

MINISTER FOR THE ENVIRONMENT

and

SECRETARY FOR THE ENVIRONMENT

and

WAIKATO-TAINUI

ENVIRONMENT ACCORD

18 June 2010

ENVIRONMENT ACCORD

THIS ACCORD is made between

THE MINISTER FOR THE ENVIRONMENT ("MINISTER")

and

THE SECRETARY FOR THE ENVIRONMENT ("SECRETARY")

and

**WAIKATO-TAINUI TE KAUHANGANUI INCORPORATED, in its capacity as
trustee of the WAIKATO RAUPATU RIVER TRUST ("WAIKATO-TAINUI")**

BACKGROUND

- A. The Waikato Raupatu Claims Settlement Act 1995 gave effect to certain provisions of the deed of settlement between Her Majesty the Queen in right of New Zealand ("the Crown") and Waikato dated 22 May 1995 and settled certain Raupatu claims made to the Waitangi Tribunal by Robert Te Kotahi Mahuta, the Tainui Maaori Trust Board and Ngaa Marae Toopu (Wai 30). The 1995 Act expressly excluded certain historical claims, including the claim to the Waikato River.
- B. In the spirit of co-operation, compromise and good faith, and as foreshadowed in the 1995 Deed, Waikato-Tainui and the Crown entered into negotiations in respect of the claims of Waikato-Tainui concerning the Waikato River.
- C. By deed of settlement dated 22 August 2008 Waikato-Tainui and the Crown reached agreement on the terms of a settlement to enter a new age of co-management over the Waikato River with an overarching purpose to restore and protect the health and wellbeing of the Waikato River for future generations.
- D. The Crown is committed to restoring and protecting the health and wellbeing of the Waikato River for future generations and to the new era heralded by the 2008 deed. However, subsequent to the 2008 deed, the Crown requested to review the co-management arrangements to assess whether it was possible to better deliver the objectives and overarching purpose of the settlement.
- E. With the agreement of Waikato-Tainui, the Crown appointed an advisory panel. The Crown approached Waikato-Tainui with the advisory panel's recommendations and Waikato-Tainui agreed to consider revisiting the arrangements in the 2008 deed.
- F. In the spirit of good faith and on the basis that the arrangements in the 2008 deed could be enhanced while preserving the integrity of the settlement, Waikato-Tainui and the Crown agreed on a revised deed of settlement dated 17 December 2009.

- G. The 2009 deed now supersedes the 2008 deed and contains the terms of settlement between the Crown and Waikato-Tainui in relation to the Waikato River.
- H. The Kiingitanga Accord signed between the Crown and Waikato-Tainui on 22 August 2008 remains in full force and effect except to the extent that its requirements are expressly satisfied by the 2009 deed.
- I. Waikato-Tainui and the Crown have agreed that accords will be entered into between Waikato-Tainui and various Ministers of the Crown to enhance the relationship between the Crown and Waikato-Tainui and facilitate the new era of co-management contemplated by the settlement.
- J. To give effect to the obligations under clause 9.4 of the deed of settlement and clause 3.1 and the schedule of the Kiingitanga Accord, and to further enhance the relationship between Waikato-Tainui, the Minister and the Secretary, this Accord is entered into by Waikato-Tainui, the Minister and the Secretary.

TERMS OF THIS ACCORD:

1 PURPOSE

1.1 The purpose of this Accord is to:

- a) reflect the commitment of the Crown and Waikato-Tainui to enter a new era of co-management over the Waikato River with the overarching purpose of restoring and protecting the health and wellbeing of the Waikato River for future generations
- b) set out how Waikato-Tainui, the Minister for the Environment ("the Minister") and the Secretary for the Environment ("the Secretary") will establish and maintain a positive, co-operative and enduring relationship
- c) ensure that the Crown, through the Minister and the Secretary, recognise and provide for the exercise of mana whakahaere by Waikato-Tainui.

2 FUNCTIONS AND ROLES OF THE PARTIES

Waikato-Tainui

2.1 To Waikato-Tainui:

- a) The Waikato River is a tupuna (ancestor) which has mana (spiritual authority and power) and in turn represents the mana and mauri (life force) of waikato-tainui
- b) The Waikato River is a single indivisible being that flows from the Huka Falls to Te Puuaha o Waikato (the mouth) and includes its waters, banks and beds (and all minerals under them) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation, flood plains, wetlands, islands, springs, water column, airspace and substratum as well as its metaphysical being with its own mauri.

2.2 The Waikato-Tainui relationship with the Waikato River, and Waikato-Tainui's respect for it:

- a) gives rise to Waikato-Tainui responsibilities to protect te mana o te awa and to exercise mana whakahaere in accordance with long established tikanga to ensure the well being of the Waikato River
- b) lies at the heart of Waikato-Tainui's spiritual and physical wellbeing and tribal identity and culture.

2.3 As relevant to environmental matters, Waikato-Tainui's objectives for the Waikato River include:

- a) the restoration and protection of the health and wellbeing of the Waikato River
- b) the restoration and protection of the relationship of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships
- c) the integrated, holistic and co-ordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River

- d) the adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River, and in particular those effects that threaten serious or irreversible damage to the Waikato River
- e) the recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within its catchments on the health and wellbeing of the Waikato River
- f) the recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities
- g) the protection and enhancement of significant sites, fisheries, flora and fauna
- h) the application to the above of both Maatauranga Maaori and latest available scientific methods.

2.4 The role of Waikato-Tainui is to:

- a) commit to achieving the purpose of this accord
- b) give effect to the purpose, joint objectives and relationship principles in this accord
- c) work collaboratively with the Minister and Secretary for the Environment to restore and protect the health and well-being of the Waikato River
- d) assist in the implementation of the deliverables identified in clause 7 of this accord.

Minister for the Environment

2.5 The Minister for the Environment is responsible for directing and overseeing the work of the Ministry for the Environment. The Minister has specific responsibilities in law for the:

- a) Resource Management Act 1991
- b) Hazardous Substances and New Organisms Act 1996

- c) Soil Conservation and Rivers Control Act 1941
 - d) Fiordland (Te Moana o Atawhenua) Marine Management Act 2005
 - e) Waste Minimisation Act 2008.
- 2.6 The Minister for the Environment also has responsibility for the Environmental Risk Management Authority.
- 2.7 The role of the Minister is to:
- a) commit to achieving the purpose of the accord
 - b) take into account the interests of Waikato-Tairāhiti when carrying out functions under the Resource Management Act 1991, the Environment Act 1986 and the Soil Conservation and Rivers Control Act 1941 that directly affect the Waikato River.

Secretary for the Environment and Ministry for the Environment

- 2.8 The Secretary for the Environment is the administrative head of the Ministry for the Environment and advises and assists the Minister in the performance of the Minister's functions. The role of the Secretary for the Environment was established under the Environment Act 1986.
- 2.9 The Ministry for the Environment was established under the Environment Act 1986. The Ministry is the government's primary adviser on the New Zealand environment and international matters that affect the environment. The Ministry's focus is on environmental stewardship for a prosperous New Zealand.
- 2.10 The Ministry has the functions set out in section 31 of the Environment Act 1986, and also has specific functions under the:
- a) Resource Management Act 1991
 - b) Hazardous Substances and New Organisms Act 1996
 - c) Ozone Layer Protection Act 1996
 - d) Climate Change Response Act 2002
 - e) Waste Minimisation Act 2008.

- 2.11 Much of the responsibility for day to day environmental management is devolved to local government, especially under the Resource Management Act 1991. This makes regional and district councils a critical part of environmental management in New Zealand. The Ministry provides guidance for their activities through national policy statements and national environmental standards (which are binding on local authorities), and also through professional development and sharing knowledge about best practice.
- 2.12 Many of the Ministry's activities involve partnerships with particular councils, iwi, business organisations or community groups to work on matters that are of national importance.
- 2.13 The role of the Secretary and therefore the Ministry for the Environment is to
- a) commit to achieving the purpose of this Accord
 - b) implement the agreed deliverables identified in clause 6 of this Accord.

3 PRINCIPLES UNDERLYING THIS ACCORD

- 3.1 The following principles underlie:
- a) the relationship of Waikato-Tainui with the Waikato River; and
 - b) this Accord.
- 3.2 Te Mana o te Awa (the spiritual authority, protective power and prestige of the river)
- a) To Waikato-Tainui, the Waikato River is a tupuna (ancestor) which has mana (prestige) and in turn represents the mana and mauri (life force) of the tribe. The Waikato River has its own mauri, its own spiritual energy, and its own powerful identity. It is a single indivisible being.
 - b) Respect for te mana o te awa (the spiritual authority, protective power and prestige of the Waikato River) is at the heart of the relationship between the tribe and their ancestral River. Waikato-Tainui regard their River with reverence and love. It gave them their name and is the source of their tribal identity. Over generations, Waikato-Tainui have developed tikanga (values, ethics governing conduct) which embody their profound respect for the Waikato River and all life within

it. The Waikato River sustains the people physically and spiritually. It brings them peace in times of stress, relief from illness and pain, and cleanses and purifies their bodies and souls from the many problems that surround them. Spiritually, to Waikato-Tainui, the Waikato River is constant, enduring, and perpetual.

3.3 Mana whakahaere (authority and rights of control)

- a) Mana whakahaere refers to the authority that Waikato-Tainui and other Waikato River iwi have established in respect of the Waikato River over many generations. Mana whakahaere entails the exercise of rights and responsibilities to ensure that the balance and mauri (life force) of the Waikato River are maintained. It is based in the recognition that if we care for the River, the River will continue to sustain the people.
- b) In customary terms mana whakahaere is the exercise of control, access to and management of the Waikato River, including its resources, in accordance with tikanga (values, ethics governing conduct). For Waikato-Tainui, mana whakahaere has long been exercised under the mana of the Kiingitanga.

3.4 Health and wellbeing

- a) The principle of health and wellbeing reflects the overarching purpose of the Settlement, which is to restore and protect the health and wellbeing of the Waikato River.
- b) The health and wellbeing of Waikato-Tainui and its special relationship with the Waikato River is inherently connected with the health and wellbeing of the Waikato River.

3.5 Co-management

- a) The Crown and Waikato-Tainui have committed to enter into a new era of co-management in respect of the Waikato River. The principle of co-management includes:
 - i. the highest level of good faith engagement; and

- ii. consensus decision-making as a general rule; while having regard to statutory frameworks and the mana whakahaere of Waikato-Tainui and other Waikato River iwi.
- b) To be effective, co-management must:
- i be implemented and achieved at a number of levels and across a range of management agencies, bodies and authorities, including (but without limitation) to the following:
 - a. the development, amendment and implementation of strategies, policy, legislation and regulations that may potentially impact on the health and wellbeing of the Waikato River; and
 - b. the processes for granting, transfer, variation and renewal of consents, licences, permits and other authorisations for all activities that potentially impact on the health and wellbeing of the Waikato River; and
 - ii include provision for Waikato-Tainui input and participation by engagement at an early stage in statutory and management processes, and other actions, that may affect the health and wellbeing of the Waikato River, including the planning and development of new and amended policies or management initiatives or decisions affecting or relating to the Waikato River. This is a positive obligation to provide for early and effective input from Waikato-Tainui, rather than simply an obligation to consult.

3.6 Integration

Arising from the principles of te mana o te awa and mana whakahaere, and inter-related to the principle of co-management, is the principle of integration. The health and wellbeing of the Waikato River and successful co-management requires effective integration of management between the relevant government agencies, Crown entities, local authorities and non-governmental agencies who have roles and responsibilities in respect of the Waikato River.

3.7 Treaty of Waitangi

Te Tiriti o Waitangi/the Treaty of Waitangi and its principles apply to this Accord and the relationship between the Crown and Waikato-Tainui reflected in this Accord.

3.8 Honour and integrity

Underpinning this Settlement is the principle of honour and integrity. Waikato-Tainui and the Crown have entered into this settlement in good faith relying on the commitments of each other contained in the deed of settlement and this Accord with the intention of achieving a full, fair and durable settlement of the Raupatu claims of Waikato-Tainui in relation to the Waikato River.

4 **JOINT OBJECTIVE AND RELATIONSHIP PRINCIPLES**

Joint Objective

4.1 Waikato-Tainui, the Minister and the Secretary are committed to the restoration and protection of the health and wellbeing of the River for future generations.

Relationship principles

4.2 Waikato-Tainui, the Minister and the Secretary agree to abide by the following relationship principles when implementing this Accord and exercising their various roles and functions:

- a) working in a spirit of co-operation
- b) ensuring early engagement on issues that the Secretary has the mandate from the Minister to work on
- c) operating a 'no surprises' approach
- d) acknowledging that the relationship is evolving, not prescribed
- e) respecting the independence of the parties and their individual mandates, roles and responsibilities impacting on the Waikato River

- f) recognising and acknowledging that parties benefit from working together by sharing their vision, knowledge and expertise
- g) committing to the highest level of engagement as indicated in this Accord and consistent with the principle of co-management
- h) being guided by the Waikato-Tainui Environmental Plan when considering matters that affect the Waikato River, and where agreed, the wider Waikato-Tainui rohe.

5 SCOPE

- 5.1 This Accord will apply to all functions, responsibilities and actions of the Minister and Secretary that affect the health and wellbeing of the Waikato River and its catchments from Karapiro to Te Puuaha o Waikato, including the Waipaa River from its junction with the Puuniu River to its junction with the Waikato River, being the parts of those rivers shown as located within the area marked "A" on the SO plan in part 12 of the schedule to the deed of settlement (the "Accord Area").
- 5.2 The Minister and the Secretary acknowledge that Waikato-Tainui interests and the exercise of mana whakahaere by Waikato-Tainui extend beyond the Accord Area.
- 5.3 In the interests of achieving the principle of co-management, and where agreed, the parties will engage in good faith in accordance with the purpose, joint objective and principles of this Accord in respect of matters that impact on the exercise of Waikato-Tainui's mana whakahaere outside the Accord Area.

6 DELIVERABLES

Relationship meetings

- 6.1 Waikato-Tainui and the Secretary will attend annual relationship meetings. At these meetings the parties will discuss matters of mutual interest, the implementation of this Accord and agree on joint work projects.
- 6.2 These meetings will be arranged to coincide with the meeting of the relationship forum (as established under the Kiingitanga Accord).

- 6.3 One month before each meeting, Waikato-Tainui and the Secretary will:
- a) share details of current work programmes
 - b) propose any new items for the joint work projects
 - c) agree administrative arrangements for the meeting.
- 6.4 Outside of the relationship meetings, relevant representatives of the parties will meet as required.
- 6.5 The agenda for each meeting will be agreed between the parties no later than 10 working days before the meeting.

Joint Work Projects

- 6.6 Waikato-Tainui and the Secretary agree to develop joint work projects on how Waikato-Tainui and the Secretary will work together.
- 6.7 Matters to be considered as part of the joint work projects must be of mutual interest to the parties and within the parties' respective capabilities, resources and mandated work programmes.
- 6.8 The joint work projects will be reviewed and updated at each relationship meeting.

Secondments

- 6.9 The Secretary and Waikato-Tainui will provide opportunities for internships and secondments between the parties and these will be discussed at the annual meeting.
- 6.10 Staff of Waikato-Tainui will be seconded by the Secretary to:
- a) develop and deliver a capability programme educating MfE staff on:
 - i. the values and practices of Waikato-Tainui
 - ii. this Accord and its implementation
 - iii. the Waikato-Tainui Environmental Plan
 - b) assist in achieving the agreed joint work projects.

6.11 Staff of the Secretary will be seconded by Waikato-Tainui to assist in achieving the joint work projects agreed at the annual meeting.

Training

6.12 The Secretary will provide annual training to Waikato-Tainui which will include:

- a) introductory and refresher training on the Resource Management Act
- b) briefings on the latest amendments to the Resource Management Act and their implications.

6.13 Options for offering the "Making Good Decisions" programme to Waikato-Tainui will be explored.

6.14 The Secretary will inform Waikato-Tainui when opportunities for university holiday employment or student research projects arise that are relevant to the Waikato River and its catchment area. Waikato-Tainui may propose candidates for these roles or opportunities.

Heritage Protection Authority

6.15 The Secretary recognises Waikato-Tainui's objective to become a Heritage Protection Authority for their area of mana whakahaere and will assist Waikato-Tainui in achieving that objective by:

- a) providing advice and information on the requirements for an application to become a Heritage Protection Authority; and
- b) working with other agencies to ensure further support is available if required.

Environmental Plan

6.16 Waikato-Tainui and the Secretary will engage to establish a process for how the Ministry and Secretary will in practice be guided by the Waikato-Tainui Environmental Plan when exercising their duties and functions.

Information sharing

6.17 The Minister, the Secretary and Waikato-Tainui will use their best endeavours to share information (where that information is not sensitive or confidential) in relation to the following matters:

- a) rivers
- b) water quality
- c) land management
- d) soil health
- e) air quality.

6.18 In addition to the requirements of the Official Information Act 1982, when considering the provision of information to Waikato-Tainui, the Minister and the Secretary will have regard to the principles in clause 3 and the further relationship principles in clause 4.2.

7 COMMUNICATION BETWEEN THE PARTIES

7.1 The Secretary and Waikato-Tainui will establish and maintain effective and efficient communication with each other on a continuing basis through:

- a) relationship meetings (in accordance with clauses 6.1 to 6.5)
- b) Waikato-Tainui providing, and the Secretary maintaining, information on the Waikato-Tainui personnel responsible for matters relating to the Waikato River, including their addresses and contact details
- c) the Secretary providing, and Waikato-Tainui maintaining, information on primary Ministry for the Environment contacts responsible for matters relating to the Waikato River
- d) both parties providing reasonable opportunities for their relevant personnel to meet with each other to discuss and (if possible) resolve any issue that may arise

- e) identifying staff who will be working closely with staff of the other party, and informing those staff of the contents of this Accord and their responsibilities and roles under it.

8 ESCALATION OF MATTERS

- 8.1 If one party considers that there has been a breach of this Accord then that party may give notice to the other that they are in dispute.
- 8.2 As soon as practicable upon receipt of the notice referred to in 8.1, the Ministry for the Environment's Tumuaki and the Claims and Environment Manager will meet to work in good faith to resolve the issue.
- 8.3 If the dispute has not been resolved within 20 working days of receipt of the notice referred to in 8.1, the Secretary and the Chief Executive Officer for the Waikato Raupatu River Trust will meet to work in good faith to resolve the issue.
- 8.4 If the dispute has still not been resolved within 30 working days of receipt of the notice referred to in 8.1, the Minister and a representative appointed by the trustees of the Waikato Raupatu River Trust will meet to work in good faith to resolve the issue.

9 REVIEW AND AMENDMENT

- 9.1 Waikato-Tainui, the Minister and the Secretary agree that this Accord is a living document, which should be updated and adapted to take account of future developments and additional co-management opportunities.
- 9.2 The first review of this Accord will take place no later than 2 years from the Settlement Date. Thereafter the Accord will be reviewed on a two yearly basis. The review of this Accord will be agreed between all parties.
- 9.3 Where the parties cannot reach agreement on any review or variation proposal they will use the escalation processes contained in clause 8 of this Accord.
- 9.4 Waikato-Tainui and the Crown may only vary this Accord by agreement in writing.

9.5 In respect of this Accord:

- a) Waikato-Tainui will be represented by the Waikato Raupatu River Trust
- b) where the Minister or the Secretary seeks to engage or otherwise interact with Waikato-Tainui (including, without limit, making available information, consulting, informing Waikato-Tainui of certain matters, seeking advice, providing notice or assistance, or meeting with Waikato-Tainui), the Minister or the Secretary will do so through the Waikato Raupatu River Trust.

10 LIMITS OF ACCORD

10.1 This Accord does not affect:

- a) legislative rights, powers or obligations
- b) any statutory functions, duties and powers of the Minister or the Secretary
- c) the ability of the Crown to introduce legislation and change government policy
- d) the ability of the Crown to interact or consult with any other person, including any iwi, hapu, marae, whanau or their representative
- e) the legal rights and obligations of Waikato-Tainui.

10.2 This Accord does not have the effect of granting, creating or providing evidence of an estate or interest in, or rights relating to, land or any other resource held, managed or administered by the Crown.

10.3 The commitments of the Minister and the Secretary under this Accord are limited to the extent that are within the capability, resources and mandated work programme of the Ministry for the Environment and the priorities of the government of the day.

11 DEFINITIONS AND INTERPRETATION

11.1 The provisions of this Accord shall be interpreted in a manner that best furthers the purpose of this Accord and is consistent with the principles set out in clause 3 of this Accord.

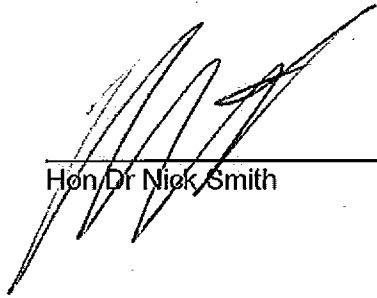
11.2 In this Accord, unless the context requires otherwise:

- a) terms defined in the deed of settlement and the settlement legislation have the same meaning in this Accord
- b) deed of settlement means the Deed of Settlement in relation to the Waikato River signed on 17 December 2009
- c) settlement legislation means Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

11.3 Subject to clause 10.1 the rules of interpretation in the deed of settlement apply to the interpretation of this Accord.

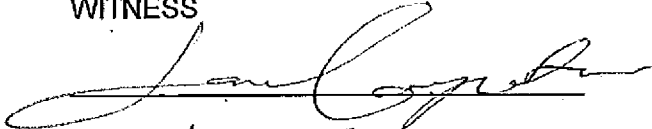
SIGNED as a deed on 18 June 2010

SIGNED by
THE MINISTER FOR THE ENVIRONMENT
in the presence of:




Hon. Dr. Nick Smith

WITNESS



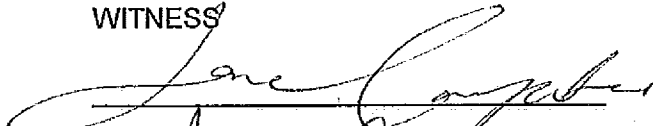
Name: Jane Carpenter

SIGNED by
THE SECRETARY FOR THE ENVIRONMENT (ACTING)
in the presence of:



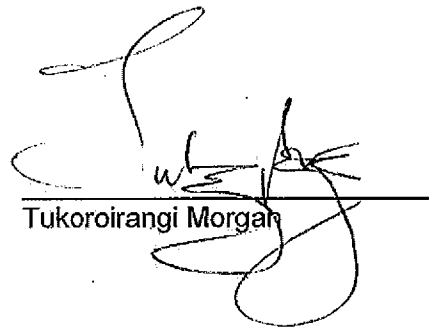
Sue Powell

WITNESS



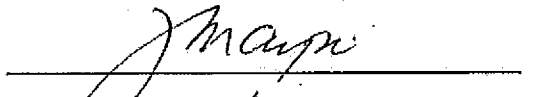
Name: Jane Carpenter

SIGNED for and on behalf
of **WAIKATO-TAINUI** by
Tukoroirangi Morgan
in the presence of:



Tukoroirangi Morgan

WITNESS



Name: Tahana Mapi