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BEFORE THE WAITANGI TRIBUNAL

WAI 2357

WAI 2358

WAI 691

WAI 788

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

The claim to Māori proprietary interests and rights to access and use water and geothermal resources in Aotearoa

**STATEMENT OF EVIDENCE OF BARBARA MARSH IN SUPPORT OF
APPLICATION FOR URGENCY**

Dated the 18th day of May 2012

RECEIVED

Waitangi Tribunal

18 May 2012

Ministry of Justice
WELLINGTON

AURERE LAW

Barristers and Solicitors

PO Box 1693

DX JP30025

ROTORUA

Ph: 07 348 0034

Fax: 07 346 2933

Solicitors Acting: Annette Sykes and Terena Wara

Ko Aorangi te maunga
Ko Mokau te awa
Ko Te Paemate te marae
Ko Tainui te waka
Ko Paemate te Rangatira
Ko Taite raua ko Iwa oku matua
Ko Barbara Ngawai Taite Marsh nee Ratima ahau

Introduction

1. My name is Barbara Marsh and I am a claimant in two claims relating to Mokau. The first is the Mokau Mohakotino which focusses solely on the Mokau river and its tributaries. The other is the Wai 788 claim, which was established to signal our hapu interests within our rohe which is being heard as part of the Te Rohe Potae Inquiry of the Waitangi Tribunal.
2. I am the youngest of the seven children of Iwa and Taite Ratima. Our turangawaewae is at Aria, where we have lived from generation to generation as of right, belonging to the land through kinship and whakapapa. From the day I was born I inherited whakapapa that would connect me to all of our ancestral lands and waterways. Since time immemorial our whanau have controlled and managed our natural environment in accordance with our tikanga and the exercise of kaitiakitanga and manaakitanga.
3. My korero will draw focus on the impact of land loss, as it pertains to our waterways, and I want to emphasize that our land and waterways are so connected that one cannot be seen without the other. At a fundamental level, the loss of our land has lead to our inability to care for our waterways. The loss of our waterways and the diversion of those traditional pathways has seen the desecration of Papa.
4. This case study will highlight the failure of the crown to recognise those relationships and to highlight how the kaitiakitanga exercised by our tupuna for hundreds of years, and the spiritual bonds that connect whenua and wai, have in some part been replaced by "councils" and "resource management regimes" who do not care in the same way we do and which have not taken

any steps to ensure our relationships with our waterways are protected or compensated for where those rights have been extinguished and transformed without our consent.

Rivers and Streams within Mokau ki Runga

5. I have listed the waterways of significance to our hapu embraced by our claim herein. As you can see they include some significant rivers and a number of streams and inlets:

Rivers

- i. Awakino
- ii. Huhatahi
- iii. Mokau
- iv. Mokauiti
- v. Mangakara
- vi. Mangapehi
- vii. Manganui
- viii. Mangaotaki
- ix. Mohakatino
- x. Ohura
- xi. Tongaporutu
- xii. Waiaraia
- xiii. Waitaanga
- xiv. Waitewhena

Streams

- xv. Mangakowhai
- xvi. Mapara
- xvii. Mangawhata
- xviii. Mangatoa
- xix. Mangaorongo
- xx. Mangapapa
- xxi. Mangaohae
- xxii. Mangaawakino
- xxiii. Mangakatote
- xxiv. Mangatoro
- xxv. Moki

- xxvi. Mangahotiwai
- xxvii. Mangaone
- xxviii. Kumete
- xxix. Huiotoke
- xxx. Piopio
- xxxi. Panirau
- xxxii. Rangikohua
- xxxiii. Rapanui
- xxxiv. Totoro
- xxxv. Turipoto
- xxxvi. Tikoputa
- xxxvii. Turangaapo
- xxxviii. Waitaanga
- xxxix. Waipapa

Waterfalls

- xl. Te Rere Pakupaku
- xli. Aniwaniwa (Te Waro)

6. I attach herewith as **Appendix One**¹ a series of Maps which show the Mokau River as plotted by early surveyors which highlights the life of the Awa in the mid 1800's.
7. We are traditionally spiritually and ancestrally, linked to the Awa, Whenua and the Marae within our rohe. I attach herewith as **Appendix Two**² a series of land maps in this early period that show how the rivers weave through our traditional territories providing sustenance to the communities that had kainga adjoining it. Historically the whanau hapu within the rohe of Mokau ki Runga see the Mokau and Awakino Rivers and their tributaries as part of the rich tapestry of our traditional heritage that holds Mana (Prestige and Power) and gives effect to our tikanga (Maori Law).

¹ Appendix One: Maps Entitled: Awakino & Mokau Native Reserves 1; Awakino & Mokau Native Reserves 4; Awakino & Mokau Native Reserves 22; Awakino & Mokau Native Reserves 28; Mokau River 1845 Image 001; Mokau River 1845 Image 006; Mokau River 1845 Image 009; Mokau River 1845 Image 014; Mokau River 1858 Image 003; Mokau River 1858 Image 004; Mokau River 1858 Image 009; Mokau River 1858 Image 014;

² Appendix Two: Maps Entitled Mokau Block; Awakino & Mokau Native Reserves 16; SA – Waiaraia and schedule of owners therein

8. They have been used in a number of contexts to maintain our customary rituals but principally, they have also have been the main food basket of our people.
9. These waterways have carried our people on their journeys; it was the only natural access through the central Region within our rohe. It was later acknowledged as a national highway.
10. The Awa represents the mana and mauri (life force) of the hapu.
11. Over many generations, the Awa sustained our people physically and spiritually. It brings us peace in times of stress, relief from illness and pain, and cleanses and purifies our bodies and souls from the many problems that surround us.
13. We the hapu of Mokau ki Runga are the ahi kaa, tangatawhenua, and manawhakahaere (who possess absolute authority and rights of control by virtue of Te Tiriti o Waitangi guaranteeing tino rangatiratanga) within our rohe, and we have always fought against the authorities applications to make changes (realignments of rivers) and against pollution of our awa.
14. We believe that all rights to the awa still belong to whanau hapu along the river. We are the kaitiaki o nga Awa in Mokau ki Runga and as Tangata Whenua we have never conceded our rights to the Crown or any local government department.
16. Certainly neither Waitomo District Council nor Environmental Waikato can point to title or ownership of the Mokau and Awakino rivers or its waterways.
17. We built our kainga along these rivers where our food was plentiful our whenua, puna, and pa tuna are still there today, whanau still retain their pa tuna along the Mokau Mokauiti Rivers it has been handed down through the generations, each patuna is named.
18. Urupa are also along the river side where kainga were built and as **Appendix Three**³ to my statement shows there are structures that have been erected over our traditional areas with sites of spiritual and cultural significance immediately located beneath or beside those structures

³ Appendix Three: Map entitled "Mouth of the Mokau River"

Mokau

19. Compared with other rivers in the Waikato region, Mokau and Awakino Rivers have small catchments. The upper reaches of Awakino River and the middle reaches of Mokau River flow through original and regenerating native forest. The flatter lower reaches of both rivers can flood and settlement has needed to accommodate this. I attach as **Appendix Four** a copy of the River Catchments within the Te Rohe Potae Inquiry District of the Waitangi Tribunal to assist in locating these waterways for the purposes of this hearing.⁴
20. Over the years much of the lower reaches of both rivers have been cleared of the dense native rainforest that occupied the catchments. In the late nineteenth and early twentieth centuries, until it became uneconomic, logs and coal were transported down the Mokau River to the small port settlement of Mokau on the northern bank of the river's mouth. The port of Mokau was also used as a base to service farm settlers along the river, with mail and supplies transported by boat.
21. From its mouth, Mokau River is navigable for small vessels for 37 km. A ferry service transported travellers across the Mokau from 1889 to 1927 when it was replaced by a road bridge. The port is now largely obsolete.⁵
22. Since 1925, hydro-electricity has been generated on Mokau River at Wairere Falls and later on its tributary, Mokauiti River. I attach herewith as **Appendix Five**⁶ a copy of the Maori land blocks that where the dam affects.
23. A recent proposal to construct another hydro-electric dam on the main channel of Mokau River was recently argued before the Environment Court.⁷ I attach herewith as **Appendix Six** an article prepared by Green Party activists after visiting with us that shows why we were vigorous in our opposition for these proposals.⁸

⁴ Appendix Four : Map entitled Te Rohe Potae Inquiry District with River Catchments

⁵ <http://www.teara.govt.nz/en/taranaki-region/14/mokau>

http://en.wikipedia.org/wiki/Mokau_River

<http://www.britannica.com/EBchecked/topic/387826/Mokau-River>

<http://www.kcenergy.co.nz/generation7.html>

⁶ Appendix Five : Map entitled "Wairere Dam and Aoturangi 3A, 3C1, and 3C2 Blocks

⁷ See <http://www.teara.govt.nz/en/1966/mokau-river/1>

<http://www.nzfishing.com/FishingWaters/AucklandWaikato/AWFishingWaters/AWAwakino.htm>

⁸ Appendix Six see <http://www.greens.org.nz/node/25865>

24. King Country Energy had previously proposed building a 44 metre high dam on the Mokau some 4.3 kilometres downstream from the existing Wairere Falls dam. The proposal was turned down by Environment Waikato and Waitomo District Council in 2006. King Country Energy subsequently appealed those decisions to the Environment Court and we have been vigorous in our opposition to these developments.
25. The middle to upper reaches of Mokau River have a series of rapids that now attract kayakers. Both Mokau and Awakino rivers attract trout fishers along their length and the lower reaches of both rivers are significant recreational whitebait fisheries.
26. No major river and catchment services have yet been undertaken on either Mokau or Awakino Rivers. Both rivers have had some minor soil erosion control and soil conservation activities carried out including in response to erosion of the road along the lower reaches of Awakino River.

Mokauiti Power Scheme

27. The Mokauiti Power station is located on the Mokauiti River near Aria and is owned and operated by King Country Energy Limited. The station provides electricity to the King Country region. I attach herewith as **Appendix Seven** a copy of a map which shows the significance of this waterway to the Village of Aria which is my papakainga.⁹
28. The Mokauiti station was commissioned in 1963. The scheme involved the damming of the Mokauiti river approximately 1km upstream, forming a storage lake. The scheme has a downstream fish passage for eels and other native fish as well as an upstream passage for elver, shrimps and other native species.

Generation Plant

29. The Mokauiti Scheme consists of a 10m high, earth filled dam structure which forms a lake. A spillway structure with a flap gate is situated on the right bank. The gate is 1.2m high and 3.4m long. This gate can discharge up to 120 cubic metres per second.

⁹ Appendix Seven; Map entitled Suburban Sections Village of Aria; Block X Totoro S. Dist;

30. A 120m canal diverts water from the storage lake to the head pond above the powerhouse. Water flows 5 cubic metres per second from the head pond through a concrete tunnel (1.8m diameter x 245.5m long), then a concrete penstock (1.8m diameter x 193m long) and, finally, a steel penstock (1.7m diameter x 86m long) down to the powerhouse 42.7m below. This flow drives two generators before being discharged back into the river.
31. The Mokauiti Station Powerhouse has two Horizontal Francis turbines (1.295MW and 0.63MW generators). The total rating is 1.925MW and the station mean output is 7GWh per year.

Concerns with respect to the development of our Awa by Crown or those delegated by legislation

32. Over the years since the early period of colonisation there have been a number of issues that have required our intervention as hapu leaders for and on behalf of our peoples. I have summarised these below to give the Tribunal a sense of our concern how these developments by the Crown and its agents or those delegated with statutory functions have gone about effecting change with little if any regard for us.

a) Omoao Stream – Pahaoa Pa site

Abstraction of water by the Waitomo District Council for the Mokau water supply has interfered with our traditional sites. One such significant site is the Pahaoa Pa.

b) Land fills

There have been a number of land fills with consequences to our Awa

- i) Te Mapara leaches into the Mokau river
- ii) Waiotahi Dump Site at Aria situated over a bush stream and leaches into the Mokauiti River
- iii) Mokau Dump site leaches into Mokau river
- iv) Aria Dump site Township leaches into a local tributary

c) Mokauiti Dam and Wairere Dam

These commercial developments have had a number of significant effects which were highlighted in our evidence opposing further development by the King Country Energy Company Ltd including:

- i) Flooding and loss of Customary access to pa tuna with subsequent loss of at least 5 pa tuna with consequent mass destruction of eel habitat
- ii) Impeding the natural access of all native fish to their kainga
- iii) Loss of the use of ancestral lands at times of flooding

d) Failure to Compensate or remediate

- i) No compensation for land acquisition or consideration for personal shares in the company
- ii) Very little recognition of the fact of flooding or efforts to relieve it
- iii) No survey costs to owners where there has been a realignment

e) Realignment of rivers

- i) As the mapping over the past 100 years shows there has been a significant realignment of the natural flow of the rivers which has caused the loss of connection to ancestral lands and grave land severance with no compensation for those responsible for the realignment.
- ii) Significantly when these issues have been raised and ways look at to alleviate the loss for locals the Waitomo District Council and the Crown have made no adjustment to rates to reflect the loss and in fact the extra cost of access to water has in the user pays environment been a further factor in dislocating our families from our ancestral lands.

f) Petroleum and gas

- i) The developments in power generation over our lands have seen a significant number of Pollution effects both on the top soil and in the underground waterways . I am really concerned about the process of fracking because of the effects on our water and our underground aquifers.
- ii) A number of Gas companies have been involved in obtaining resource consents to effect pipelines over our lands including Kea Petroleum and Gas; Kapuni Gas; Maui Gas ; and Vector. I am aware many of these companies are subsidiaries of or have relationships with large multinational oil companies who seem to have more benefits and tax incentives flowing their way from the government than are afforded to local communities and hapu owners whose rights are constantly been interfered with.

g) Aerial distribution of 1080

- i) We have been avid objectors to this form of pest eradication for it pollutes all waterways wetlands, and has a major impact on ground foraging birds as well as native frogs, worms and other insects.
- ii) The impacts upon all our native fish was also documented by us in evidence to various forums and we have been vigilant in voicing our opposition in our relationships with the Department of Conservation; and local and regional authorities who have supported these practices

h) Piopio Sewerage Scheme

- i) This effluent scheme has contributed to significant pollution of the Mokau river streams wetlands and coastal estuary at Mokau and has been something we have objected as being in violation of our tapu. Like a number of cases argued in the Waitangi Tribunal we do not support water waste discharge as an activity consistent with our tikanga.

i) **M.O.F.Commercial Fishing**

- i) The depletion of tuna through commercial fishing and allocation of tuna licenses by NIWA and the Ministry of Fisheries has also exacerbated our traditional rights to water and affected significantly our ways of life. We simply have no food to harvest anymore. Tuna has always been a special part of our diet but we have had to stop eating to protect our fish life and enhance the life cycle of Tuna.

Conclusion

33. Our participation in these hearings is part of our responsibility as kaitiaki of our world, the world that we have occupied in Mokau ki Runga since time immemorial. My earliest memories at the feet of our kuia was education from them to protect these natural relationships as they form a physical manifestation of our deeper spiritual connection to Papatuanuku. I was to do so with every ounce of my being. We have walked all of these lands since that time and have watched the march of so called progress take its toll on our most precious taonga. We have an intimate understanding of what that has meant for us. Our people are living elsewhere, there is no jobs yet our resources cross subsidise the lives of those in town who have work and who live far removed from the consequences of sewage pollution and gas and electricity generation.
34. The present proposals by the Crown to ready for sale significant assets that generate power electricity and other commercial outcomes is part of this long denial of our rangatiratanga and process of transformation as part the process of colonisation which I have outlined has occurred. We urge this Tribunal to seek this process to pause until there is adequate and ongoing provision for tangata whenua Whanau and Hapu in these matters. To do otherwise is to deny the guarantees that Te Tiriti make for Maori in this country.
34. We are not a meanspirited people but we seek justice. We have waited for nearly 30 years since the inception of the Tribunal to get our hearings underway and I feel now that the wait has been in vain because if these proposals go ahead there would have been a preemptive strike by the Crown

and the essential issue of ownership, guardianship and responsibility to ensure the maintenance of our taonga and our waterways for future generations will be overtaken by a process of privatisation and commercialisation that ignores us and tries to assert us as irrelevant.

35. The Tribunal must intervene to ensure our rights are respected and given recognition now.

Dated at Te Kuiti this 18th day of May 2012

A large rectangular grey box used to redact the signature of Barbara Marsh.

Barbara Marsh