

Water Claim – a Summary

Throughout the preparation and conduct of the claim the legal team has maintained an Inquiry Plan, a strategic planning document now in its 12th edition.

It exists to ensure that all parties are up to date with the case, the events and the arguments. Unfortunately it was not available to the Council from the beginning as the Council was undergoing elections from February, when the case was filed. The Council's officers were not appointed, and the executive was not established, until June 23 (at the Council hui at Rotorua). By then the legal team was heavily involved in completing evidence and preparing for the hearing, which was then only two weeks away.

However, in talking with others, Council members and others may find helpful the following bullet points on the case, based upon material in the Plan.

- The claimants have been brought together not because they are the only claimants but because they providesound case examples of proprietary interests in different types of water bodies: cold springs, hot springs, rivers, lakes, wetlands and aquifers. The benefit they seek is not just for themselves but for all who are similarly affected.
- The Council is there not because it claims to speak for all Māori Wardens but because it has the statutory authority to promote policies for the benefit of all Māori Wardens and to engage with government with regard to them.
- The claimants do not claim to own all the water, or any water, but claim rather, a proprietary interest in particular water resources.
- The outcome which is sought is a framework by which proprietary interests can still be recognised where that is still practicable in the form of royalty compensation for third party user: and a general compensatory fund where it is not now practicable.
- A general compensatory fund may be used for example, to support housing on papakainga formerly on water bodies, with provisions to ensure continued water access. Tanks for Bridge Pa could be an example.
- Claimants have no dispute with Iwi Leaders. They look to Council and Iwi Leaders for national policy solutions, the Council by virtue of its statute, and to the leaders of hapu and iwi for the application of the national criteria to the local situation.
- The water claim issues are contemporary issues affecting extant (existing) rights and are not to be confused with historic settlement negotiations which relate to former losses and by which the rights become extinguished and the claim, compromised.

- The question is not whether proprietary rights or management rights should prevail. Both are important.
- The question is not whether water can be owned. The proper question to ask is whether a water resource can be owned.
- The question is not whether a water resource can be owned in English law but whether a water resource can be owned as a legal concept.
- The claim is not about opposing the share sales. The claim is that the sales should not proceed until Māori rights in relation to water resources used by the power companies have been determined and settled. The reasons are:
 - the sale of shares before Māori rights have been settled creates a body of shareholders opposed to any settlement with Māori in the future because it could affect the value of their shares; and
 - the sale of shares on the basis of a zero cost to power companies for the use of the water resource, gives an undue profit to the Crown if there are prior claims to the resource which have not been settled.
- Negotiations with hapu and iwi before a framework for settling their rights are determined puts those iwi in an unfair bargaining position, for they are entitled to know their rights before negotiations begin.
- The Council does not have a claim to water rights. It is there to seek recognition of water rights for hapu and iwi.
- The Council and claimants have not delayed. Claims in water resources have been made from at least 1873. Specific findings on the existence of proprietary interests have been made by the Tribunal from 1992. The delay has been in the government response.
- It is not an answer to hold back shares in the power companies for future, iwi settlements. That confers no significant benefit. It simply means that the money to which the iwi are entitled on settlement may be used to invest in shares if the iwi wishes.
- The claimants are not using the share sales as an opportunity to make a gain but are reacting to the share sales as illustrating the ongoing refusal to recognise the outstanding claims to proprietary interests in water bodies.
- That which is sought is not a pan-tribal settlement but a national recognition of rights.