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MAORI ISSUES RELATING TO THE GEOTHERMAL RESOURCE

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ABSTRACT

The Maori people have been a silent partner with regards to the Treaty of Waitangi, this silence is now being broken. The Maori are becoming more involved within matters that have the potential to impact upon their traditional lands and resources, their taonga; treasures. The geothermal resource is one such taonga. This paper examines some of the issues that have arisen as a result, of more active participation and awareness by Maori people towards their traditional taonga, the geothermal resource.

INTRODUCTION

Maori people are expressing a desire to be recognised as equal partners, within the management of their traditional resources. The geothermal resource is a traditional taonga of the Maori people, and as such, the Maori as kaitiaki, guardians, over these resources, seek to have an equal measure of control with respect to policies and decision making regarding the management of this taonga. The Maori people have in the past, been omitted from participation within the management of this resource, due largely to the fact that the decision makers who formed present legislation, failed to recognise the unique status of the Maori people as tangata whenua, people of thhe land. The Geothermal Energy Act 1953 and the Water and Soil Conservation Act 1967 are both deficient in making specific provision for Maori cultural and spiritual values relevant to natural water, and its use or non-use.

This paper examines maori participation or "non-participation" in relation to the Water and Soil Conservation Act 1967, highlighting the role of Regional Water Boards with regards to its management strategy tools; water rights and management plans. This paper also outlines issues relevant to a Maori perspective in trying to achieve recognition and effective participation at all levels of policy and decision making within the management of natural resources.

RECOGNITION OF MAORI CULTURAL AND SPIRITUAL VALUES

The geothermal resource is a traditional taonga of the Maori people, a taonga that the Crown have claimed ownership over, with respect to the Geothermal Energy Act 1953.

The recognition of Maori cultural and spiritual values with regard to this taonga must be taken into account by Regional Water Boards, when deliberating on a water right application with respect to the geothermal resource. However, such recognition presently remains the responsibility of those tribal groups who become involved within the water right process, often as an objector, in an adversorial capacity, Only those groups involved within the water right process will have the ability to support and/or promote their concerns.

The High Court decision by Chilwell. J. in 1987 re: Huakina Development Trust v Waikato Valley Authority and Bowater, presents a legal interpretation, and recognition that Maori cultural and spiritual values cannot be excluded from consideration in the weighing of advantages and disadvantages.

Chilwell, J stated that in his judgement the word "interests" and the phrase "the interests of the public generally" within section 24 (4) of the Water and Soil Conservation Act 1967, makes provision for Maori cultural and spiritual values. These values cannot be excluded from consideration:

> ... if the evidence establishes the existence of spiritual, cultural and traditional relationships with natural water held by a particular and significant group of Maori. They cannot be excluded for the reason that the Water Act is so deficient in guidelines that the Court has to resort to extrinsic aids.

Chilwell, J further concluded that the primary and Planning Tribunal could not rule inadmissible, evidence which tended to establish that significant Maori groups had cultural and spiritual associations with natural water.

> In terms of section 24 (4) that evidence must be directed to establishing that the grant of the application would prejudice the objector's interests in the spiritual, cultural and traditional relationships of the particular and significant group of Maori with natural water or the interests of the public generally in those relationships. The weight to be given to the evidence in the balancing exercise approved by Ream is a matter for the primary tribunal and the Planning Tribunal on appeal.

In his decision, Chilwell, J also made observations relating to interpretations of the Treaty of Waitangi where:

> There can be no doubt that the Treaty is part of the fabric of New Zealand society. It follows that it is part of the context in which legislation which impinges upon its principles is to be interpreted when it is proper in accordance with the principles of statutory interpretation, to have to resort to extrinsic material.

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TREATY OF WAITANGI

The Treaty of Waitangi is at present, not considered to be part of municipal law, in that it does not impart rights enforceable in the Courts. Chilwell, J concluded that the provisions of the Treaty of Waitangi:

> ... do not for the purposes ot an application pursuant to sections 21 and 24 [sic: of the Water and Soil Conservation Act] provide the appellant with any recognisable legal right relevant to such an application.

This interpretation essentially states that the Treaty of Waitangi cannot be a proper consideration for Regional Water Boards to take into account, in terms of existing water and soil legislation.

Provision for the inclusion of the principles of the Treaty of Waitangi in various resource statutes, including the Water and Soil Conservation Act 1967, is currently under review. At present, the Regional Water Boards are responsible for the administration of water and soil management.

In the Manukau case 1985 (re: Waitangi Tribunal Report 8) the Waitangi Tribunal considered that the Water and Soil Conservation Act 1967 did not contain any provisions to enable Regional Water Boards or the Planning Tribunal to take into consideration, Maori cultural and spiritual values. However, other legislation such as the Town and Country Planning Act (TCPA) 1977 does make special provision for Maori values. Section 3(1)(g) of the TCPA makes provision for the relationship of the Maori people and their culture, and traditions with their ancestral land should be recognised and provided fcr, as a matter of national importance. The Waitangi Tribunal stated that:

> This gap in the Water and Soil legislation puts Maori objectors at a disadvantage and does not reflect the principle contained in Article II of the Treaty of Waitangi by which the Crown guaranteed to Maori New Zealanders... the full exclusive and undisturbed possession of their Fisheries and other properties.

The Tribunal made the recommendation in the Manukau case that existing legislation such as the Water and Soil Conservation Act and related legislation be amended:

> to enable Regional Water Boards to take into account Maori spiritual and cultural values when considering water right applications.

The current review of Resource Management Law Reform will hopefully provide for a more equitable cultural basis, in forming resource management legislation that will make provision for Maori cultural and spiritual values.

REGIONAL WATER BOARDS

The Management of geothermal resources is a function of the Waikato Catchment Board, as the Regional Water Board, in respect to the Water and Soil Conservation Act 1967. The Waikato Catchment Board's management responsibilities encompasses a variety of issues relevant to the potential impacts on all users of natural water:

- the benefits to be gained by any potential user
- any potential detriments to the physical and metaphysical environment and/or other users of that resource.

Essentially, the Waikato Catchment Board evaluates all known factors relevant to any application and applies a balancing of the benefits and detriment, before making a decision on the granting or refusal of a water right application.

Generally, the Waikato Catchment Board regards the geothermal resource and its subsequent reserves, as an important regional and national asset. Any decisions made by the Waikato Catchment Board relating to resource use and allocation will be made having full regard to that fields management plan. That is, the granting of a water right to take and use the geothermal resource should be consistent with the Waikato Catchment Board's management plan for any particular field.

The Waikato Catchment Board has the statutory responsibility of managing the allocation of rights to use the geothermal resource with respect to natural water.

The Board's approach to geothermal development with regard to management planning has been to consider the geothermal resource as an additional component of the water and soil resource. The preparation of geothermal management plans for specific fields will be carried out in a similar manner to that which exists for present management plans, which allows for active public participation.

WATER RIGHTS

Water rights provide the Regional Water Boards an allocation/regulation system for the management of natural water. The Water and Soil Conservation Act 1967, section 21, vests in the Crown the sole right to:

- dam any river or stream;
- divert or take natural water;
- discharge natural water or waste into any natural water;
- discharge natural water containing waste onto land or into the ground in circumstances which result in that waste, or any other waste emanating as a result of natural processes from that waste, entering natural water;
- use natural water.

The Regional Water Board has the responsibility for authorising rights to any of the above activities. Any individual or body may make an application for the purpose of obtaining a water right. The water right process allows for all concerns relevant to the application to be heard, by a special or Standing Tribunal, or by the Regional Water Board itself.

When all matters relevant to a tribunal hearing have concluded, the tribunal will report their findings and recommendations to the Regional Water Board. The Regional Water Board considers the application and the recommendations of the Tribunal, and makes a decision whether to grant or decline the application, and what conditions (if any) to attach to a water right if the application is granted. The decision of the Regional Water Board is subject to appeal by the applicant or objector to the Planning Tribunal.

MANAGEMENT PLANS

Water and soil management planning involves the definite statement of goals, objectives and policies. in order to achieve the three statements, the plan is required to:

- identify aims and objectives for water and soil management;
- identify conflicts that arise between aims and objectives; and
- indicate how these conflicts are to be resolved.

The identification of aims and objectives, is one of the first requirements involved within the planning process. The overall purposes of a management plan are expressed by the aims. Objectives are more specific, and outline the practical means in which an aim is to be achieved. The aims for water and soil management plans are derived from the objectives in the long titles of the Soil Conservation and Rivers Control Act 1941 and the Water and Soil Conservation Act 1967. A considerable amount of resource information is required, before all possible objectives can be identified.

The second stage in the planning process requires the identification of any conflicts arising between the various aims and objectives for the water and soil resources of the overall Catchment. The third stage in this process is conflict resolution, hopefully obtainable by developing appropriate policy statements of specific intent, indicating how different aims and objectives are to be achieved. This approach will give the Regional Water Board a working strategy for the Catchment, enabling guidelines to be formalised to assist in policy implementation.

Generally, management plans deal with the implementation of water and soil management aims in specific catchments. However, there are limitations relating to the overall effectiveness of water and soil resource planning under present water and soil legislation. The Water and Soil Conservation Act 1967 makes provision for the resolution of conflicts over resource use on a case by case basis, which does not conform to the usual concept of planning. (WVA, 1987). Further, the above Act is deficient in providing formal legislative status to, or procedures for the preparation of plans for water and soil resource management.

TRIBAL PERSPECTIVES

Each Maori tribal group has their own tribal perspective relating to concerns within their specific waka boundaries. A universal Maori perspective is difficult to achieve, although some consensus may be reached by communications between the various iwi, tribal authorities. However, it should be recognised that it is preferable at all times for each tribal group to represent themselves, on behalf of their own iwi.

Difficulties occur when outside agencies attempt to communicate with certain Maori individuals or groups who may have an active role within the "local scene", but may be inappropriate to discuss or make commitments that may require a more tribal approach.

It is essential that contact by any outside agency be made with the appropriate Maori tribal authority. The comment has often been made by Maori tribal authorities within the Waikato Catchment administration region, that many local authorities and development agencies by-pass or omit the culturally accepted format of establishing consultation with the appropriate tribal authority, either out of ignorance or purposefully. It is not difficult to obtain information in determining the appropriate tribal authority to approach, within a specific tribal region. This information is available at that region's Department of Maori Affairs office, and can usually be found within the telephone listings for the region's Maori Tribal Trust Board.

One of the major reasons for approaching the tribal authority before seeking contact with known individuals, is that the tribal authorities, in the form of Maori Trust Boards or Tribal Runanga, generally act as the representative or spokesperson for the iwi.

Recognition of the iwi authorities needs to be promoted, for until this recognition is realised, there could remain a lack of information from a Maori perspective. It is obvious, that in order to receive a Maori tribal perspective, you first need to have those people participating. A problem that has occurred in the past, and which is still prevalent today, is that communications with Maori groups by local authorities and outside agencies have often taken place in the latter stages of any potential developments. It is important for all agencies to realise that for full and effective participation to be achieved, the iwi authorities must be included within all stages of policy and decision making areas in respect to the management of the geothermal resource.

TRIBAL AUTHORITIES

The Waikato Catchment Board has three distinctive tribal groups within its administrative region, the Tainui, Te Arawa and Ngati Tuwharetoa people. These three tribal groups are each represented by their own tribal authorities being, the Tainui Maori Trust Board, Te Arawa Maori Trust Board and the Tuwharetoa Maori Trust Board.

The Maori Trust Boards Act 1955 and its various Amendments provides for the election of trustees and administration of the Boards. The functions of a Board are set out in section 24 of the Act, where the assets of the Board are administered for the benefit of its beneficiaries. The principle objectives being the:

- promotion of health;
- promotion of social and economic welfare;
- promotion of education and vocational training.

The Waikato Catchment Board has learnt, through a period of trial and error, that it is in their best interest to obtain participation with the appropriate Maori tribal authorities, in order for effective consultation to occur. The Centre for Maori Studies and Research 1984, made the statement that:

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> No development in the area can take place without consultation through the appropriate channels within this movement [Kingitanga]. For outside agencies, the only channel whereby they can enter into discussions is the Tainui Maori Trust Board. Where government agencies or private industry have chosen to deal with parts of the Tainui system, the Trust Board in every case has finished up having to act as mediator, negotiator or authority often in conditions of confusion and conflict.

The Maori tribal authorities are accountable to their people, and such trust is not taken lightly, misrepresentation of the tribal group by any individuals within the tribal authority would meet with severe cultural and social reprimands.

CONCLUSION

A Maori perspective can only be effectively obtainable if there are Maori people participating with full voting privileges within the decision making process, as a decision maker, and not merely acting in an advisory capacity. The lack of effective Maori tribal representation within the management systems for the geothermal resource, is a continuing factor in the retention of the status quo, which is to the detriment of Maori values.

Existing legislation relevant to the Geothermal Energy Act and the Water and Soil Conservation Act makes no specific provision for the inclusion for Maori representation. The position of the Waikato Catchment board is quite clear, that without any formal guidelines and/or, amendment to present water and soil legislation, it is difficult for the Board to undertake measures for the inclusion of Maori representation with full voting privileges. However, the Board has a co-opted member from the Taumarunui County Council (without full voting privileges) who presents them with some insight into Maori concerns regarding his particular tribal area. This form of representation is not entirely satisfactory from a Maori viewpoint, in that other tribal groups within the Waikato Catchment boundary are not represented.

Current legislation needs to be amended before effective Maori representation can be achieved, relevant to the management of the geothermal resource. The "ideal" solution from a Maori viewpoint would be to have equal control and representation in all areas of planning, policy and decision making. Equal partnership would operate to the benefit of both the decision makers and the Maori people, ensuring that one groups values does not dominate over the other.

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