



POUAKANI CLAIMS TRUST NO.2 UPDATE

WAIKATO RIVERBED CLAIM

BACKGROUND OF CLAIM:

1. In 2019 an application was filed to the Māori Land Court by Pouākani Claims Trust no 2 on behalf of all those who whakapapa to the hapū who had mana whenua to the land on either side of the river.
2. The basis of this application is for the Māori Land Court to determine whether the Riverbed under parts of the Waipapa, Maraetai and Whakamaru dams and part of the beds of the artificial lakes created by those dams, were Māori customary land when titles were issued to the Crown.
3. During the Supreme Court Paki Proceedings, there was no clear ruling regarding the Riverbed and water. Chief Justice Elias suggested that any claims to the Waikato Riverbed and water were to be made to the Māori Land Court.
4. In 1987, the Crown created State-owned enterprises (SoE) to take over the trading assets of the Crown.
5. On 31 March 1988 the Crown agreed to sell all the State Electricity Division assets to Electricity Corporation of New Zealand Limited ("ECNZ") and to give good title to the land, this included the above-named dams and artificial lakes.
6. As part of the original sale process, plans of the relevant land were prepared and eventually registered in the Land Transfer Office under the Land Transfer Act. Land Titles to the Waipapa and Maraetai land have been issued to, now, Mercury.
7. The Crown holds the title to the Whakamaru dam site. Mercury also has registered operational easements to each of the lakes behind the dams.
8. Titles issued under the Land Transfer Act legislation provide that once an owner is registered their interest in the land, the title cannot be defeated or, to use a legal term, the Title is indefeasible.
9. Mercury claims that it has indefeasible title to the dams and lakes and the legal title/registration cannot be taken away from them.

MERCURY POSITION:

- There is no point in going to a full hearing of the merits of the claim. Mercury wants the claim/application to be struck out because they say;
- The Māori Land Court does not have the jurisdiction within Te Ture Whenua Act to attack any claim to title issued by the Land Transfer Act.
- The issues raised by Pouākani fall outside of the Jurisdiction of the Māori Land Court.
- Mercury also relies on the promise by the Crown to give them good title, claiming to be a good faith purchaser for value off the Crown.





POUAKANI POSITION:

- The Māori Land Court has exclusive jurisdiction to decide if land is Māori customary land
- Land does not cease to be Māori simply because the Crown purports to sell it. The Crown cannot sell what it does not own.
- Pouākani argues that the indefeasibility argument only applies to the land itself and does not stop a claim to the water.
- Further issues have been raised including breaches of Te Tiriti and the Crown's breach of fiduciary duties owed to Pouākani For these arguments to apply to this claim/application the Māori Land Court will need to first decide if the land was still Māori customary land at the time title issued and, if so, who are the owners.

SUMMARY:

MERCURY WANT THE MĀORI LAND COURT APPLICATION STRUCK OUT.

POUĀKANI WANT THE HEARING TO PROCEED.

THE PRIMARY PURPOSE OF THE UPCOMING HEARING IS TO DETERMINE WHETHER THE CLAIM/APPLICATION CAN PROCEED WITHIN THE MĀORI LAND COURT.

THERE WILL BE NO ORAL EVIDENCE AT THIS HEARING.