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Water Services Bill  
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**Ngāti Kahungunu Iwi**  
INCORPORATED

## NGATI KAHUNGUNU SUBMISSION

### Water Services Bill 2020

**Ngāti Kahungunu Iwi Incorporated (NKII)** is the mandated Ngāti Kahungunu authority with interests in all aspects of Ngāti Kahungunu development. Ngāti Kahungunu has the third largest iwi population (62,000<sup>1</sup>) in the country and over 36,000 registered members. The rohe of Ngāti Kahungunu extends from Paritu, north of Wairoa to Turakirae in South Wairarapa; geographically the second largest tribal rohe in the country.

The mission of Ngāti Kahungunu Iwi Incorporated is:

*“To enhance the mana and well-being of Ngāti Kahungunu”.*

The iwi authority maintains an independent position to advocate for the interests and rights of Ngāti Kahungunu, underpinned by the values, beliefs and practices of whanau and hapū. Tāngata whenua hold significant cultural, social, economic and spiritual connection to the taiao. This includes a responsibility and obligation as kaitiaki of care and protection for future generations. This has led to many responses from tangata whenua concerned with adverse effects on the taiao, that have developed since the advent of western values, practices, management and science and accumulation of the adverse effects upon tangata whenua values, practices, management and mātauranga.

The natural environment has guided shaped and characterized Ngāti Kahungunu tāngata whenua, iwi, hapū and whānau, who have always been strategically located near important waterways resources. Māori have made great use of the environment and worked in conjunction with it to develop their physical world (resources) sustainably, bringing certainty and safety to their communities and those of future generations. These practices and way of life have been eroded drastically by contemporary resource management practices and policies.

Ngāti Kahungunu Iwi Incorporated invests considerable amount of time, resources and energies in drawing together and considering the views and objectives of Ngāti Kahungunu mai Paritu ki Turakirae. Discussions have highlighted the commonality amongst tāngata whenua in terms of their values. However, despite the best efforts of tāngata whenua to work with Councils, there has been

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<sup>1</sup> 2013 Census of Population and Dwellings, New Zealand Ngāti Kahungunu population only.

little positive change to the outcomes over the years. It also highlighted that the same frustrations and disappointments in terms of natural resource management that has inadequately and continually failed to address the long standing concerns of tāngata whenua.

The following objectives were the outcome of a series of hui across Ngāti Kahungunu from 2010 – 2015, and have been subsequently developed further in response to the evolving policy and impacts on our waterways:

- i. The revitalisation of the **Mauri** of waterways.
- ii. Repatriation of our values, practices and customs – enabling access and use of waterways and resources.
- iii. Water quality and quantity provides for safe and reliable drinking water.
- iv. Maintain, enhance restore water quality.
- v. Managed for aquatic ecosystem purposes. Maintaining water flow and quantity for ecosystem health.
- vi. Avoid adverse causes and effects of unsustainable land use.
- vii. Manage water and land use at the sub-catchment scale and provide and resource for effective hapū input.

### ***Te Tiriti o Waitangi***

1. Ngāti Kahungunu has never relinquished ownership over our water bodies; the Treaty of Waitangi confirmed and guaranteed our interests over this extremely important taonga. Since the Treaty of Waitangi, the Crown has wrongly and progressively acted as the owner, under the assumption of exclusive rights of control, without the informed consent of Ngāti Kahungunu.
2. More recently, the Waitangi Tribunal found that Māori had proprietary rights and interests in freshwater and that those rights are sufficiently linked to commercial developments and companies that use water, without paying.<sup>2</sup>
3. NKII agree with the Waitangi Tribunal's interim findings and as the mandated iwi organisation we have a constitutional duty and obligation to:
  - promote, protect and assert the mana, rangatiratanga and kaitiakitanga of ngā hapū o Ngāti Kahungunu;
  - act in the beneficial interests of all descendants of Kahungunu, particularly where the interests and rights of Ngāti Kahungunu tāngata whenua, hapū and whānau have been unfairly subjugated.

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<sup>2</sup> Wai 2359, *Waitangi Tribunal Interim Report on Freshwater*

- establish a Kahungunu Iwi Water Authority to specifically undertake these tasks, on behalf of Ngāti Kahungunu.
4. On September 3<sup>rd</sup> 2012 NKII lodged a contemporary statement of claim on behalf of ngā hapū o Ngāti Kahungunu.

*WAI 2379: A Contemporary Treaty Claim to Freshwater and Geothermal Resources within their respective rohe on behalf of the iwi, hapū, whanau and marae of Ngāti Kahungunu.*

5. In line with the Waitangi Tribunals recommendation for meaningful discussion with iwi, Ngāti Kahungunu have and continue to invite the Crown to come and talk with us, *kanohi ki te kanohi (face to face)*, to develop mutually beneficial pathways forward *pokohiwi ki te pokohiwi (shoulder to shoulder)* in terms of resource management. Ngāti Kahungunu has also offered the same invitation to our 11 relevant councils and territorial authorities within Ngāti Kahungunu.
6. The Water Service Bill (Bill) allows for a user pays system across the country to supply drinking water and arguably expropriates the rights of Kahungunu who maintain rangatiratanga in our rohe. This includes potential for private entities that are not treaty partners to manage water supply with no onus to recognise tangata whenua rights nor co-management or co-governance arrangements.

### **Taonga**

7. Freshwater is a taonga to tāngata whenua. The relationship between tāngata whenua and the water is supposed to be protected in resource management legislation. Management by regional councils is directed by the National Policy Statement for Freshwater Management (NPS-FM), which acknowledges the importance of the Treaty Partnership in freshwater management and the national significance of freshwater through 'Te Mana o te Wai'. Despite this, management of rivers, aquifers, lakes, wetlands and waterways in general is seldom undertaken in a way that is consistent with Te Ao Māori view, let alone in keeping with local tikanga or kawa.

### **Te Mana o te Wai**

8. Te Mana o te Wai is a tangata whenua term and concept that most New Zealanders can identify with. Te Mana o te Wai recognises the inherent mana, authority, reverence and mauri waterways have or 'should' have. Support of this concept, protection and restoration is growing amongst the national populace.
9. If freshwater management within the Ngāti Kahungunu rohe is to be more inclusive of Māori values and interests, an appropriate and inclusive planning mechanism needs to be put in place

to deliver outcomes for Māori that reflect the status and philosophy of existing tangata whenua rights.

10. Of primacy to this philosophy is the promotion of waimāori (naturally clean water) rather than disinfection of water. As kaitiaki it is our responsibility to ensure freshwater is clean with mauri intact, rather than trying to clean and disinfect contaminated water.
11. The implementation of current regulatory framework doesn't recognise Te Mana o te Wai nor the preservation of Mauri, Mahinga Kai and rights of tangata whenua in general. A clearer definition and direction is needed to provide and recognise for Te Mana o te Wai. Alternatively, this term and concept should be removed from policy if recognition is not meaningful and it is being referred to in a tokenistic manner. Te Mana o te Wai as an indigenous term should not be bastardised; tangata whenua are best placed to understand Te Mana o Te Wai and ensure its due recognition in natural resource management.

***Havelock North Gastro Outbreak – Brookvale Bores and Mangateretere Stream***

12. The catalyst for the Water Services Bill is the gastro outbreak in Havelock North. This was in the back yard of Ngāti Kahungunu. This outbreak occurred despite the iwi doing all it could do to prevent this catastrophe through spending considerable time, resources, energies and advocating for better resource management and application of our mātauranga.
13. In 2008, Ngāti Kahungunu challenged the consent application of Hastings District Council (HDC) to place the domestic community drinking water bores at the Havelock North location. Due to the location being on the old river bed of the Tukituki and its connection and the adverse impacts on the nearby Mangateretere stream. Facing the probability of being unsuccessful the iwi accepted a compromise through a formal "Side Agreement" where HDC agreed to move away from Brookvale and relocate the bore elsewhere in 10 years' time, in 2018.

***Ngāti Kahungunu vs Hawkes Bay Regional Council Decision [2015] NZEnvC 50. ENV-2013-WLG-000050***

14. In 2014, prior to the outbreak Ngāti Kahungunu Iwi Incorporated challenged Hawke's Bay Regional Councils (HBRC) proposed changes to the Regional Policy Statement (Plan change 5). HBRC proposed to remove policy that protected the Heretaunga Aquifer, with an ambition to treat contaminated water. Prior to council's management, the Heretaunga Aquifer has provided people with clear pristine untreated drinking water for over a 1000 years.
15. Hawkes Bay District Health Board was an interested party in this court case and has had a close working relationship with the iwi over the years.

16. In 2015, the Environment court ruled in favour of Ngāti Kahungunu Iwi Incorporated. Including, retaining the policy of “No degradation to the Heretaunga Plains Aquifer System”. This ruling also set national case law on the interpretation of water quality policy within the National Policy Statement for Freshwater Management 2011 and 2014. Ministry for Environment and Hawke’s Bay Regional Council promoted the rationale of managing water quality through averages (‘under’s and overs’), that is, it was ok to let one water body degrade if another was preserved. Ngāti Kahungunu and many other disagreed. This was the local and central government policy. The environment Court viewed the rationale as “fundamentally flawed”.
17. Despite this Court decision and aside from retention of policy, in practice nothing much has changed, in fact the officers report to Council suggested that it would a tough ask for the iwi to get this policy approach during catchment development with stakeholders. The iwi also has been forced to continue debating the exact same argument with regional council staff a number of times during council led “stakeholder engagement” for TANK waterways.
18. Councils approach was to essentially treat any contaminated water and viewed it no longer necessary to “avoid” or protect source water bodies from contamination. The environment Court ruled this approach as being “illogical”.

#### ***Hastings District Plan***

19. NKII also opposed the Hastings District Council proposed plan as it proposed to remove a whole chapter on the significance of the Heretaunga aquifer and relevant policy in the proposed Hastings district plan. This proposed change seemed to align with the HBRC proposed plan change. However, this took place after environment court decision and as a result an amicable resolution was reached with Hastings District Council where policies related to the Heretaunga Aquifer were retained.

#### ***Marae and Papakainga***

20. The Water Services Bill 2020 directly and unreasonably contests the rangatiratanga of tangata whenua on their marae and papakainga. The Bill imposes an unreasonable burdens on tangata whenua in relation to drinking water supplies on the marae and papakainga<sup>3</sup>; and provides for intrusive compliance and enforcement powers in the event of non-compliance.
21. Given Ngati Kahungunu have never relinquished our rights in respect of water, and indeed maintain rangatiratanga over water the requirement for annual registration and payment of a

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<sup>3</sup> See Hapu and Te Puni Kokiri definition

fee is an affront to that rangatiratanga and is considered an expropriation of rights and would be considered as further evidence of a contemporary dishonouring of Te Tiriti.

22. We therefore oppose the requirement for registration of private water supplies and registration of individual water supplies for marae and papakāinga.

#### ***Retention of Local Functions under the Health Act***

23. Ngati Kahungunu has had experience of working with representatives from the local District Health Board. We propose the retention of certain powers of medical health officers in the Health Act 1956, including section 69ZZP – local authority may be required to warn users of self-supplied building supplies about contamination.

#### ***Water Quality, Water Quantity and Source Protection***

24. The Bill Entrenches a narrow focus on providing water that does not make people sick by treating the water rather than ensuring high quality water that promotes health by protecting it from contamination in the first place.
25. As has been described above in part Ngati Kahungunu has gone to great lengths to protect our waters including drinking water. Our view is that is extremely illogical not include protection over our waterways and aquifer as the source of our drinking water.
26. The Resource Management Act in particular has scant regard for the integrity and quality of our groundwater's and aquifers from which Kahungunu predominantly rely on for drinking water.
27. It is a fundamentally flawed approach to only treat or have provisions for drinking water at the end of the tap. This management approach shifts the burden and cost from polluters and land users to the general public and consumer. It is yet another example of private public subsidies and transference of responsibility. That supports exploiters of a supposedly held in common natural resource asset that is water, to continue accumulating wealth while the general public including those with less means are expected to offset the cost of that exploitation or worse accept the adverse health effects from contamination such as E.coli, and elevated nitrate nitrogen that could lead to cancer and other ailments.
28. If human health is to be taken serious and if another drinking water catastrophe is to be avoided in the very place that is the catalyst for these reforms then water quality and quantity at source needs to be included in management regime that over arches regions.

#### ***Rangatira Based Water and Taiao Management***

29. Including water quality, water quantity and land use management under the scope of this bill is a necessary safe guard for protecting the population.

30. In recognizing the rangatiratanga of Ngati Kahungunu we propose that for the rohe of Ngati Kahungunu that an equivalent Taumata Arowai specifically for the rohe from Wairoa to Wairarapa over sees the responsibilities of regional councils and that it's establishment and operations is co-designed in conjunction with the Department of Internal Affairs.

31. This has logic on a number of levels - geographically, hydrologically, climate and cultural.

#### ***Water Services Bill – Recommendations***

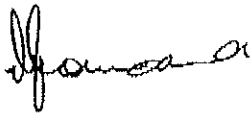
- i. That the Crown through statute recognises Ngāti Kahungunu Iwi rights and interests in freshwater.
- ii. Marae and papakainga (small Maori network supplies) are removed from the proposed legislation as this is a direct challenge to Ngāti Kahungunu rangatiratanga.
- iii. Retention of section 69ZZP, Health Act 1956.
- iv. Drinking water management would include “source protection” i.e. safeguarding the quality and quantity of freshwater with greater limits and controls on land use to recognise human health impacts including drinking water.
- v. Iwi Taumata Arowai for Ngati Kahungunu Rohe.

#### **Conclusion**

Human health, well-being and cultural values have not been taken serious in resource management. As a result the health, well-being and culture of tangata whenua has suffered significantly.

Ngāti Kahungunu Iwi Incorporated are interested in speaking to our submission. For any additional information on this submission, please contact Ngaio Tiuka, Pouarataki – Te Taiao me ona Rawa (Director of Environment and Natural Resources), [ngaio@kahungunu.iwi.nz](mailto:ngaio@kahungunu.iwi.nz).

Nā māua,



Ngahiwi Tomoana  
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