

IN THE WAITANGI TRIBUNAL  
OF NEW ZEALAND

WAI 2180

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of the Taihape Rangitīkei ki Rangipō District Inquiry (Wai 2180)

AND

IN THE MATTER of a claim by Hare Arapere and Puruhe Smith for and on behalf of themselves and the hapū of Ngāti Pīkiahū (Wai 1872)



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**CLOSING SUBMISSIONS ON BEHALF OF NGĀTI PĪKIAHU (WAI 1872)**

**Dated 28 October 2020**

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*Tahuri mai o pane ki te wai o Rangitikei  
Mowai rokiroki, ko te huna i te moa, eee-ii  
Turn your eyes to the waters of Rangitikei  
Although it is calm, like the moa all is gone, vanished<sup>1</sup>*

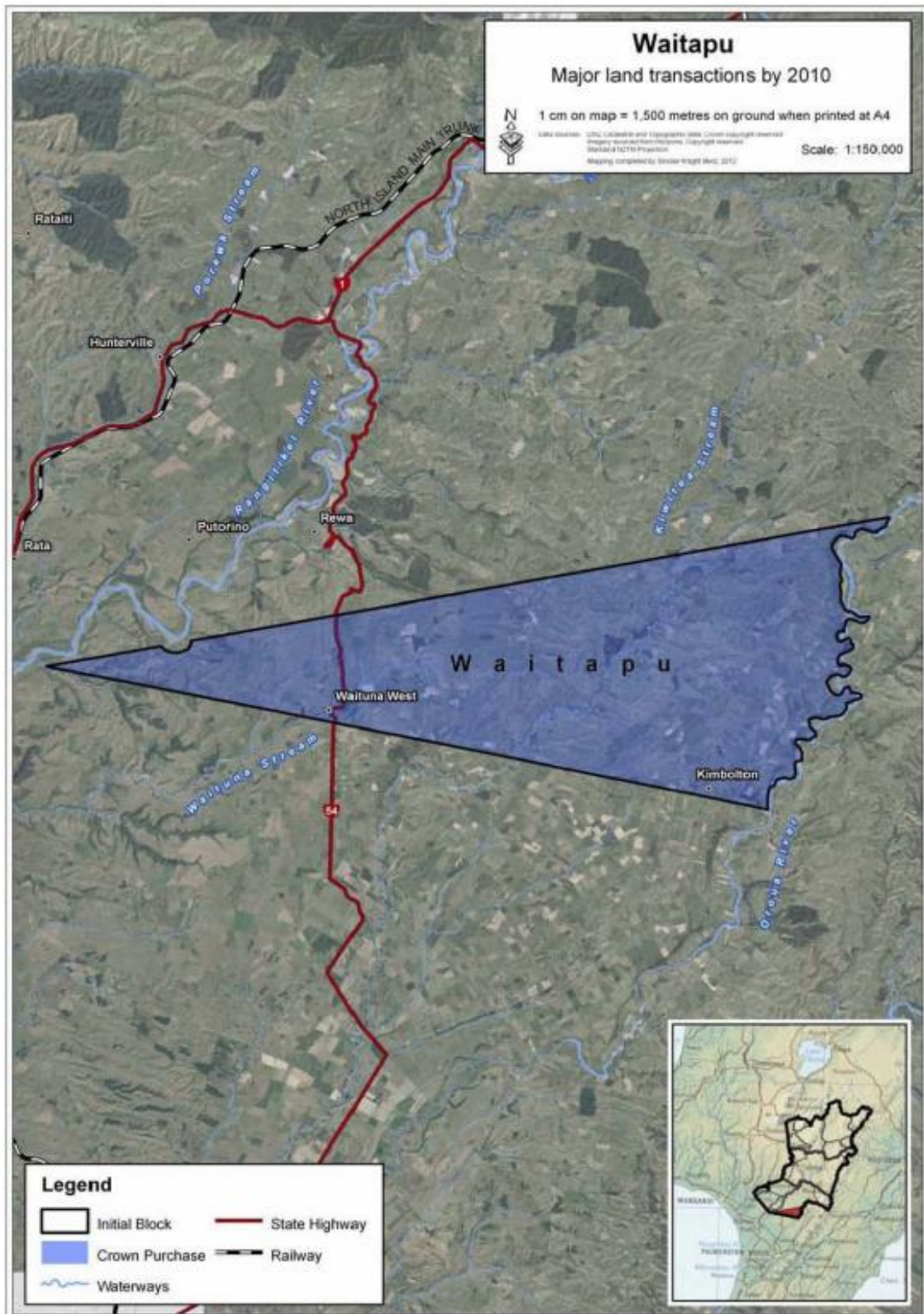
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<sup>1</sup> *Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872* dated, 17 May 2017, (Wai 2180, #F6) at para 66.

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Map 1: Waitapu Block and the Rangitikei River<sup>2</sup>



## **MAY IT PLEASE THE TRIBUNAL**

### **1.0 INTRODUCTION**

- 1.1 These closing submissions are prepared for Hare Reweti Arapere and Puruhe Bruce Smith on behalf of themselves and Ngāti Pīkiahū ki Poupatatē.
- 1.2 These closing submissions address the following issues:
  - (b) The Rangitīkei River and its tributaries; and
  - (a) The Waitapu Block.
- 1.3 In particular, this claim adds to the chorus of claims by other tangata whenua who have lost land and resources in this Inquiry District and provides a specific overview of the results of those takings at a whānau and hapū level.
- 1.4 Finally, the relief/recommendations sought on behalf of the claimants will be discussed.
- 1.5 Given the nature of the closing submissions process for this inquiry, it has not been necessary to make detailed submissions on all issues, as these are covered adequately by the generic submissions. These claimant closing submissions, however, attempt to illuminate specific issues relevant to this claim. We adopt the Generic Closing submissions in so far as they relate to the Wai 1872 claim.
- 1.6 In particular, the following Generic Closing Submissions are relevant to this claim:
  - (a) Crown Purchasing;
  - (b) Environmental Issues; and
  - (c) Waterways, lakes and aquifers and non-commercial fisheries.

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<sup>2</sup> Hearn, TJ *The Sub-district Block Study – Southern Aspect* (Wai 2180, #A7) 1 November 2012, at 244.

## 2.0 RANGITĪKEI RIVER AND ITS TRIBUTARIES

### Introduction

2.1 The purpose of filing this claim is to address the grievances suffered by Ngāti Pīkiahū and their tūpuna, at the hands of the Crown. The claimants submit that the Crown has failed to recognise the importance of the Rangitikei awa and its tributaries to Ngāti Pīkiahū. In doing so it has failed to uphold and acknowledge the mana and tino rangatiratanga that Ngāti Pīkiahū has within this area and over the Rangitikei River.

2.2 This issue relates to issue E of the Tribunal Statement of Issues which asks:<sup>3</sup>

*6. In what ways has the Crown sought to exercise its authority over the management of waterways, lakes and aquifers in the Taihape inquiry district since 1840, including the creation of local authorities and the delegation of powers and functions to such bodies?*

*7. In what ways has the Crown sought to exercise its authority over the management of waterways, lakes and aquifers in the Taihape inquiry district since 1840, including the creation of local authorities and the delegation of powers and functions to such bodies?*

...

*9. In what ways have the policies and processes of the Crown and local authorities contributed to physical changes of the waterways, lakes and aquifers of the Taihape inquiry district, including environmental degradation? For example:*

*b. Flood protection works;*

*c. Bridges;*

*d. Gravel Extraction;*

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<sup>3</sup> Wai 2180, #1.4.3 *Tribunal Statement of Issues*, 9 December 2016 at 47.

## **Management and Control of the Rangitīkei River and its tributaries**

2.3 A detailed explanation of the significance of the Rangitīkei awa is set out in:

- (a) David Alexander #A38 and #A40 Reports;
- (b) Robert Joseph and Paul Meredith #A44 Report;
- (c) The Wai 1872 Amended Statement of Claim;
- (d) Generic Closing Submissions on Crown Purchasing and Environmental Issues; and
- (e) Joint Statement of Evidence of Hare Arapere and Bruce Smith.

2.4 The claimants say that as kaitiaki of the Rangitīkei River they seek to have their rights and interests acknowledged and recognised to actively protect, engage and participate in the management of the Rangitīkei River and its tributaries.<sup>4</sup>

### **Relevant Crown Duties**

2.5 The claimants submit that the Crown has failed in its duty to:

- (a) Actively protect the claimants, their lands and taonga to the fullest extent possible;
- (b) Act reasonably and with utmost good faith towards the claimants; and
- (c) Ensure that policy and legislation is sufficient to allow Māori the ability to actively manage and make decisions relating to their lands and taonga.

### **Breach**

2.6 As above, we adopt the Generic Closing Submissions on Environmental and Waterways, lakes and aquifers and non-commercial fisheries Issues<sup>5</sup> which note:

- (a) The claimants referred to "taonga in the environment" which they said included "natural resources; indigenous flora and fauna and the ecosystems

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<sup>4</sup> Amended Statement of Claim dated 22 August 2016, (Wai 2180, #1.2.12) at [21] – [22].

<sup>5</sup> Wai 2180, #3.3.56 *Generic Closing Submissions on Environmental Issues* (14 Oct 2020) and Wai 2180, #3.3.58 *Generic Closing Submissions re waterways, lakes and aquifers and non-commercial fisheries* (20 Oct 2020).

and habitats that support them; geographic features such as rivers, lakes, maunga, and swamps; and sites such as pā and wāhi tapu;<sup>6</sup>

- (b) There is sufficient evidence for a finding that rongoā was severely affected by deforestation, simply by considering the evidence before the Native Land Court produced in the 1870s and 1880s about customary uses, and then considering the title conversion, alienation and extent of deforestation that occurred outside of the control of Taihape Māori and outside of Crown duties guaranteeing rangatiratanga over land and taonga;<sup>7</sup> and
- (c) In relation to the concept of *ad medium filium aquae*, consequently, there is evidence that Taihape Māori conceptualised the river as a tupuna in a very different way from English law notions, and that the idea of a conceptual halfway line was alien to their conceptions.<sup>8</sup>

2.7 The evidence from Dr Joseph and Mr Meredith's report on the Rangitīkei River also indicates that:

- (a) "Many Māori refer to the use of water of and of water bodies in rituals that were and are central to their spiritual life...Intrinsic to many Māori customary rituals was the use of particular wai (water) for karakia, for the sick, for protection, and for healing. Some informants explained that rivers and other waterways had many wāhi tapu including burial sites on their banks or in the waters. Special sites were used for Rongoā (healing) or to prepare the dead for burial. As a result, some places were tapu and were never used for drinking water, swimming, or for gathering food. On the other hand, other places are noa and are safe to swim, drink or take kai.<sup>9</sup>
- (b) Rangitikei River iwi and hapū continue to practice Rongoā Māori – spiritual rituals that are central to the spiritual life of the iwi and hapū. Rongoā Māori or traditional Māori medicine was a system of healing that comprised diverse practices with an emphasis on the spiritual dimension of health.

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<sup>6</sup> Wai 2180, #3.3.56 *Generic Closing Submissions on Environmental Issues* at 12.

<sup>7</sup> Wai 2180, #3.3.56 *Generic Closing Submissions on Environmental Issues* at 42.

<sup>8</sup> Wai 2180, #3.3.58 *Generic Closing Submissions re waterways, lakes and aquifers and non-commercial fisheries* at 9.

<sup>9</sup> P Meredith, R Joseph and L Gifford, *Ko Rangitīkei Te Awa: The Rangitīkei River and its Tributaries Cultural Perspectives Report* (Wai 2180, #A44) dated 20 May 2016 at 139.



Rongoā includes spiritual healing through karakia and rituals in rivers and streams, herbal remedies and physical therapies. Tohunga ahurewa were often responsible for rongoā, especially its spiritual aspects. Many of the informants discussed how the waterways were important for rituals that are central to the spiritual life of the iwi and hapū.<sup>10</sup>

- (c) The Rangitīkei River and other waterways were the main mode of transport between settlements. A Ngāti Pīkiahū/Ngāti Waewae informant noted that in times of old, the Rangitīkei and Moawhango Rivers were a type of “aqua highway” that connected them and their Ngāti Tūwharetoa relations to the north.<sup>11</sup>

2.8 As well as this, the following points arose from questioning by Counsel and the Tribunal of Dr Joseph and Mr Meredith:

- (a) A Māori legal system based on tikanga Māori applied to the river. A “traditional body of rules and values developed by Māori to govern themselves personally and collectively. People were taught from a young age what was tika (right, correct, proper, honest, just, culturally correct, or upright). This included values of Whānaungatanga, Wairuatanga, Mana, Tapu, Noa, Utu, Rangatiratanga, Manaakitanga, Aroha, Kaitiakitanga.<sup>12</sup>

2.9 Under cross-examination, David Alexander also pointed out a significant event to the Wai 1872 claimants being the 1897 flood wherein:

- (a) The 1897 flood is supremely important in my opinion because it changed the character of the river and as such, the river was not then able to be navigable by water craft or by waka. Even before then the use of the river had declined so far as waka is concerned because alternatives had become available and those alternatives were of course the railway which was progressively being extended up the Rangitīkei Valley and the roads which likewise were being extended.<sup>13</sup>

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<sup>10</sup> P Meredith, R Joseph and L Gifford, *Ko Rangitīkei Te Awa: The Rangitīkei River and its Tributaries Cultural Perspectives Report* (Wai 2180, #A44) dated 20 May 2016 at 139.

<sup>11</sup> P Meredith, R Joseph and L Gifford, *Ko Rangitīkei Te Awa: The Rangitīkei River and its Tributaries Cultural Perspectives Report* (Wai 2180, #A44) dated 20 May 2016 at 78.

<sup>12</sup> Wai 2180, #4.1.9, Hearing Week 2 transcript at 107-108.

<sup>13</sup> Wai 2180, #4.1.9, Hearing Week 2 transcript at 215.

- (b) A large number of waka in effect were left stranded on various stretches of the river. They were still used to ferry across the river and we have got photos ... which shows the waka at Onepuehu where the bridge had collapsed. The bridge which people had relied on to cross the river was no longer possible. They used waka instead to go across the river.<sup>14</sup>

2.10 Further to this, the claimants gave evidence that:

- (a) One of their key concerns in relation to the Rangitīkei River and its tributaries and mainly with how the Crown has failed to recognise our mana and rangatiratanga over the Rangitīkei River;<sup>15</sup>
- (b) Our rights and interests in our tūpuna awa come through our continued use and occupation, shared with other hapū and iwi. As kaitiaki, we have a spiritual relationship with the awa and an obligation to protect the mauri of the awa. We believe that Crown actions have had a negative impact on many aspects of our awa today – from changing the course of the awa to activities such as metal extraction, effects of bush felling, effluent disposal and water extraction for irrigation use affecting the overall quality of the water;<sup>16</sup> and
- (c) [T]he awa was and continues to be used by us for a number of spiritual and ceremonial practices such as iriiri, tohi, rāhui, karakia whakawātea, whakanoa and hei oranga mo te tinana me te wairua.<sup>17</sup>

2.11 Importantly, the claimants also stated that the Crown’s assertion of “ownership” and control of the Rangitīkei River is contrary to our tikanga. The 1903 Coal-mines Act, which gave the Crown access to ownership of the River from Kawhatau to Waitapu, has never been accepted by us as iwi and hapū. It is unlikely that our

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<sup>14</sup> Wai 2180, #4.1.9, Hearing Week 2 transcript at 216.

<sup>15</sup> *Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872* dated 17 May 2017 (Wai 2180, #F6) at 5.

<sup>16</sup> *Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872* dated 17 May 2017 (Wai 2180, #F6) at 6.

<sup>17</sup> *Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872* dated 17 May 2017 (Wai 2180, #F6) at 6.

elders even knew about it or gave it any thought as the concept of ownership of the awa is not part of our tikanga.<sup>18</sup>

- 2.12 In our submission, the legislation did not require any consultation or negotiation with Māori landowners. In this situation, despite their clear Treaty duty to consult, the Crown instead chose to proceed with a process which resulted in the compulsory acquisition of the land.
- 2.13 Furthermore, we submit that the duty of good faith meant that the Crown was required to consult with the claimants prior to compulsorily acquiring the land. On this occasion no consultation was undertaken with the claimants, which was a failure by the Crown to consult and protect Māori interests. Instead, we submit, the evidence shows that Māori land was specifically chosen for the taking because it was economical, being less developed land.
- 2.14 We submit that, based on the evidence, the Crown rather than actively protecting the claimants in the use of their waterways to the fullest extent possible, sought to establish ownership over the waterways without proper consideration of tangata whenua rights and interests.
- 2.15 We also submit that the actions of the Crown showed no regard for the concept of partnership.
- 2.16 Furthermore, we submit that through the delegation of powers to local authorities the Crown has failed to create opportunities for Māori to participate and engage at a meaningful level. The Crown's attempt to include Treaty references in legislation has proved to be unreasonable, especially for Ngāti Pīkahu who have been unable to successfully engage with local authorities to protect their awa and natural environment.<sup>19</sup>
- 2.17 Accordingly, we submit that the failure of the Crown is demonstrated by the following actions:

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<sup>18</sup> *Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872* dated 17 May 2017 (Wai 2180, #F6) at 10.

<sup>19</sup> P Meredith, R Joseph and L Gifford, *Ko Rangitīkei Te Awa: The Rangitīkei River and its Tributaries Cultural Perspectives Report* (Wai 2180, #A44) dated 20 May 2016 at 282.

- (a) The Crown's assertion of ownership over the Rangitikei River and its tributaries;<sup>20</sup>
- (b) Diversion of the Rangitikei river in 1917-1918 by the Rangitikei City Council. This re-routing of the rivers natural flow caused sections of the awa to dry up and no form of consultation was undertaken with Te Reureu Māori, including Ngāti Pīkiahū;<sup>21</sup>
- (c) The dredging of gravel and shingle from the bed of the Rangitikei has been authorised by the Crown for over 100 years, which has materially affected the mauri, plant/fish life and structure of the river. Dredging has also caused substantial erosion of the riverbed. This extraction of gravel took place as early as 1888, under the Public Works Act 1876 and was continued under the Coal Mines Act 1903;<sup>22</sup>
- (d) Implementation of the Fisheries Amendment Act 1986 resulted in a quota management system being enforced. The introduction of this management system has been detrimental to Ngāti Pīkiahū as it has restricted their ability to gather mahinga kai in their rohe;<sup>23</sup>
- (e) The Rangitikei Catchment Board diverted the Waituna Stream, destroying its natural flow. This diversion has created an ongoing issue for Ngāti Pīkiahū as the lands behind the Poupatatē Marae are regularly flooded. When this flooding occurs, no assistance is provided to Ngāti Pīkiahū or other local Māori who are affected;<sup>24</sup> and
- (f) In 2014, the Waituna stream caused extreme flooding, to the extent that the Waituna bridge was completely under water. As the Crown failed to aid the people in the area, Ngāti Pīkiahū opened up Poupatatē Marae to those Māori and Pākehā living in the valley, as many were unable to access their

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<sup>20</sup> P Meredith, R Joseph and L Gifford, *Ko Rangitikei Te Awa: The Rangitikei River and its Tributaries Cultural Perspectives Report* (Wai 2180, #A44) dated 20 May 2016 at 241.

<sup>21</sup> P Meredith, R Joseph and L Gifford, *Ko Rangitikei Te Awa: The Rangitikei River and its Tributaries Cultural Perspectives Report* (Wai 2180, #A44) dated 20 May 2016 at 241.

<sup>22</sup> P Meredith, R Joseph and L Gifford, *Ko Rangitikei Te Awa: The Rangitikei River and its Tributaries Cultural Perspectives Report* (Wai 2180, #A44) dated 20 May 2016 at 282.

<sup>23</sup> P Meredith, R Joseph and L Gifford, *Ko Rangitikei Te Awa: The Rangitikei River and its Tributaries Cultural Perspectives Report* (Wai 2180, #A44) dated 20 May 2016 at 282.

<sup>24</sup> Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872 dated 17 May 2017 (Wai 2180, #F6) at [57].

homes, work or school.<sup>25</sup> To date the Crown and local council have not taken any action to rectify this issue, meaning these lands remain vulnerable to further damage from flooding.<sup>26</sup>

2.18 We submit that the result of these actions has been largely negative for the Rangitīkei awa and its tributaries. The mauri and health of the awa has been severely degraded.

2.19 Ngāti Pīkiahū have a vast knowledge of their waterways and seek to participate in management structures where they are equal partners, so that the health and quality of the wai can be improved.<sup>27</sup>

2.20 In the *Mangonui Sewerage Report (1988)* the Tribunal stated that:<sup>28</sup>

“... there should be consultations with the district tribes in our view, when certain local projects are proposed. An individual right of objection is not an adequate response to the Treaty’s terms ... Criticism that a tribe has failed to object is largely to blame the victim of the historic process for its current condition. Modern circumstances compel the need for legally cognisable forms of tribal institutions with authority to represent the tribe on local issues and adequate resources to assist the formulation of tribal opinion.”

2.21 Accordingly, we submit that Ngāti Pīkiahū have not had the opportunity to fully engage with local authorities, as all attempts to have their rights and interests recognised have been overlooked.

2.22 Here we say that the Crown had an overarching duty to protect Te Reureu Māori rights and interests, however these considerations have been disregarded in pursuit of Crown and local authority interests.

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<sup>25</sup> Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872 dated 17 May 2017, (Wai 2180, #F6) at 57.

<sup>26</sup> Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872 dated 17 May 2017, (Wai 2180, #F6) at 57.

<sup>27</sup> Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872 dated 17 May 2017, (Wai 2180, #F6) at 63 – 65.

<sup>28</sup> Te Puni Kōkiri, *He Tirohanga ō Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal* (Wellington, 2002), at 90.

## Prejudice

2.23 As a result of the Crown’s legislative regime, the claimants are deprived of their rights over their tūpuna awa Rangitīkei. In their evidence, the claimants stated:

“We see the awa as a living being with a mauri that cannot be “owned” in that way. As kaitiaki we see our role as looking after the awa as it looks after us. We have an obligation to care for the awa so that it survives through the generations for our mokopuna after us.

To us the Crown does not own the awa, and we will always refute any suggestion by the Crown that it does have legal ownership.”<sup>29</sup>

2.24 In our submission, what must also be remembered is the significance of the awa to the claimants, and that the legislation and regulatory regime put in place by the Crown has not sufficiently provided for Māori consultation and participation in managing and protecting their natural environment, including their tūpuna awa Rangitīkei.

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<sup>29</sup> Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872 dated 17 May 2017, (Wai 2180, #F6) at 11.

### 3.0 WAITAPU BLOCK

#### Introduction

3.1 Another issue of significance for the claimants is the loss of land on the Waitapu Block.

3.2 We submit that the claimant's evidence is particularly important to address Land Alienation and Crown Purchasing Issue of the Tribunal Statement of Issues which asks:<sup>30</sup>

*9. Were the Crown's purchase methods fair and reasonable, and Treaty compliant? Did they involve willing sales by communities of willing owners?*

...

*11. What impacts were felt by Taihape Māori as a result of Crown purchases in the district?*

...

*16. Were there opportunities, processes or policies available that enabled Taihape Māori to express their concerns or hopes for the transaction of ownership and if so, were Taihape Māori in a suitable position (eg. financially, economically, politically) to take advantage of them?*

*17. What method(s), if any, did the Crown employ to adequately investigate customary interests in the Waitapu block? Why did the block not go through the process of title determination by the Native Land Court before purchase?*

*18. What was the impact, if any, of the Crown determining title in, and purchase of, the Waitapu Block on Taihape Māori customary interests, in terms of their present and future needs?*

3.3 The TSOI also sets out that the Taihape Tribunal will inquire into:<sup>31</sup>

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<sup>30</sup> Wai 2180, #1.4.3 *Tribunal Statement of Issues*, 9 December 2016 at 23 and 24.

<sup>31</sup> Wai 2180, #1.4.3 *Tribunal Statement of Issues*, 9 December 2016 at 11.

- (a) The 'discovery' of the Waitapu block as a leftover piece of land between Ōtamakapua and the Rangitīkei-Manawatū purchase; and
  - (b) The subsequent Crown purchase of the block and any issues associated with how the owners were identified, the level of compensation awarded, recognition of any customary interests, etc
- 3.4 In particular, the claimant's evidence highlights the prejudice arising from the incorporation of a land tenure system that facilitated the alienation and fragmentation of Māori land in the Inquiry District.

### **Interests in the Waitapu Block**

- 3.5 The Te Reureu Reserve is of great importance to Ngāti Pīkiahū as previous to the 1860's this is the area they primarily occupied. The original block gifted to Ngāti Pīkiahū ran from the mouth of the Waitapu stream to the Ruahine Ranges. However, part of the Te Reureu Reserve was erroneously included in the Crown purchase of the Waitapu block. Meaning once the Te Reureu Reserve was set up post 1860, the boundary of the block only ran from the Rangitīkei to Makara.<sup>32</sup>
- 3.6 The Te Reureu reserve that Ngāti Pīkiahū originally occupied was in excess of twenty thousand acres on the eastern side of the Rangitīkei River. This area has been significantly reduced.<sup>33</sup>
- 3.7 In the 1860's various hui were held at Parewanui Marae with Crown representatives to discuss land sales.<sup>34</sup> It is important to note that Ngāti Pīkiahū were always non sellers and refused to sell any land. Therefore, any taking of land or land sales that did occur was through Ngāti Apa who were willing sellers at the time.<sup>35</sup>
- 3.8 The Waitapu block sits in both the Taihape and Porirua ki Manawatū Inquiry Districts. As such the Tribunal has directed that specific issues be determined in

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<sup>32</sup> Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872 dated 7 September 2018 (Wai 2180, #L14) at [30].

<sup>33</sup> Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872 dated 7 September 2018 (Wai 2180, #L14) at [29].

<sup>34</sup> Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872 dated 7 September 2018 (Wai 2180, #L14) at [33].

<sup>35</sup> Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872 dated 7 September 2018 (Wai 2180, #L14) at [34].



each Inquiry. The Tribunal has determined that the issues to be determined in this Inquiry relate to:

- 3.9 The 'discovery' of the Waitapu Block as a leftover piece of land between Otamakapua and the Rangitīkei-Manawatū purchase; and
- 3.10 The subsequent Crown purchase of the block and any issues associated with how the owners were identified, the level of compensation awarded and recognition of any customary interests.

#### **Relevant Crown Duties**

- 3.11 The claimants argue that the Crown has failed to uphold the following duties:
  - (a) To actively protect Māori land from alienation; and
  - (b) To ensure that Ngāti Pīkiahū retained enough land to sustain themselves and future generations.

#### **Breach**

- 3.12 We submit that the Crown has breached its Te Tiriti duty of active protection by purchasing the Waitapu block without completing a proper investigation into who held rights in this block. The Crown's failure to gain prior consent from all Māori owners resulted in the denial of rights, as Ngāti Pīkiahū have been unable to exercise unqualified exercise of chieftainship over lands in which they possess customary rights.
- 3.13 The Waitapu block became of significant interest to the Crown in 1872, where the Native Minister John Bryce insisted that Native Land Officer James Booth complete the Waitapu block purchase before securing Otamakapua, as he stated it was "the key to the larger block," illustrating the eagerness of the Crown to secure large tracts of land in this district.<sup>36</sup>

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<sup>36</sup> B Stirling and E Subasic, *Taihape: Rangitīkei ki Rangipo Inquiry District Technical Scoping Report* (Wai 2180, #A2) dated 27 August 2010 at 55.

- 3.14 We submit that there is no evidence to show that Te Reureu Māori had an interest in selling their land interests, nor is there evidence to illustrate that discussions with local Māori had taken place.
- 3.15 In deciding to secure the Waitapu block, we submit that the Crown did not take sufficient steps to investigate or determine who the beneficial owners of the land were. Had they acted accordingly, Crown officials would have found that some of the land included in the Waitapu boundary was within the Ngāti Pīkiahū rohe.
- 3.16 It is also vital to note that no record of this Native Land Title has been located to date. There is no record of what type of title this land was held under, or how title was determined and awarded.<sup>37</sup>
- 3.17 This lack of documentation exacerbates the claimant's rights to this land, as there is no record of the Crown undertaking negotiations or gaining consent from Ngāti Pīkiahū or other hapū of Te Reureu.
- 3.18 During questioning from claimant counsel at Hearing Week 7, Dr Hearn indicated that:
- “... the creation of the so-called Waitapu Block was a purely political convenience. It had nothing to do with customary interests and anyone. It had everything to do with certain other imperatives that the Crown had. McLean of course was a master at effecting compromises and that's what he managed to do. Although to be fair I mean Ngāti Apa or at least Kāwana Hunia because it is not entirely clear that he had the undiluted support of Ngāti Apa over this one. But he made it clear that he would continue to press his interest in that section of Waitapu that was apparently allocated to Ngāti Hāuiti but he didn't succeed of course. But no, as far as I know, no one outside those named on those purchase deeds was ever consulted.”<sup>38</sup>
- 3.19 The claimants and their tupuna received no form of compensation for the taking of this land. On this basis we submit that the Crown purchase of the Waitapu block is in breach of the Crown's Treaty duty of active protection by their failure to consult with Ngāti Pīkiahū once the 'discovery' of the Waitapu block was made and by failing to recognise the customary interests of Ngāti Pīkiahū in the Waitapu block.
- 3.20 Furthermore, we submit that the duty of good faith meant that the Crown was required to consult with the claimants prior to compulsorily acquiring the land. On

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<sup>37</sup> B Stirling and E Subasic, *Taihape: Rangitikei ki Rangipo Inquiry District Technical Scoping Report* (Wai 2180, #A2) dated 27 August 2010 at 55.

<sup>38</sup> Wai 2180, #4.1.15, *Hearing Week 7 Transcript*, at 99.

this occasion no consultation was undertaken with the claimants, which was a failure by the Crown to recognise and protect Māori interests.

### **Prejudice**

3.21 The Crown taking of Ngāti Pīkiahū land, specifically in the purchase of the Waitapu block, has been detrimental to the claimants as they are no longer able to exercise their customary rights or protect their interests over their land.

3.22 The claimants have said that:

The Crown has never fully recognised our identity, and as a result we have been side-lined in decision making over our whenua.

We seek to work with the Crown as equal partners and to have our identity and interests recognised, respected and honoured. Recognition of our identity will be the building blocks for all future interactions with the Crown.<sup>39</sup>

3.23 The taking of this land has effectively alienated Ngāti Pīkiahū from their whenua and has left them with a small portion of land to cultivate and pass on to their future generations. We say that in this instance the Crown has not provided a sufficient endowment of land for Ngāti Pīkiahū's present and future needs.

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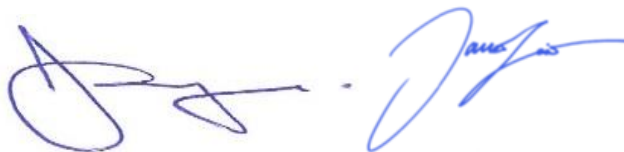
<sup>39</sup> Joint Statement of evidence of Hare Reweti Arapere and Puruhe Bruce Smith on behalf of Wai 1872 dated 7 September 2018 (Wai 2180, #L14) at 44 – 45.

#### **4.0 RELIEF SOUGHT/ RECOMMENDATIONS**

4.1 In accordance with the above submissions, the claimants seek the following recommendations:

- (a) Findings that the Crown breached the principles of Te Tiriti o Waitangi;
- (b) That the Crown provides a full and comprehensive apology for the breaches of the principles of Te Tiriti o Waitangi, in particular that the Crown apologise for the compulsory acquisition of significant amount of the claimant's land in the Waitapu block;
- (c) That the Crown return claimants land in the Waitapu block, or, where it is not currently Crown-owned, compensation to the claimant for the loss of that land;
- (d) That the Crown provide full and comprehensive financial compensation;
- (e) Recognition of the claimants' tino rangatiratanga and the restoration of the claimants' self-governance, including appropriate recognition by all Crown Departments and Agencies and Local Authorities;
- (f) Make provision for the participation of the claimants on all statutory boards, authorities, agencies, companies and other Crown organisations;
- (g) Pay the full costs of the claimants for the preparation and presentation of this claim and the cost of recovering any land recommended to be returned or other costs incurred in securing the implementation of recommendations; and
- (h) Any further relief that this Tribunal deems appropriate.

Dated this 28<sup>th</sup> day of October 2020



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**Jerome Burgess/James Lewis**  
Claimant Counsel