eyes of the Ngati Pahauwera. From the beginning -"mai rano" - those rights have been exercised and defended by the tangata whenua - the people of the land and its waters. These are the same rights that were guaranteed by the Treaty of Waitangi as being rights of the tangata whenua to the full, exclusive and undisturbed possession of the lands, forests, fisheries and other treasures.

4 AND WE CLAIM that these matters are contrary to the principles of the Treaty of Waitangi.

5 WE SEEK THE FOLLOWING RELIEF:

Adjournment or complete cancellation of the Conservation Order, which is in the process of being finalized, 9 February, 1990.

6 WE WISH the Tribunal to commission a researcher and research funds to report on the claim.

That a Research Officer be appointed to collate the necessary history and documentation of the Mohaka River, to investigate Waahi Tapu, Archaeology, and Genealogy.

"We ask leave to amend this claim after the research work has been done".

7 THE TRIBUNAL IS ASKED to appoint a lawyer to assist us.

If legal aid is not forthcoming, as Ngati Pahauwera is without independent funds.

8 WE WISH the claim to be heard at the Te Huki marae, Raupunga, via Wairoa.

9 WE BELIEVE THE FOLLOWING PERSONS AND ORGANISATIONS SHOULD BE NOTIFIED OF THIS CLAIM:

The Crown

Ministry of Environment

Hawke's Bay Acclimatization Society

New Zealand Acclimatization Society

Hawke's Bay Regional District Council

Tuwharetoa tribe

and any other interested Hapu

10 WE CAN BE CONTACTED care of the following address:

The Chairman
Mr A W Aranui
Ngati Pahauwera Resource Committee
Postal Agency
RAUPUNGA

Phone 741 (STD 072426)

DATE: 24-1-90

SIGNATURES: PRINT NAME

A. Aranui Ariel Whai Aranui

Waitangi Tribunal, Department of Justice, Wellington.

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Appendix 01 The Claim

1.2 Extract from further statement of claim received 6 April 1990

1.2 Extract from further statement of claim received 6 April 1990

I Ariel Aranui

for myself and the descendants of Ngati Pahauwera of which I am one, claim we are prejudicially affected by

The Mohaka River, and other material and non-material taonga.

We acknowledge our shared role as Kaitiaki of the river with other hapu of Ngati Kahungunu and other iwi.

We ask the Waitangi Tribunal to investigate whether the Crown's management of our taonga, from 1840 to the present, has prejudiced our rights to the natural resources and other matters guaranteed to us by Article two of the Treaty. In particular, we ask the Tribunal to investigate:

- the taking of shingle from the Mohaka River and its impact on the ecology of the river.
- the granting of access to the Mohaka River to allow for the same.
- the failure of the Crown to protect our rights to taonga (Hangi stones).
- the disturbance of land cover by forest clearing and other means, and its impact on our food and other water resources.
- the management of fisheries and wildlife, including restrictions placed on our use and access to these resources.
- the Crown's failure to recognize and facilitate te tino rangatiratanga in its management of our taonga

Remedies

1 We ask for acknowledgement that our taonga have been acquired or abused by the Crown in terms that were contrary to the principles of the Treaty

3 Consultation with and agreement by the Ngati Pahauwera in matters affecting our people, or any of the taonga from any part of our lands and waters, so that at all times Maori values are addressed and respected

DATED at Wairoa this 6th day of April 1990.

SIGNATURES OF CLAIMANTS:

A. Aranui.

Waitangi Tribunal, Department of Justice, Wellington.

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1.3 Amendment to claim received 25 November 1991

1.3 Amendment to claim received 25 November 1991

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi
Act 1975

A N D A claim by Maraea
ARANUI for herself
and on behalf of Ngati
Pahauwera in respect
of the Mohaka River
(Wai 119)

AMENDED CLAIM IN RESPECT OF THE MOHAKA RIVER

It is claimed on behalf of Ngati Pahauwera that:

1 The Mohaka River (including its waters and bed) from the Te Hoe junction of the River to the point at which the fresh water of the River dissipates in the sea (a distance of five kilometres from the mouth of the River) is a taonga of Ngati Pahauwera in respect of which, pursuant to the Treaty of Waitangi, Ngati Pahauwera is guaranteed te tino rangatiratanga by the Crown.

2 The fisheries in the Mohaka River are taonga of Ngati Pahauwera.

3 Ngati Pahauwera has never relinquished the mana of the Mohaka River or of their fisheries in it.

4 Ngati Pahauwera is and is likely to be prejudicially affected by:

1

(a) the Water and Soil Conservation Act 1967
(b) the Resource Management Act 1991 which acts are inconsistent with the principles of the Treaty of Waitangi in denying and/or failing to recognise and give effect to Ngati Pahauwera rangatiratanga over the Mohaka River;

2

the policy proposed to be adopted by or on behalf of the Crown establishing a national conservation order in respect of the waters of the Mohaka River;

3

the actions of the Crown in proceeding with proposals for a conservation order in respect of the Mohaka River in denial of Ngati Pahauwera rangatiratanga over the River;

4

the actions of the Crown in failing to recognise Ngati Pahauwera rangatiratanga over the Mohaka River;

5

the actions of the Crown in permitting the Mohaka River to be detrimentally affected (by extraction of gravel from the River and by the impact of forestry activities on lands adjoining the River) or in not protecting the River from such detrimental effects;

6

the actions of the Crown in permitting Ngati Pahauwera fisheries to be detrimentally affected or in failing to protect Ngati Pahauwera fisheries in the River from the effects of gravel extraction from the River and from the impact of forestry activities on lands adjoining the River;

7

the failure of the Crown to protect Ngati Pahauwera rights to their taonga of hangi stones found in the River;

8

the actions of the Crown in restricting Ngati Pahauwera access to their traditional fisheries and other food resources dependent on the River;

[no number 9 given]

10

if section 261 of the Coal Mines Act 1979 and its predecessors applies (which is denied on the basis that the Mohaka River is not a navigable river), then section 261 of the Coal Mines Act 1979 and its predecessors denies Ngati Pahauwera rangatiratanga in the River;

11

the actions of the Crown in failing to protect Ngati Pahauwera rights to the resource of gravel in the River bed and permitting others to expropriate such resource.

DATED at Wellington this 25th day of November 1991

(Solicitor for Claimants)

Waitangi Tribunal, Department of Justice, Wellington.

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1.4 Memorandum of Counsel received 19 December 1991

1.4 Memorandum of Counsel received 19 December 1991

BEFORE THE WAITANGI TRIBUNAL

Wai 201, Wai 119 AND OTHERS

IN THE MATTER of the Treaty of Waitangi
Act 1975

AND

IN THE MATTER of Wairoa ki Wairarapa

Claims

AND

IN THE MATTER of a claim by MARAEA ARANUI
for herself and
on behalf of Ngati
Pahauwera in respect of
the Mohaka River

MEMORANDUM OF COUNSEL FOR CLAIMANT IN RESPONSE TO

MEMORANDUM FROM CROWN COUNSEL

This Memorandum is made in response to matters raised by Crown Counsel in her Memorandum of 9 December 1991.

I respond to the particular matters raised using Crown Counsel's numbering.

4.3.1

As appears by paragraph 3 of the amended claim, Ngati Pahauwera claims that it has never relinquished the mana of the Mohaka River or the fisheries in it. This is a claim that Ngati Pahauwera have retained te tino rangatiratanga for the River.

4.3.2

The claim of te tino rangatiratanga over the River is based upon Ngati Pahauwera association with the River and its presence within the rohe of Ngati Pahauwera.

4.4

Paragraph 1 of the amended claim indicates that the claims in respect of the waters of the Mohaka River are limited by the boundaries indicated in that paragraph.

4.5

The Claimant claims te tino rangatiratanga in respect of the waters of the River pursuant to Article II of the Treaty of Waitangi.

4.6

The parts of the bed of the Mohaka River claimed are identified in paragraph 1 of the amended claim and comprise those parts of the River from the Te Hoe junction to the point at which the fresh water of the River dissipates in the sea.

4.7

The Claimant claims te tino rangatiratanga in respect of the bed of the River.

5.1

The Claimant claims all fisheries in the Mohaka River within the boundaries delineated in paragraph 1 of the amended claim. Details of the species fished and hapu associated with the fisheries are contained in the evidence filed on behalf of the Claimant.

5.2

The Claimant claims te tino rangatiratanga in respect of the fisheries in the River.

6.1

It is not appropriate for the Claimant to anticipate the Crown response to its claim. If the Crown denies maintenance of Ngati Pahauwera mana over the River on the basis of land sales, then in reply Ngati Pahauwera will say

(a) that any such sales are irrelevant to the claim of te tino rangatiratanga in respect of the River

(b) that the land sales were promoted or permitted by the Crown in breach of its Treaty obligations and are themselves inconsistent with the principles of the Treaty

(c) that the land sales in the circumstances were not effective to relinquish Ngati Pahauwera mana over the River.

6.2

The rights claimed are to tino rangatiratanga over the River and the fisheries.

7.1

The Water & Soil Conservation Act 1967 is claimed to be inconsistent with the principles of the Treaty both in denying and in failing to recognise and give effect to Ngati Pahauwera rangatiratanga over the Mohaka River. The provisions of the Act which are inconsistent with the principles of the Treaty include in particular sections 20, 20A-I and section 21 of the Act which establish regimes for the control of natural water and rivers in the Crown and its delegates.

7.1.2

The incidents of rangatiratanga are not appropriately matters of pleading. Crown assumption of authority is an abrogation of tino rangatiratanga.

7.2

The provisions of the Resource Management Act inconsistent with the principles of the Treaty are the provisions by which the Crown assumes authority over water and rivers and the gravel and mineral resources in the bed of the Mohaka River.

8

A national conservation order prejudices Ngati Pahauwera and is inconsistent with the principles of the Treaty of Waitangi because an assertion of Crown authority over the River which creates third party rights for future dealings with the River. It is therefore inconsistent with tino rangatiratanga which is claimed by Ngati Pahauwera.

9.1

The Claimant in paragraph 4(3) of the amended claim claims against the Crown that it is inconsistent with Ngati Pahauwera tino rangatiratanga in the River for the Crown to take action through its agencies under the Water & Soil Conservation Act 1967 to establish a water conservation order in respect of the Mohaka River.

9.2

The Crown's actions are in denial of Ngati Pahauwera rangatiratanga because an assertion of authority inconsistent with the rangatiratanga of Ngati Pahauwera.

10

The reference in paragraph 4(4) is to omissions by the Crown and actions to assert Crown control over the River (in the manners specified) in denial of Ngati Pahauwera rangatiratanga.

11

Gravel extraction and forestry activities have been directly undertaken by the Crown on lands adjoining the River and have been permitted by the Crown or its agents. In addition, the Claimant complains of the Crown's omission to protect the River from these depredations. Details of the gravel extraction and forestry use and their impacts upon the River are given in the evidence filed. The Claimant does not have full particulars of the permits given by the Crown for these activities or the extent of the Crown's direct involvement in them, details of which are within the knowledge of the Crown.

12

Evidence as to effect upon the fisheries has been filed. The same response is made to the request for details as is given in respect of paragraph 11.

13

The failure to protect the taonga of hangi stones (referred to paragraph 7 of the amended claim) is a claim of omission. Details of detriment are given in the evidence filed.

14

Again, this is a claim of Crown omission. Details of detriment are given in the evidence filed.

15



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Section 261 asserts Crown ownership, in denial of tino rangatiratanga.

16

The Claimant claims tino rangatiratanga in respect of the gravel resource. Crown omission in failing to protect is claimed. The prejudice suffered is identified in the evidence filed.

ISSUES TO BE ADDRESSED AT URGENT HEARING

17.1

The Crown has filed extensive evidence in the Planning Tribunal in relation to fisheries, forestry activities on the River (relevant to assessment of degradation and

water quality) and impact of gravel extraction. It is difficult to see that further time is needed to get together the technical and scientific evidence relating to these topics.

17.2

The issues in relation to the Water & Soil Conservation Act 1967 and the Resource Management Act 1991 are directed at Crown assumption of authority over the Mohaka River, a major taonga of Ngati Pahauwera. It is not accepted that the issues are board. They certainly do not require extensive evidence because based on principle, construction of the Treaty and its application to modern conditions.

TIMETABLE

19

The urgency of the claim has been established by Crown timetable in proceeding with the water conservation order. If the Crown intends to proceed with the determination of the water conservation order, a tight timetable is essential if the Claimant's rights are not to be further prejudiced.

EVIDENCE

23

The claim to te tino rangatiratanga is a claim of principle derived from Treaty construction and application. It is difficult to see that substantial evidence will be required, unless the Crown denies rangatiratanga on the basis of land loss. This is an affirmative defence which the Crown has yet to raise. If it is not raised, the position is that the Claimant is ready to proceed and there is no good reason, given the exigencies of the case, why the Tribunal should not adhere to the timetable set.

DATED at Auckland this 20th day of December 1991

Sian Elias QC

Waitangi Tribunal, Department of Justice, Wellington.