

IN THE MATTER of the Resource Management Act 1991

AND IN THE MATTER of a Board of Inquiry appointed under s149J of the Resource Management Act 1991 to determine an application for resource consents sought by Watercare Services Limited for its Waikato River Take and Discharge Proposal

STATEMENT OF EVIDENCE OF TUKOROIRANGI MORGAN

Introduction

1. My name is Tukoroirangi Morgan. I reside at [REDACTED]
[REDACTED] My tribal affiliations are Ngati Makirangi, Ngati Mahuta and Ngati Mahanga. I am currently the elected member of Te Hoe o Tainui Marae as their representative on Te Whakakitenga o Waikato Incorporated Society (TWOW) the recognised Iwi Authority for Waikato. I am also a member of Te Arataura (TAT), the executive arm of TWOW and Tainui Group Holdings Waikato Tainui's commercial arm.
2. I am providing expert evidence as the co-negotiator of the Waikato River Settlement. I am also giving evidence as an inaugural co-chair of the Waikato River Authority. I understand the provisions of the Code of Ethics.

Co-negotiator Waikato River Settlement

3. At the February 2004 TWOW quarterly Hui the late Lady Raiha Mahuta and I were elected as co-negotiators for the Waikato River Treaty of Waitangi claim. This claim was part of the Waitangi Tribunal claim (wai 30) filed by Robert Te Kotahi Mahuta on behalf of the Tainui Maaori Trust Board (TMTB), Ngaa Marae Toopu and Waikato Tainui in April 1987. The claim was to the 1.2 million acres of lands confiscated as a consequence of the invasion of the Waikato and the ensuing war waged by Imperial Troops, the Waikato River and four West Coast Harbours.
4. The relevant section of wai30 as it pertains to the Waikato River reads as follows;

"The claimant's state they are prejudicially affected by the following acts, policies and omissions of the Crown:

By which ownership and mana of the Waikato River is denied to Waikato-Tainui.

By which the waters of the Waikato River is desecrated, polluted and depleted.

In failing to recognise and protect Waikato-Tainui fisheries and lands in the Waikato River.

By which Waikato-Tainui fisheries in the Waikato River have been depleted by pollution, over-fishing and spiritual desecration.

In providing a legislative framework for land use planning, water use planning and resource planning which fails properly to take into account Waikato-Tainui concerns for the Waikato River and which is inappropriate for the protection of Waikato-Tainui rights guaranteed by the Treaty."

5. As a result of Court action taken by the TMTB against the proposed sale of Coal Corporation a State Owned Enterprise in 1989 the TMTB entered into direct negotiations with the Crown. This resulted in the direct negotiations of the early 1990s culminating in a Deed of Settlement in 1995 of the Raupatu lands settlement. The Waikato River claim from the Huka Falls to Te Puaha was reserved for further negotiations. These negotiations began in 2004 and were concluded with a Deed of Settlement in 2008 and legislative enactment in 2010.
6. My evidence will cover what was agreed and more importantly what was intended by the Waikato River negotiations and settlement.
7. Before that however, I refer to the submission of Mr Solomon where he outlines the original engagement between Waikato and Water Care Services during the Auckland drought crisis of the early 1990s. My evidence also acknowledges the long standing relationship between Watercare and Waikato however like Mr Solomon's submission, this relationship is secondary to the relationship the Tribe has with its Tuupuna Awa. That relationship is recorded in whakatauki and pepeha and in the affidavits and oral histories of kaumaatua and kuia who have now passed.

"The River is a being, a mother, complete and whole body comprising the water, the bed and the banks from its source to the sea. The life of the River

and thus the tribe is in its intactness – no limb struck from its body or the heart separate from the head.”¹

If the wairua of the River is violated, the River suffers, becomes sick and if ignored, will die.”²

“To us the people of Tainui, the River has a very deep significance to our way of life today. To us Waikato is the River for cleansing oneself of blessing, and the River is one of our guardians...”³

“The power of the River does not change or dwindle with the passing of the year...To us the most important thing about the River is the water’s healing powers.”⁴

“We are the guardians and protectors of the River. We have a duty to try and make people understand that the assault on the River, our ancestor, must stop.”⁵

8. During the 1990s the Tribe responded to a number of resource consent applications under the RMA such as Kinleith Paper Mill, Anchor Dairy Products, Hamilton City Waste Water, AFFCO Horotiu, Perry’s and Envirowaste Landfills and Water Care’s water treatment and pipeline consents. There were a number of other applications the tribe opposed. Those hearings were costly but the tribe were committed to protecting the Awa from environmental damage and further degradation.

9. The late Sir Robert Mahuta made a submission at the 1996 Water Care consent hearing I partly set out below;

“Waikato Tainui has a special relationship with the Waikato River and its rights and interests in and over the Waikato River were confirmed by the Treaty of Waitangi. The confiscation (Raupatu) of Waikato lands in the 1860s and other acts and omissions in relation to the Waikato River have given rise by Waikato Tainui before the Waitangi Tribunal.

¹ Kamira Haggie Moohaka River Waitangi Tribunal Inquiry 1994

² Pumi Taituha Moohaka River Waitangi Tribunal Inquiry 1994

³ Mere Taka, oral history Waikato River Historical Report 1999

⁴ Iti Rawiri, oral history Waikato River Historical Report 1999

⁵ Hare Puke, Tainui Maaori Trust Board archives 1998

The proposal will have adverse on the Waikato River, including its waters, fisheries and vegetation and its surrounding environment and on Waikato Tainui's special relationship with the Waikato River....

The proposal is contrary to the purpose and principles of the Resource Management Act 1991, in particular sections 5, 6, 7 and 8 of the Act....

Consultation undertaken with Waikato Tainui prior to filing the application was grossly inadequate and did not involve the quality or depth of dialogue the obligation to consult requires...⁶

10. Lady Mahuta and I were given a clear mandate in 2004 (reaffirmed annually by Te Kauhanganui, now known as Te Whakakitenga o Waikato) and confirmed with the Deeds of Settlement in 2008 and 2010. Endorsement and approval of the final terms of the Waikato River Deed of Settlement was provided by Te Whakakitenga and Ngaa Marae Toopu on behalf of Waikato Tainui. As the surviving co-negotiator of that settlement I have an obligation to protect the integrity and the intention of the settlement.

11. As the original claim to the Waikato River included ownership by the tribe the Crown did not accept this proposition so the settlement negotiations focused on the health and wellbeing of the Awa and a co-management regime to enable the manifestation of Mana o te Awa and the exercise of Mana Whakahaere. These foundational principles are intransmutable and are generational.

12. The negotiations took several years to complete and these were intense as the negotiations did not just engage Waikato and the Crown, but also other River Iwi, government agencies and departments, stakeholder groups such as local government, Federated Farmers, Forest and Bird, electricity generators, major industry and the general public.

13. The redress included co-management instruments such as the Accords, Joint Management Agreements, a contestable cleanup fund administered by the Waikato River Authority, Iwi management plans and importantly Te Ture Whaimana - the Vision and Strategy and the overarching purpose to "*restore and protect the health and well-being of the river for future generations.*". Also reserved by the settlement was revisiting the settlement

⁶ Submission of Sir Robert Te Kotahi Mahuta 1996

if there was future privatization of water or commodification of an interest in water and the river as broadly defined. This is known as the disposition clause. At the time of negotiations this included the building of structures in or on the river bed as creating a property right in the river bed. This application proposes such structures being constructed. It is my opinion that the water allocation regime is privatization disguised as regulatory management that flies in the face of the intentions of the settlement and the new era between the Iwi and the Crown.

Waikato-Tainui's relationship with the Waikato River

14. This is expressly and explicitly referenced in the Deed, it is worth restating the scope of that relationship in this forum because even though the parties have been here before this is post settlement for Waikato, the relationship and the Awa have never been in front of a Board of Inquiry and the voice of the river having been hard fought for must never be silenced again.

"Waikato have a special relationship with the Waikato River since the Waikato River is the ancestor of Waikato and the water is the life blood of the ancestor.

The Waikato River determines the identity and wellbeing of Waikato and their rangatiratanga over the Waikato River is confirmed by the Treaty of Waitangi....

This Deed will not affect the any claims, rights and interests of Waikato in their relationship with the Waikato River."

Mana o te Awa

15. This was a non-negotiable bottom line of the settlement.

"To Waikato-Tainui the Waikato River is a tupuna (ancestor) which has mana (prestige) and in turn represents the mana and mauri (life force) of the tribe. The River has its own mauri, its own spiritual energy, its own powerful identity. It is a single indivisible being."

Mana whakahaere

16. Another non-negotiable.

⁷ Clause 2.41

*"Mana whakahaere refers to the authority that Waikato-Tainui and other River iwi have established in respect of the River over many generations. Mana whakahaere entails the exercise of rights and responsibilities to ensure that the balance and mauri (life force) of the River are maintained. It is based in recognition that if we care for the River, the River will continue to sustain the people."*⁸

Inaugural Co-chair of Waikato River Authority

17. The Waikato cleanup fund and the Waikato River Authority (WRA) were settlement redress under the Waikato River Settlement. I alongside the other River Iwi and Crown representatives worked on the framework for the Vision and Strategy more than 10 years ago. The membership of the WRA reflected the membership of the working party establishment committee – 50% River iwi and 50% Crown appointments. The principle role of the WRA is to distribute the contestable cleanup fund for projects that would contribute to the health and well-being of the Awa and also to be the guardians of Te Ture Whaimana and that it's position as the primary direction setting document (a Regional Policy Statement) for the catchment is reinforced. I believe that is still the position.

Conclusion

18. The negotiations were more than a regulatory frame work enhanced through co-governance but a Treaty settlement that expressly recognises the Treaty relationship of the Crown and Waikato but also the relationship between Waikato and the Awa.

19. It was founded on generations of trauma, disconnection and a coloniser's assumption of control that is still perpetuated by these applications before the Board and consenting authorities. I do not accept the allocable justification of the environmental sustainability as this becomes a permanent quantum that will be difficult to reduce in the future and in fact will enable a greater future take. The environment and ecosystem is relevant as is importantly the metaphysical being of the Awa which is inextricably tied to the identity and health and wellbeing of the Tribe.

20. Lastly, I am absolutely offended that Water Care has offered water allocation to the Iwi as part of remediation and mitigation. It goes to their incomprehension, ignorance and arrogance of Waikato's relationship with the River. If anyone should be allocating it should be Waikato.

A handwritten signature in black ink, appearing to read 'Tukoroirangi Morgan', written in a cursive style.

Tukoroirangi Morgan

15 June 2021