WAITANGI TRIBUNAL

Wai 2358

CONCERNING the Treaty of Waitangi Act 1975

AND the National Fresh Water and Geothermal Resources Inquiry

MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER

Introduction

1. On 13 March 2013, the Tribunal directed parties to provide any final submissions about the issue questions for Stage Two of this inquiry, and also to advise the Tribunal as to the research and evidence that they intended to prepare for Stage Two (Wai 2358, #2.5.36).

2. On 5 April 2013, the Crown, claimants, and interested parties filed submissions in response to the Tribunal's direction. We also received two later submissions from Ms Annette Sykes and from Ms Kathy Ertel, representing a number of interested parties. Ms Ertel sought leave to file submissions at midday today, and that leave was granted.

3. In their submissions to the Tribunal, the Crown and the Wai 2358 claimants have proposed a new way forward for this inquiry, involving discussions to narrow the issues and, if possible, to reach agreed positions on most of the Stage Two issues.

The parties' submissions

4. In the claimants' submission (Wai 2358, #3.1.191), concessions made by the Crown during the Supreme Court proceedings were such that 'the issues that need to be determined at Stage Two can be significantly narrowed. In particular, it is possible that an agreed view may be able to be formed between the Crown and NZMC and the co-claimants on much if not all of the substance of issues (e)-(h)' As a result, in the claimants' submission, the Tribunal's inquiry might possibly be restricted to the making of recommendations under issue (i), if the Crown and claimants can reach an agreed position as to Treaty breach. The claimants therefore requested an opportunity to 'further discuss this issue with the Crown and hope that those discussions will significantly narrow the issues.' Claimant counsel advised that informal discussions have already taken place. The claimants intend to meet with the Crown towards the end of April and hope to then file a joint memorandum setting out the results.

5. Crown counsel supported the proposal that the Crown and claimants confer further on a 'cooperative approach to the inquiry' (Wai 2358, #3.1.188). They suggested that the Tribunal schedule a short teleconference so as to 'enable the parties an opportunity to develop a joint approach to the issues and hearing for the Tribunal's final consideration'.

6. The interested parties, of course, were not aware of this development when they made their submissions on 5 April 2013. For the most part, the interested parties either accepted or made no submissions about the proposed issue questions for Stage Two. Ms Ertel, however, has suggested that the issue questions may need some amendment, to reflect Stage 1 findings and to broaden the scope of issue question (f) (see Wai 2358, #3.1.201). The interested parties also mainly reserved their position on the filing of evidence, awaiting the finalisation of the Stage Two issues and (in some cases) the evidence yet to be filed by other parties. Some interested parties outlined the evidence that they intend to call in Stage Two. Issues were also raised about the status of interested parties, and whether some groups should now be considered claimants rather than interested parties for the next stage of this inquiry.[1]

Directions

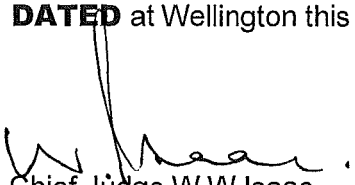
7. The Tribunal welcomes the proposal for the Crown and claimants to confer and reach agreed positions on Stage Two issues. The Crown and claimants are directed to file a joint memorandum, updating the Tribunal and other parties as to progress and results, no later than **midday, Friday 24 May 2013**.

8. After receipt of this memorandum, the Tribunal will convene a judicial conference to consider the progress that has been made, and to hear submissions from all parties as to the future scope and direction of this inquiry.

9. Any other outstanding issues, such as the requests of some interested parties for full party status, would also be considered at that conference.

The Registrar is directed to send a copy of this memorandum-directions to counsel for the claimants, Crown counsel and all those on the distribution list for Wai 2358, the National Fresh Water and Geothermal Resources Inquiry.

DATED at Wellington this 12th day of April 2013



Chief Judge W W Isaac
Presiding Officer
WAITANGI TRIBUNAL

[1] See Appendix 1 for a list of the submissions

Appendix 1 to Wai 2358, # 2.5.37

ROI	On behalf of	Counsel
3.1.184	Contact Energy	D Randal
3.1.185	Tauhara North No.2A, 2B and 2C Blocks, the Tauhara North No. 2 Trust	D Stone
3.1.186	TrustPower Ltd	L Burkhardt
3.1.187	Ngāti Tahu Tribal Lands Trust	C Bidois
3.1.188	Crown	V Hardy and J Gough
3.1.189	Marama Waddell Wai 568, 824, 974, 1313, 2365	
3.1.190	Harry Kereopa and Evelyn Kereopa on behalf of Te Ihingarangi, a hapū of Ngāti Maniapoto (Wai 762); Marama Waddell on behalf of herself, her whānau and her hapū who are member of Te Whiu, Te Uri Taniwha and Ngā Uri o Wiremu rāua ko Maunga Tai (Wai 824); Morehu McDonald, on behalf of Ngāti Hinerangi and the Ngāti Hinerangi Trust Board (Wai 1226); Te Enga Harris on behalf of Wiremu Hemi Harris and Meri Otene whānau and on behalf of Ngāti Rangi, Ngāti Here, Ngāti Tupoto, Ngāti Hohaitoko, Ngāti Kopuru, Te Rarawa and Ngāti Uenuku (Wai 1531); Rueben Taipari Mare Porter on behalf of himself, his whānau and members of Kaitangata, Ngā Tahawai and Whānau Pani hapū of Northland (Wai 1968); Piriwhariki Tahapeehi on behalf of Ngāti Mahanga, Ngāti Tamaoho and Ngāti Apakura (Wai1992); The combined claim of Chappy Harrison on behalf of Harihona whānau and Ngāti Tara, and Robert Gable on behalf of the descendants of Ngāti Tara, a hapū of Ngāti Kahu (Wai 2000 incl. Wai 1886); Mona Thompson and Ron Wi Repa on behalf of themselves, Ngāti Rakai, Ngāti Waimauku, Ngāti Waikorara, Ngāti Mihi, Ngāti Wairoa, and Ngā Uri o Pehira Keepa and Ngā Uri o Wi Repa (Wai 1962); Phillip Hiroki Ripia for and on behalf of Hohepa Joseph Ripia and Robert Reginald Ripia Eagle, children of Erana Pera Manene Ripia (new Powhiro) and Manu Frederick Ripia (Wai 973); Maggie Ryland, for and on behalf of Te Whānau a Te Aotawarirangi, of Tokomaru Bay (Wai 1089); and	D Naden

ROI	On behalf of	Counsel
	Noeline Henare, for and on behalf of Ngāti Pahere, a hapū of Ngāti Maniapoto (Wai 1480).	
3.1.191	New Zealand Māori Council and the co-claimants	F Geiringer
3.1.192	Vernon Winitana and others on behalf of Panekiri Tribal Trust Board, Ngāti Ruapani, Ruapani Lands claim (Wai 144); Anaru Paine, Irene Williams, Sid Paine on behalf of Ngāi Tūhoe Pōtiki, Tumatawhero – Waikaremoana claim (Wai 795); Dr Rangimarie Turuki Rose Pere or Kuini Te Awa Beattie on behalf of Ngāti Rongo, Ngāti Hineaanga, Ngāti Hinekura, Te Whānau Pani and Ruapani-Tūhoe, Pere Kaitiakitanga claim (Wai 1013); Nicky Kirikiri and another on behalf of the owners and beneficiaries of the Te Heiotakoka 2B To Kopani 36 and 37 Trust claim (Wai 1033); Charles Aramoana and Sandra Jeanette Kari Kari Aramoana for themselves and Upokorehe hapū, Ngāti Raumoa, Roimata Marae Trust and Upokorehe, Upokorehe claim (Wai 1092); Hinehou Polly Leef, Mekita Te Whenua, Richard Wikotu, Rocky Ihe and Kahukore Baker for the Whakatohea hapū, Rongopopoia ki Upokorehe, Rongopopoia Hapū claim (Wai 1787), Ani Taniwha for Ngāti Hine, Ngāti Kawau, Ngāti Kawhiti and Ngā Uri o Te Pona etc claim (Wai 1666); Christine Wallis and others, Wallis whānau claim (Wai 1908); Julie Tamaia Taniwha for Ngā Uri o Te Pona, Ngā Uri o Te Pona claim (Wai 2149); Justyne Te Tana on behalf of herself, Pera Tuporo, Henare Tuporo 1, Henare Tuporo 2, Wiremu Tuporo, Winiata Tuporo, Pera Tuporo Taniwha Taipari, Talia Taniwha Taipari, Cogan Taniwha Tuporo Parslow, Anahere Tuporo Taniwha, Zavier Tuporo Taniwha Te Tana,Taniwha and others claim (Wai 2010), Te Rarua (kuio) McClutchie – Morrell for Te Rarua (Kui) McClutchie-Morrell, descendants of Uepohatu and Ngāti Hau hapū whānau, East Coast Airing of Grievances claim (Wai 2340); Rapata Kaa for the hapū Ruawaipu, Ruawaipu Active Protection claim (Wai 1272); Vivienne Taueki for herself, the descendants of Taueki and Muaūpoko ki Horowhenua, Muaūpoko (the descendants of Taueki) claim (Wai 1629); Ron Taueki and another for Muaūpoko. Horowhenua Block Claim (Wai 237); Te Rūnanga o Ngāti Manawa; Sharon Barcello-Gemmell, Harvey Ruru and Jane duFeu on behalf of Te Ati Awa on behalf of Te Ati Awa Te Tau Ihu Water Rights Claim (Wai 1454); Merehora and Peter Pokai Taurua on behalf of Ngāti Rahiri, Ngāti Kawa, Ngāti Manu, Ngāti Rangi, Ngāti Rehia, Ngāti Kuri, Ngāti Manu, Uneoneone me Parawhau hapū ki Ngā Puhi iwi (Wai 2244)	K Ertel
3.1.193	Te Rūnanga o Ngāi Tahu	J Inns
3.1.194	Waikato-Tainui Te Kauhanganui Incorporated	D Flavell

ROI	On behalf of	Counsel
3.1.195	Sir Tumu te Heuheu (Ngāti Tuwharetoa), Tom Roa (Waikato-Tainui), Mark Solomon (Ngāi Tahu), Toby Curtis (Te Arawa) and Brendon Puketapu (Whanganui), Selwyn Parata (Ngāti Porou), Vanessa Eparaima (Raukawa), Ngahiwi Tomoana (Ngāti Kahungungu) in their collective capacity as the Freshwater Iwi Leaders Group	N Milner
3.1.196	Frederick C Allen Wai 740 Te Atiawa	
3.1.197	Ngāti Kahungungu Iwi Incorporated	M Chen
3.1.198	The Raukawa Settlement Trust	B Vertongen
3.1.199	Haami Piripi, on behalf of himself and the Iwi of Te Rarawa (Wai 1699 and Wai 1701); Mr David Potter and Mr Andre Patterson (Wai 996); Cletus Maanu Paul and Charles Muriwai White as members of Ngai Moewhare, a marae located in the rohe of Ngāti Manawa and a claimant in Te Ika Whenua inquiry (Wai 212); Frederick Charles Allen on behalf of himself and members of Te Atiawa Iwi (Wai 740); Michelle Marino and Errol Churton for and on behalf of themselves and the descendants of Tāringa Kurī (Te Kaeaea) (Wai 377).	J Mason
3.1.200	Arapeta Hamilton on behalf of Ngāti Manu, Te Uri Karaka, Te Uri o Raewaera and Ngāpuhi ki Taumarere tribes Wai 354, currently engaged in the Waitangi Tribunal's Northland Inquiry District Wai 1040; Muiora Barry, Barbara Marsh, Lenny Turner and Tohe Raupatu (deceased), Wai 691 and 788, who are currently engaged in the Waitangi Tribunal's Te Rohe Pōtae Inquiry District Wai 898; and the Ngāti Hinemanu me Ngāti Paki Heritage Trust Wai 662, Wai 1835, Wai 1868, who are currently engaged in the Waitangi Tribunal's Taihape Inquiry District Wai 2180.	A Sykes
3.1.201	Vernon Winitana and others on behalf of Panekiri Tribal Trust Board, Ngāti Ruapani, Ruapani Lands claim (Wai 144); Anaru Paine, Irene Williams, Sid Paine on behalf of Ngāi Tūhoe Pōtiki, Tumatawhero – Waikaremoana claim (Wai 795); Dr Rangimarie Turuki Rose Pere or Kuini Te Awa Beattie on behalf of Ngāti Rongo, Ngāti Hineaanga, Ngāti Hinekura, Te Whānau Pani and Ruapani-Tūhoe, Pere Kaitiakitanga claim (Wai 1013); Nicky Kirikiri and another on behalf of the owners and beneficiaries of the Te Heiotakoka 2B To Kopani 36 and 37 Trust claim (Wai 1033); Charles Aramoana and Sandra Jeanette Kari Kari Aramoana for themselves and Upokorehe hapū, Ngāti Raumoa, Roimata Marae Trust and Upokorehe, Upokorehe claim (Wai 1092); Hinehou Polly Leef, Mekita Te Whenua, Richard Wikotu, Rocky Ihe and Kahukore Baker for the	K Ertel

ROI	On behalf of	Counsel
	Whakatohea hapū, Rongopopoia ki Upokorehe, Rongopopoia Hapū claim (Wai 1787), Ani Taniwha for Ngāti Hine, Ngāti Kawau, Ngāti Kawhiti and Ngā Uri o Te Pona etc claim (Wai 1666); Christine Wallis and others, Wallis whānau claim (Wai 1908); Julie Tamaia Taniwha for Ngā Uri o Te Pona, Ngā Uri o Te Pona claim (Wai 2149); Justyne Te Tana on behalf of herself, Pera Tuporo, Henare Tuporo 1, Henare Tuporo 2, Wiremu Tuporo, Winiata Tuporo, Pera Tuporo Taniwha Taipari, Talia Taniwha Taipari, Cogan Taniwha Tuporo Parslow, Anahere Tuporo Taniwha, Zavier Tuporo Taniwha Te Tana,Taniwha and others claim (Wai 2010), Te Rarua (kuio) McClutchie – Morrell for Te Rarua (Kui) McClutchie-Morrell, descendants of Uepohatu and Ngāti Hau hapū whānau, East Coast Airing of Grievances claim (Wai 2340); Rapata Kaa for the hapū Ruawaipu, Ruawaipu Active Protection claim (Wai 1272); Vivienne Taueki for herself, the descendants of Taueki and Muaūpoko ki Horowhenua, Muaūpoko (the descendants of Taueki) claim (Wai 1629); Ron Taueki and another for Muaūpoko. Horowhenua Block Claim (Wai 237); Te Rūnanga o Ngāti Manawa; Sharon Barcello-Gemmell, Harvey Ruru and Jane duFeu on behalf of Te Ati Awa on behalf of Te Ati Awa Te Tau Ihu Water Rights Claim (Wai 1454); Merehora and Peter Pokai Taurua on behalf of Ngāti Rahiri, Ngāti Kawa, Ngāti Manu, Ngāti Rangi, Ngāti Rehia, Ngāti Kuri, Ngāti Manu, Uneoneone me Parawhau hapū ki Ngā Puhi iwi (Wai 2244)	