



TE RŪNANGA O NGĀTI AWA

Te Rūnanga o Ngāti Awa
PO Box 76
Whakatane 3158

TE RUNANGA O NGATI AWA – SUBMISSION CLEAN WATER PACKAGE 2017

27 APRIL 2017

This submission is lodged by Te Rūnanga o Ngāti Awa¹ on behalf of ngā uri o ngā hapū o Ngāti Awa.

Figure 1 shows the Ngāti Awa area of interest.



Figure 1 Ngāti Awa Area of Interest (Source: Te Kahui Mangai, Te Puni Kokiri website)

The relationships of Ngāti Awa people with their ancestral land, waters, sites, waahi tapu and other taonga are longstanding and enduring.

Ngāti Awa settled historic grievances with the Crown in 2005.

The Ngāti Awa Claims Settlement Act 2005 and Ngāti Awa Deeds of Settlement identify:

- statutory acknowledgements (including with three rivers and their tributaries)
- cultural redress lands and areas, including protected areas
- commercial redress lands and commercial redress licensed lands
- other lands and natural and physical resources
- waahi tapu, sites of significance and other ancestral taonga
- spiritual and cultural values and traditions

¹ Te Rūnanga o Ngāti Awa is established by Te Rūnanga o Ngāti Awa Act 2005.

Ngāti Awa values and interests in fresh water are wide and varied.

Ngāti Awa acknowledges and supports operative Bay of Plenty Regional Policy IW2B and IW2B (b) as these recognise that only Ngāti Awa people can identify and evidentially substantiate their relationships and that of their culture and traditions with their ancestral taonga, including fresh water.

Mataatua Declaration on Water 2012

Ngāti Awa is a signatory to the Mataatua Declaration on Water 2012 and confirms, declares and affirms its principles.

The Mataatua Declaration on Water was developed by Te Hono o Mataatua (the Mataatua Assembly) between 2008 and 2012. Te Rūnanga o Ngāti Awa is a member of Te Hono o Mataatua and was secretariat during the declarations development. Please note that a copy of the Mataatua Declaration on Water was presented to former Prime Minister Key during a visit to Whakatāne in 2013.

Ngāti Awa signed the declaration alongside seven other iwi including Ngaitai, Whakatohea, Ngāti Whare, Ngāti Manawa, Ngāti Pūkenga, Ngāi Te Rangī and Te Whānau a Te Ehotu. A copy of the signed version is attached in Appendix A.

The Declaration identifies principles that Ngāti Awa confirmed, declared and affirmed in 2012.

It provides a useful introduction to Ngāti Awa views on fresh water for statutory organisations and others with responsibility for involving Ngāti Awa iwi and hapū in fresh water management and decision-making.

More recently Ngāti Awa referred to the declaration in its submissions to proposed region-wide water quantity plan change 9 and plan change 12 to the Bay of Plenty Regional Water & Land Plan which are two freshwater planning processes requiring our involvement.

Ngāti Awa refers the Ministry to the Declaration on Water and invites discussion.

Central Government Principles

In good faith, Ngāti Awa acknowledges that central government has declared a set of principles in the National Policy Statement for Freshwater Management. Principles like the essential nature of water, the need for wise management, recognition of common interest in fresh water are expressed.

Government also declared that nobody 'owns' water but is unclear about what it means by the word 'own', which can include rights to decide and act, and in respect to water, Ngāti Awa points out that water is also subject to Article II of the Treaty of Waitangi.

During the Declaration development process Te Hono o Mataatua (the Mataatua Assembly) members discussed concepts of 'ownership' including the concepts surrounding rights to assess and decide access to and use of fresh water in our rohe.

In 1991 Government delegated functions for the management of fresh water to regional and district councils under the Resource Management Act. Government also delegated powers to decide applications for consent to take and use fresh water, discharge into it, transfer water permits, prioritise allocation to hydro-electric power generators and enable existing consent activities advantages based on a perpetuating 'first in first served' approach to water allocation.

However government acted without taking account of Article II or the relationships of Māori with fresh water, nor the implications that reforms will have on Māori if the burden of responsibility to carry costs for involvement of iwi and hapū in the assessment, management, planning and consent decisions for fresh water remain unrecognised and provided for.

Ironically the resource management legislation underpinned a 'first in first served' approach, with the exception that it does not currently recognise the preceding Article II in Te Tiriti o Waitangi.

On the matter of the concept of 'ownership' of water, Ngāti Awa submits that:

- The proposed reforms are strongly influenced by the unexplained principle that no-one 'owns' water
- The word 'own' is not described by Government but reasonably conjures for Ngāti Awa people associations with concepts including (but not limited to) having powers of discretion and decision-making for access and use of fresh water resources in the Ngāti Awa area of interest
- Ngāti Awa has never ceded rights under Article II of Te Tiriti o Waitangi
- Ngāti Awa observes that Governments NPSFM and reforms enable the 'first in first served' approach to perpetuate but does not include allocation provisions for Ngāti Awa and other iwi
- The Mataatua Declaration on Water identifies principles for fresh water that should be read, considered and the subject of discussion between Ngāti Awa and the Ministry.

Relief Sought

Ngati Awa seeks engagement with Ministry officials to discuss fresh water and encourages Ministry officials to read, consider and discuss the Mataatua Declaration with Ngati Awa.

Reasons

Crown agencies misunderstand Ngati Awa's full, exclusive and undisturbed possession of ancestral water established under the Treaty of Waitangi and confirmed by Ngāti Awa and other iwi in the Mataatua Declaration on Water. The tikanga is based on kaitiakitanga of a taonga tuku iho of significance to tangata whenua who have inherited responsibility to protect the fresh water resource for future generations by exhibiting powers including the exercise of discretion and decision-making that are consistent with, but not the same as the western concepts of "ownership".

Ngāti Awa is concerned that a policy platform that fails to take account that Article II of Te Tiriti o Waitangi is a starting point for discussion on fresh water can establish a misaligned foundation for the activities and decision-making Ngāti Awa and other iwi and hapū will be relied upon to develop regulation for freshwater, and the implementation of those regulations which will necessitate Ngāti Awa involvement.

Recognition and Provision for Ngati Awa Relationships with Fresh Water

The reforms will require Councils to ensure that iwi and hapu relationships with fresh water are identified in plans and will engage with iwi and hapu when considering values and setting objectives for those water bodies.

The reforms identify a range of tools for identifying iwi and hapu values and direct decision-makers to have regard for those interests and values in fresh water management. Iwi Participation Arrangements (IPA's) were introduced into Parliament in 2015 and involve a Council led initiative where iwi are invited to discuss and agree on how they may participate in fresh water management.

Mana Whakahono a Rohe is an alternative approach to improve iwi involvement in freshwater management. Mana Whakahono a Rohe provides for iwi to initiate discussions with Councils on freshwater management if and when they are ready to do so.

Ngāti Awa holds Statutory Acknowledgements of their relationships with major waterways including Ōhinemataroa (Whakatāne), Rangitaiki and Tarawera Rivers and their tributaries. It also holds statutory acknowledgements for Ōhiwa Harbour which is a receiving environment and includes estuarine marshlands that are affected by fresh water and sea water.

Under the RMA and NPSFM Councils are required to demonstrate how its decisions recognise and provide for Ngāti Awa's relationships with those waterways, and involve iwi and hapū in identifying tangata whenua values and interests in fresh water, and to work with iwi and hapū to reflect these in objectives for freshwater management units for which limits for water quality and water quantity will be set.

Ngāti Awa submits that:

Statutory agencies including consent authorities are currently exhibiting they do not fully understand who "tangata whenua" are, how iwi, hapū and affiliated private Māori Land Trusts own and manage tribal land, Māori Freehold land, General land owned by Māori and other lands owned and returned to iwi via treaty settlements including cultural redress, commercial redress, commercial redress licensed land and private Māori Freehold land (which may be leased to others who use it for non-optimal purposes); all of which require fresh water for their own sake and to enable sustainable development to enhance the social and economic well-being of tangata whenua.

Unless agencies understand the ways in which Māori people own and manage their lands, and the implications and issues associated with matters of tenure that are distinct from the ways in which general land is owned and managed, the risk of ongoing lack of recognition of these important realities will continue to be reflected in fresh water management regulation.

Councils and other statutory agencies are therefore at risk of continuing to fail to recognise the complex inter-relationships between Māori, their land and water.

Relief sought:

Ngāti Awa seeks engagement with Ministry officials to discuss these matters affecting the wise management of fresh water.

Ngāti Awa submits that:

It has concerns over the interpretation of Te Mana Whakahono a Rohe and its application. Maori relationships with water are complex. They are based on an inherited duty of kaitiakitanga and the exercise of rangatiratanga which makes manifest the physical and spiritual connection of iwi, hapū and whānau to their ancestral taonga.

For example, an assessment of mauri can only be made by tangata whenua, so processes that require that assessment should recognise and provide sufficient resource for cultural impact assessments and the assessments of mauri so these can contribute to resource planning and consent decisions, without creating a cost to iwi and hapū in the provision of such assessments and authoritative advice.

Such assessments assist statutory organisations to meet their statutory responsibilities in terms of matters of national importance in section 6, s6(e), s7, s7(a) and s8 of the RMA. They also assist applicants for resource consent to demonstrate the outcomes of engagement with tangata whenua, so their advice can be recognised and provided for in Council decision-making.

Processes must recognise that human and financial resource is needed at iwi authorities to prepare assessments and participate in these decision-making processes. At the current time many iwi and hapū (and their volunteers or staff) make significant contributions to planning and consenting processes in districts and regions – and though they contribute rates and taxes and are entitled to a status greater than the public generally, they continue to be expected to contribute assessments and to the implementation of fresh water planning and policy implementation, at their cost alone.

Settled iwi, having received quantum in settlement of historic grievances observe that statutory agencies assume iwi will invest proportions of their quantum in the employment of staff or support for volunteers that engage and advise local authorities.

This warrants discussion as such assumptions and expectations can be unreasonable and unfair given it is statutory agencies that are required by law to recognise and provide for matters of national importance, and it is they who are the public servant on whom Ngāti Awa, to some extent, relies to recognise and provide for its relationships, culture, traditions, values and interests in fresh water. It is the extent of reliance and the opportunity for integration and collaborative decision-making that is important, particularly in the post-settlement era.

Relief sought:

Ngati Awa seeks engagement with Ministry officials to discuss these matters.

Ngāti Awa submits:

Kaitiaki have existing networks based on traditional relationships with water and with other kaitiaki. Kaitiaki should be supported to maintain and grow these networks and relationships with future generations in mind.

Ngati Awa's current Statutory Acknowledgements do not fully represent our relationship with water in that they do not consider water in all its forms and do not incorporate Mātauranga Māori concepts and understandings. A true and more complete representation of Ngati Awa's relationship with water should include kaitiaki who have a spiritual and physical connection to the resource on a daily basis.

Relief sought:

Ngati Awa seeks engagement with Ministry officials to discuss these matters.

Ngati Awa Economic Interests in Water

The fresh water reforms provide a number of tools to better manage economic use of water requiring more efficient use of water, addressing over allocation and allowing for the transfer of water allocations and discharge allowances. This presents two issues for Ngati Awa.

Firstly, where a catchment is determined to be over allocated there may be no ability to obtain consent to take water (and/or discharge nutrients). This appears to be the case in the Rangitaiki Catchment and could be a significant constraint on any future development of Māori lands, commercial redress land and commercial redress licensed land that may be suitable for alternative land uses that require water.

Secondly the ability for a lessee operating on Maori land to transfer water and nutrient discharge rights may directly affect the economic viability of that Maori owned land (where the discharge and/or nutrient discharge rights are held by the lessee not the land owner).

Relief sought:

Ngati Awa seeks engagement with Ministry officials and regional council planners to discuss:

- **The implications of regulation that permits the transfer of water rights or allocations where the transfer may negatively affect the economic viability of Maori lands.**
- **The implications of and necessity for restrictions on the transfer of water rights away from Māori land by a lessee of that land**
- **The implications of and necessity for restrictions on the discharge or allocation of nutrient thresholds where their transfer may negatively affect the economic viability of Maori Freehold land, General Land owned by Māori, commercial redress land, commercial redress licensed land, cultural redress and other land including reserve land, marae and urupa.**
- **Recognition and provision for an economic allocation of water to provide for the current and future needs of tangata whenua, their values and their interests in fresh water.**

Swimmability

Ngāti Awa support rigorous standards for our rivers and lakes that ensure they are swimmable, ecologically healthy, and their mauri is protected and enhanced.

The wellbeing of the people, native species, water and all living things and inanimate objects are interconnected and must be urgently protected.

Ngāti Awa opposes the proposed amendments to the Human Health for Recreation attribute table, which would weaken the standard for swimmability. The E.coli attributes need to be strengthened. Ngāti Awa supports the inclusion of smaller rivers and streams (below order 4) in the swimming standards.

Ngāti Awa supports the requirement for regional councils to adopt a Macroinvertebrate Community Index (MCI) score of 80 as a minimum threshold, and to develop an action plan to improve the MCI score to above this threshold, or when monitoring shows there is a downwards trend in the MCI, to reverse that trend if a waterway's MCI score is low or declining – as recommended by the Land and Water Forum.

Ngāti Awa also supports the adoption of all the recommendations made by the Land and Water Forum to assist regional councils to limit two key nutrients, nitrogen and phosphorous, in our rivers and lakes.

Exclusion of Stock

The deadlines proposed for excluding dairy support, deer and beef cattle from waterways more than 1 metre wide and from lakes, wetlands and other surface water bodies are opposed.

Ngāti Awa seeks the following relief:

- The 2022 deadlines should be brought forward to 2020;
- The 2025 deadlines should be brought forward to 2022; and
- The 2030 deadlines should be brought forward to 2025.

Reasons

Fresh water management and resource management reform provides momentum for bolder timeframes. Primary industry, including dairying, forestry and horticulture are in a relatively fluid state of readiness to prepare and adopt bolder policy change and timeframes that those proposed in the reforms.

As dairy farmers, foresters and horticulturalists Ngāti Awa understands that incremental and meaningful advancement of necessary behavioural change will have profound effects.

People need encouragement and, at times, must simply accept policy that compels change to achieve improved sustainable management and sustainable development outcomes.

Thank you for the opportunity to provide feedback to the Clean Waters package.

Ngāti Awa looks forward to discussing its submission with Ministry officials. Arrangements can be made using the contact details provided.

Kia ora,

Leonie Simpson

Leonie Simpson
Chief Executive

APPENDIX 1



THE MATAATUA DECLARATION ON WATER

Ko te tino iwhiri o nga Whakapapa Kaitiaki a rika o te hira o Maori i whakapono me otiro iho iho ko te kaitiaki o Maori ko te tino iwhiri o te hira o Maori. Ko te hira o Maori ko te tino iwhiri o te hira o Maori. Ko te hira o Maori ko te tino iwhiri o te hira o Maori. Ko te hira o Maori ko te tino iwhiri o te hira o Maori.

I te mea e whakapono ana nga tangata maori i te hira o Maori ko te tino iwhiri o te hira o Maori. Ko te hira o Maori ko te tino iwhiri o te hira o Maori. Ko te hira o Maori ko te tino iwhiri o te hira o Maori.

WE THE TRIBES OF MATAATUA WAKA being the indigenous peoples of the Bay of Plenty region of Aotearoa New Zealand and parties to the Treaty of Waitangi agree to the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples and commit ourselves to the development of regional policy and planning and consenting mechanisms relevant to the protection of access to and use of their ancestral waters within the Bay of Plenty region, recognising that:

- I Water that comes out of the ground and from the clouds above, that includes the oceans and seas, the rivers, streams and tributaries, the lakes and wetlands, the springs, geothermal fluids and aquifers both above and below ground, is of vital importance in sustaining the life principle of all human beings in the past, for the present and in the future;
- II Water is also essential in ensuring the life principle of all living things, flora and fauna and therefore in maintaining the environment in which we live;
- III It is the sacred duty of present generations to ensure that water quality and quantity is available to sustain the lives of future generations of the peoples of Aotearoa;
- IV While all humans living in Aotearoa have a right to life and therefore to water, the indigenous peoples of the land have rights based on the Treaty of Waitangi and on ancestral title to the use of their waters in their tribal regions;
- V As good citizens of the land and in exercising our rights as tangata whenua, we the people of Mataatua recognise the need to share our water and to arrange it for the long term benefit of all peoples.

WE DO HEREBY DECLARE AND AFFIRM that it is our desire and wish to continue to attain full and undisturbed possession of our ancestral waters including rivers, streams, lakes, aquifers, thermal waters, wetlands, tributaries, and geothermal features and resources, and their beds and banks and the atmosphere above those resources, and to continue our rights to purchase and use our ancestral water resources wherever they are gathered, used by those:

WE DO ALSO HEREBY EMPHATICALLY STATE that any person desiring access to ancestral water resources for the purpose of using those resources in an ongoing space in, above, under or from ancestral water resources must seek consent from the Tribes of Mataatua through Te Hiri o Maori (the Mataatua Assembly) and their delegated consent authorities according to recognised principles of mana whenua that affirm the rights of the tangata whenua and their respective iwi.

WE DO HEREBY RECOMMEND that the Crown and its agents:

- Recognise the rights of indigenous peoples to access and exercise their traditional practices and customs in the use of their ancestral and cultural water resources;
- Recognise that the Crown is required to provide adequate volume, flow and quality of the water bodies that are necessary to sustain the life principle of all humans and living beings;
- In giving effect to Article 2 of the Treaty of Waitangi the Crown ensure access to and use of water resources in its Treaty partners.

WE THE TRIBES OF MATAATUA WAKA also recognise that as good citizens of the land and in exercising our rights under the common law and the Treaty of Waitangi (the Rights of Indigenous Peoples) we have a responsibility to share our water and to exchange rights of access, use and compensation for the long term benefit of all peoples residing in these our lands.

This declaration is approved and agreed by the Tribes of Mataatua and is held and provided by Te Hiri o Maori, the Mataatua Assembly.

Mr Hiramō Moke Nene
 Chairman, Te Hiri o Maori, Mataatua Assembly

Robert Edwards
 Deputy, Chairman Te Hiri o Maori, Mataatua Assembly



THE MATAATUA
DECLARATION
ON WATER

NGĀ IWI Ō MATAATUA
Name of Iwi

Ngāi Te Rangi

Kiwi Ngata
Iwi Whānui

Ngāi Tākeke

Ngāi Tākeke

Ngāi Tākeke

Ngāi Tākeke

Ngāi Tākeke

Ngāi Tākeke
Ngāi Tākeke
Ngāi Tākeke

Ngāi Tākeke
Ngāi Tākeke

Signature

[Handwritten signature]

Ngāi Tākeke
Ngāi Tākeke

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

Ngāi Tākeke
Ngāi Tākeke

[Handwritten signature]

[Handwritten signature]
Pauoro Ngāi Tākeke



THE MATAATUA
DECLARATION
ON WATER

NGĀ IWI O MATAATUA
Name of Iwi

Signatories

Te Whānau o Te Kōwhiri

Edward Hobbitt

Whakaitōhea

Josephine Motson

Ngāi Tahu

Maria Ngata

(3)