

HE  
MAUNGA  
RONGO



# HE MAUNGA RONGO

Report on Central North Island Claims

Stage One

Volume 1

WAI 1200

WAITANGI TRIBUNAL REPORT 2008



The cover photograph by Craig Potton shows Pohutu and 'The Prince of Wales' Feathers, two of Whakarewarewa's famous geysers, with the sun setting behind them. In Central North Island tradition, the presence of geothermal activity and energy is explained by stories of the ancestor Ngatoroirangi. Standing on the slopes of the snow-clad Tongariro, he called for fire from Hawaiki to warm himself. It arrived via Whakaari (White Island), surfacing at numerous points along the way.

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Waitangi Tribunal

Te Rōpū Whakamana i te Tiriti o Waitangi

*Kia puta ki te whai ao, ki te marama*

The Honourable Parekura Horomia  
Minister of Maori Affairs  
Parliament Buildings  
WELLINGTON

16 June 2008

E te Minita o nga Take Maori

Tena koe e te rangatira e noho mai na i te tunga tiketike a whakatutuki nei i nga wawata o to iwi Maori. Kati tena tatou i runga i te ahuatanga o nga mate huhua puta noa i te motu mai Muriwhenua ki Murihiku whakawhiti atu ki Wharekauri. No reira nga mate haere atu ra, haere atu ra, oti atu. Tatou te hunga ora, tena koutou.

We have the honour of presenting you with our published report on the claims of iwi and hapu of the Central North Island region, following the release, in stages, of a pre-publication version of the report during the latter part of 2007.

The Central North Island inquiry addresses concerns raised in over 120 claims from across three inquiry districts – Rotorua, Taupo, and Kaingaroa – which were brought together in the largest inquiry ever undertaken by the Tribunal. The region covered by the inquiry stretches from the coastal Bay of Plenty, inland to Lake Taupo and eastwards across the Kaingaroa Plains. It includes many substantial assets (including the Kaingaroa, Rotoehu, Horohoro, Whakarewarewa, Crater, Waimihia, Marotiri, Pureora, and Waituhi Crown forests).

Our hearings for this stage one inquiry, dealing with generic or big-picture issues which concerned hapu and iwi across the region, were held over 10 weeks between 1 February and 9 November 2005. We were privileged to hear a broad range of evidence from some 50 claimant communities. Over 270 claimant witnesses gave accounts of their histories, while over 100 reports were submitted by Crown and claimant counsel in evidence. We

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also acknowledge the role of the Crown Forestry Rental Trust, which provided substantial assistance to claimants and the casebook research programme.

We draw to your attention in particular the importance in this inquiry of major twentieth-century issues raised by the claimants. Though these often have their roots in Crown Treaty breaches of the nineteenth century, issues such as reduced development opportunities – in farming, tourism, the indigenous and exotic timber industries, hydro-electricity, and geothermal power generation – have had major impacts on claimant communities. The extent of Crown recognition of hapu and iwi authority over their waterways, including Lake Taupo, and their geothermal resources has also been an important twentieth-century issue.

We uphold the claimants in their fundamental grievance that the root of all Treaty breaches in their rohe was the Crown's failure to give effect to the Treaty guarantee to Maori of tino rangatiratanga (autonomy), and their entitlement under article 3 to the same rights and powers of self-government as settlers. In our view, it was entirely practicable for the Crown to have given effect to those Treaty guarantees in the nineteenth century, since a range of examples of community, regional, and national forms of autonomy were available to it. Yet, Central North Island tribes have been deprived of their authority to manage their own affairs and their own taonga, in breach of the Treaty. This has resulted in economic, social, and cultural prejudice to all the Maori peoples of the region.

First, they have been refused the right to govern themselves and their own properties and affairs, although such a right was guaranteed in the Treaty. This occurred despite the constant efforts of Maori leaders to engage with the Crown in the nineteenth and twentieth centuries, seeking legal powers for their own institutions to govern their communities, decide titles to land and resources, and manage those assets collectively, as was their right under the Treaty. The Crown had many opportunities to meet these Maori requests constructively in the spirit of partnership, and often made public statements of an intention to do so. Ultimately, however, such opportunities were lost, circumvented, or actively repressed, in breach of Treaty principles. Although Central North Island Maori did not give up, their efforts were defeated.

Secondly, the tribes of the Central North Island have had a form of land titles imposed upon them that broke the tino rangatiratanga of their communities and led to real or virtual loss of much of their land. A Pakeha-led State court, the Native Land Court, decided their titles, creating a new form of 'virtual' individual ownership in which tribal authorities were deprived of their customary authority. Individuals, however, could do little with their paper titles save sell them. Much land was then alienated to the Crown through unfair purchase policies and practices, without full consent or a fair recompense. In the twentieth century, the long-term legacy of the Crown's title system was the fractionation of individual interests in every generation, to the point where the interests many Maori owners retained were seen by officials as an administrative nuisance. One Crown response in the mid-twentieth century was a sustained attempt to remove Maori owners

of small interests from the titles. At the same time, the Crown's new title system created serious and unnecessary barriers to the development of remaining land. It also facilitated the operation of a public works regime which discriminated against owners of Maori land, providing fewer rights and protections for them when land was taken for public purposes. All of these things were in breach of Treaty principles. Reforms in Te Ture Whenua Maori Act 1993, following earlier Crown provision for collective owner management through trusts and incorporations, while a positive improvement, have not removed the prejudice nor redressed its cumulative impact. It is still necessary to restore effective bases for iwi and hapu in the Central North Island.

Thirdly, the English common law and the statute law of the settler-controlled parliament deprived Central North Island iwi and hapu of authority over, and sometimes customary ownership of, the natural resources that were the key to economic development in their region. This includes their many waterways and geothermal taonga. We have recommended that these matters be redressed, that Maori autonomy be given effect, and that the Resource Management Act 1991 be amended to be made consistent with the Treaty.

Fourthly, Central North Island iwi and hapu have been denied their Treaty right to develop their properties and taonga, and to develop as a people. They have not been given the same State assistance or its equivalent, as was provided to settlers. At the same time, the Crown's title system has imposed barriers to Maori development that do not hinder other citizens. This Treaty breach has had serious prejudicial effects in the Central North Island. As requested by the Crown, we have suggested criteria for the parties to consider in any current application of the claimants' right of development.

All of these factors combined to deny Central North Island Maori the mutual benefit from the new society that had been promised by the Treaty. Instead, they have suffered economic, social, cultural, and political marginalisation. They have not been able to control or substantially mitigate the environmental and other effects of the development that has occurred. In our view, these Treaty breaches and resultant prejudice are serious and require swift and substantial redress.

We note the extensive nature of the Crown forests within the region, which have generated numerous claims before this Tribunal. No fewer than 40 applications for remedies hearings or binding recommendations formed the basis for many of the claims before us, which remain extant at the time of signing this letter.

We have made no general recommendations in respect of possible settlements. In our view, the Central North Island claims can now be settled without further inquiry by the Tribunal, should that be the wish of the parties.



Judge CL Fox  
Presiding Officer

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The Tribunal would like to acknowledge the staff and contract writers whose assistance was important to us in the preparation of this report: Grant Phillipson, Cathy Marr, Eileen Barrett-Whitehead, James Mitchell, and Garth Cant. Thanks also go to many others who have contributed their time and skills to its production: Noel Harris and Max Oulton (maps); Tim Shoebridge, Paul Christoffel, Keir Wotherspoon, Esther McGill, Andrew Mason, Oliver O’Connell, Anita Rossbach, Alexander Perov, Amy Howden-Chapman, Megan Cook, Megan Simpson, Sophie Rattanong, Perrine Gilchrist, Alice Miller, Hannah Boast, Narelle Gray, Isaac Hensman, Libby Major, and Bea Turner (reference and other assistance); and John Huria, Richard Thomson, and Sarah-Jane McCosh (editing and typesetting).

We also wish to acknowledge the large number of staff and contractors who contributed to the preparation and running of the Central North Island inquiry. Among them are: inquiry facilitators Jaime Meikle, Amy Bendall, Barry Rigby, Eileen Barrett-Whitehead, Chappie Te Kani, and Mark Derby; claims coordinators Turei Thompson, Pam Wiki, Greer Samuels, Lisa Hippolite, Alicia Matthews, Tina Mihaere, and Jenny Syme; registrarial staff Donna Flavell, Nathan Milner, Kare Wiki, and Francis Cooke; and Richard Moorsom for his support in many capacities.

During hearings, the Tribunal relied upon the particular assistance of: Richard Waiwai, cultural adviser to the panel; Rangi McGarvey, interpreter and translator; and Alan Doyle, sound technician.

█ PREFACE

In May 2007, the Tribunal announced its intention to release a pre-publication version of the Central North Island report, in order to ensure that the parties could receive the material well in advance of the Te Arawa Settlement Bill, which the Crown advised was to be introduced into Parliament. The report was released in parts in June, July, August, and November 2007. The decision was taken to release parts as and when they became available, despite the fact that the text had not been copy-edited.

The Tribunal indicated that the parties should expect that, in the published version of the report, the headings and formatting might be adjusted, typographical errors rectified, and footnotes checked and corrected where necessary. The process of editing and correcting these details has been extensive and, given the length of the report, time-consuming.

In all chapters, a number of amendments have been made, resulting in some changes of substance. These have not, however, altered the findings and conclusions of the Tribunal. Rather, they are intended to clarify further the Tribunal's intent. In some cases, chapter summaries have been refined, or added where they were previously lacking.

Photographs and additional illustrative material have been inserted, and some maps or their titles have been modified or replaced.

No party should now rely on the text of the pre-publication version of our report.



Judge Caren Fox  
Presiding Officer

## ABBREVIATIONS

AC	<i>Law Reports, Appeal Cases</i> (England)	ltd	limited
AJHR	<i>Appendix to the Journal of the House of Representatives</i>	MCH	Ministry of Culture and Heritage
app	appendix	MONZTPT	Museum of New Zealand Te Papa Tongarewa
App Cas	<i>Law Reports, Appeal Cases</i> (England)	NIWA	National Institute of Water and Atmospheric Research
ArchivesNZ	Archives New Zealand	no	number
ATL	Alexander Turnbull Library	NZED	New Zealand Electricity Department
BPP	<i>British Parliamentary Papers: Colonies New Zealand</i> (17 vols, Shannon: Irish University Press, 1968–69)	NZLJ	<i>New Zealand Law Journal</i>
c	circa	NZLR	<i>New Zealand Law Reports</i>
CA	Court of Appeal	NZPCC	<i>New Zealand Privy Council Cases</i>
CD	compact disc	NZPD	<i>New Zealand Parliamentary Debates</i>
CFRT	Crown Forestry Rental Trust	OTS	Office of Treaty Settlements
ch	chapter	p, pp	page, pages
cl	clause	para	paragraph
CLO	Crown Law Office	PC	Privy Council
CNI	Central North Island	pl	plate
div	division	QBD	<i>Law Reports, Queen's Bench Division</i> (England)
doc	document	RMA	Resource Management Act 1991
DSIR	Department of Scientific and Industrial Research	ROI	record of inquiry
ed	edition, editor	s, ss	section, sections (of an Act of Parliament)
ERMA	Environmental Risk Management Authority	sec	section (of this report, a book, etc)
fol	folio	sch	schedule
ff	following	sess	session
fn	footnote	sl	slide
GNS	Institute of Geological and Nuclear Sciences	tbl	table
ha	hectare	TPD	Tongariro Power Development
ibid	ibidem	TVZ	Taupo Volcanic Zone
J, JJ	justice, justices (when used after a surname or surnames)	UN	United Nations
LHAD	Land History and Alienation Database	v	and
		vol	volume

'Wai' is a prefix used with Waitangi Tribunal claim numbers.

Unless otherwise stated, endnote references to claims, documents, papers, recordings, and statements are to the Wai 1200 record of inquiry, a copy of which is available on request from the Waitangi Tribunal.