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Rt Hon John Key
Prime Minister
PARLIAMENT BUILDINGS

Tēnā koe Prime Minister

On the 24th August the Waitangi Tribunal issued its interim report on the National Freshwater and Geothermal Resources claim, concluding that *'the matters in this claim are of national importance and at the core of the Māori-Crown partnership sealed in 1840'*.

The Māori Party, in light of our Relationship Accord and specifically the mandate to act in accordance with Te Tiriti o Waitangi presents the following response, recognising the importance of an environment for building solutions.

Treaty of Waitangi, Te Tiriti o Waitangi

Our priority has been to facilitate pathways for all Māori with interests in the water debate to resolve their claims. Māori have rights and interests in their water bodies which were confirmed, guaranteed and protected by the Treaty of Waitangi. We see our role as a critical intermediary in seeking a resolution between tangata whenua and the Crown.

We are driven also by the mandate of section 45Q in the Public Finance (Mixed Ownership Model) Amendment Bill, that *"Nothing in this Part shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)"*.

The provisions of this clause, advocated by the Māori Party; and its precedent in section nine of the State Owned Enterprises Act, place a specific Treaty obligation on the Crown to act in utmost good faith in protecting the property rights of Māori to the fullest extent possible.

International context

In April 2010 the New Zealand Government signed up to the United Nations Declaration on the Rights of Indigenous Peoples. That framework and other key instruments appended to this letter reinforce the vital role of indigenous communities in relation to water and the various mechanisms negotiated to protect these rights.

Māori rights and interests in water – call for an overarching national framework

The Tribunal notes that the recognition of the just rights of Māori in their water bodies can no longer be delayed.

In building the case, the Tribunal refers to the '*long pedigree*' of Māori claims to legal recognition of their proprietary rights in water bodies stretching back to the nineteenth century. The report draws attention to previous Tribunal reports on the Kaituna River, the Manukau Claim, the Mohaka River claim, the Ngawha Geothermal Resource claim, the Te Ika Whenua Rivers claim, the Whanganui River claim and the Central North Island claim.

Various findings are referred to, including that Māori did not only possess the beds or rivers or lakes – they possessed water regimes consisting of beds, banks, water and aquatic life. Importantly, the Tribunal summarises, '*while Māori custom was not the same as ownership, ownership was its closest equivalent*'.

There are three key proposals that the Māori Party would like Government to support in a joint commitment to advance progress in Māori rights and interests on a national scale.

1. That the Government develop a national framework on Māori customary and proprietary rights and interests in water that includes governance, management and allocation, and is guided by the kaupapa of rangatiratanga and kaitiakitanga. The Tribunal recommends discussion should be initiated through the Crown urgently convening a national hui in conjunction with iwi leaders, the New Zealand Māori Council and other claimant parties.
2. That the Government demonstrate its commitment to this process by agreeing, with the parties identified in (1) above, a timeframe to determine and recognise proprietary rights and interests. We note that Sir Tumu te Heuheu has endorsed the need to establish a timetable for ongoing discussions on the matter of iwi rights and interests (letter of 21 August).
3. That the Government adopt as soon as possible, the recommendations articulated by the Land and Water forum around co-governance that, "*A non-statutory National Land and Water Commission should be established on a co-governance basis with iwi*".

River by river, waterway by waterway, iwi by iwi

While a national framework is required, momentum must continue in the specific negotiations with tribes who claim proprietary rights and interests.

A joint statement made on 18 July states that

The Maori Party and the Government continue to support a process of negotiation between hapu and iwi and the Government on their rights and interests in water, and the Government has undertaken not to legislate over those rights and interests.

The Prime Minister, on 27 July, noted that the Government's preference was to recognise Māori rights and interests by negotiating "river by river, waterway by waterway, iwi by iwi".

To advance the interests of hapū and iwi, we recommend:

1. A commitment to continuing direct localised, negotiations, which is critical in maintaining good faith with hapū and iwi. Discrete negotiations with claimants without an interest in the SOE lands for discrete bodies of water – such as Poroti Springs or Taniwha Springs – must be prioritised.
2. That work proceeds in the share allocation of settled and unsettled iwi at both a pan-tribal and specific kaitiaki level of interest in State Owned Enterprises land. We would hope the Crown might avoid the necessity of testing whether a Treaty breach exists. This can be achieved either by temporarily delaying the sell-down of Mighty River Power, or by commencing negotiations in some urgency to reach urgent agreement with those iwi with rights and interests within the Mighty River Power estate.

Freshwater Iwi Leaders Group

We believe that Government must be convinced that the Iwi Leaders Freshwater Group is a representative body. While the responsibility for mandate clearly rests with iwi leadership, the Crown must satisfy itself that the Group is inclusive of smaller hapū and iwi as well as larger tribal groupings.

1. The Māori Party supports the suggestion from Sir Tumu te Heuheu, that the Communication and Information Exchange Protocol established between Ministers and the Iwi Leadership Group be refreshed accordingly.
2. Joint Ministers (Māori Affairs/Environment) should fast-track work to integrate Māori Participation in RMA (the Phase two work programme).

Next Steps

The Tribunal is halfway through a two stage inquiry.

The Crown needs to demonstrate active commitment to clarifying Māori proprietary rights and interests in water and announcement of a timetable to developing a national framework would certainly help prepare the groundwork for Stage Two of the Inquiry.

There are some critical issues which require urgent scrutiny. One example for instance, is that we understand that the Crown has acted in breach of its duty to Māori in entering 999 year leases at a peppercorn rental (\$1) over land held by the SOEs whose titles are section 27b memorials.

Finally, we appreciate the generosity of the Attorney-General, in facilitating discussion with David Goddard, QC and Jason Gough (Crown Law). The discussion confirmed for us the vital need for an overarching framework; and the opportunity that this report provides us with for initiating such work.

We note the QC's repeated statements about the capacity and the willingness of the Crown to proceed forward.

We endorse, furthermore, the comments both advisors made around the value of this interim report, in clearly placing the issues of Māori proprietary rights and interests on the agenda.

We accept their advice that while it would not appear to be insurmountable, there is a causal nexus between the potential provision of SOE company shares attaching additional rights (Shares Plus) and Māori rights in the water bodies used by electricity-generating companies – and we believe that this must be urgently addressed in discussions going forward.


In confirming the Crown's duty of protection, we would like to see an addition to the declaration in the prospectus concerning proprietary rights and interests of iwi/Māori in the freshwater yet to be settled – that it also includes a statement around commercial obligations and the share plus scheme.

We note with some irony, that our private members bill, the Oaths and Declarations (Upholding the Treaty of Waitangi) Amendment Bill, has just been pulled out of the ballot. The purpose of the bill is to enable a person taking any oath set out in statute to state that they will uphold the Treaty of Waitangi. We like to think the way in which we respond to the Waitangi Tribunal's report on the National Freshwater and Geothermal Resources claim may well provide a model in this regard.

Finally, we have shared our thinking in this letter with Sir Tumu te Heuheu and Sir Taihakurei Durie, as behoves our intention to be transparent in our communications with all parties. We are mindful of the Tribunal's statement that it *'is long overdue for the Crown Treaty partner to recognise its obligation to seek a mutually agreed and beneficial resolution with its Māori Treaty partner'*. We welcome the opportunity for ongoing dialogue.

Heoi anō


Hon Dr Pita Sharples
Co-leader of the Māori Party


Hon Tariana Turia
Co-leader of the Māori Party

Appendix one: INTERNATIONAL INSTRUMENTS

Source: 'Native Title Report 2008, chapter 6,
Australian Human Rights and Equal Opportunities Commission

International Instrument	Protection of Indigenous peoples' Rights to Water
<i>International Covenant on Economic, Social and Cultural Rights (ICESR)</i>	The right to water is implicit in the ICESCR, protected through: <ul style="list-style-type: none"> • The right to an adequate standard of living • The right to enjoyment of the highest attainable standard of physical and mental health • Peoples' right to freely dispose of their own natural resources (where in no case can 'a people be deprived of its own means of subsistence')
<i>International Covenant on Civil and Political Rights (ICCPR)</i>	<ul style="list-style-type: none"> • The right to freely dispose of natural resources • The particular rights of 'ethnic, religious or linguistic minorities' to not be denied 'the right, in community with the other members of their group, to enjoy their own culture'
<i>United Nations Declaration on the Rights of Indigenous Peoples</i>	<ul style="list-style-type: none"> • Indigenous access, conservation and economic development of water • A right to maintain and strengthen the distinctive Indigenous spiritual relationship with 'traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas' • The right to conservation and protection of Indigenous lands and resources with state assistance • The right to development for all Indigenous lands and resources including water
<i>Convention on Biological Diversity</i>	<ul style="list-style-type: none"> • Objective is to sustain all life on earth, including aquatic ecosystems, with the global goal to reverse and stop the loss of biodiversity • Provides for the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity • Many of the decisions of the COP call for the full and effective participation of indigenous communities in order to achieve the global goal
<i>Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention)</i>	<ul style="list-style-type: none"> • The conservation and wise use of all wetlands and their resources 'through local, regional and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world' • Provides guidelines for establishing and strengthening local communities' and indigenous peoples' participation in the management of wetlands focusing on the need for Indigenous engagement and participation, trust and capacity building, knowledge exchange, flexibility and continuity
<i>Agenda 21</i>	<ul style="list-style-type: none"> • A comprehensive plan of action to be taken globally, nationally and locally by organisations of the UN, governments, and major groups in every area where there are human impacts on the environment • Provides for the protection and management of freshwater resources recognising the effects that climate change will have on water and indigenous peoples Identifies the need to: <ul style="list-style-type: none"> • Engage indigenous people in water management policymaking and decision-making • Improve indigenous technologies to fully utilise limited water resources and to safeguard those resources against pollution • Recognise the interconnection between economic development and access and supply of water.
<i>Rio Declaration</i>	Recognises the vital role of indigenous communities' knowledge and traditional practices in environmental management.