

# scope

*Contemporary Research Topics*

Tīrou 1  
September 2025

Article

<https://doi.org/10.34074/scop.7001005>

## TINO RAKATIRATAKA O TE WAI MĀORI: AUTHORITY OVER FRESHWATER

Kelli Te Maihāroa and David Higgins

Published by Otago Polytechnic Press.

CC-BY the authors.

© illustrations: the artists or other copyright owners or as indicated.

# TINO RAKATIRATAKA O TE WAI MĀORI: AUTHORITY OVER FRESHWATER

Kelli Te Maihāroa and David Higgins

## INTRODUCTION

This article explores the enduring concept of tino rakatirataka (sovereignty, authority) expressed by Kāi Tahu whānui over wai māori (freshwater) within the most southern takiwā. The whakapapa of Te Pō ki Te Ao Mārama, from eternity to the human realm, provides the whakapapa framework for Kāi Tahu whānui rights, entitlements and responsibility of rakatirataka over wai māori. Kā Tiritiri o te Moana (the Southern Alps), including Aoraki, is the source of wai māori which provides the authority for Kāi Tahu whānui to establish and express rakatirataka and mana over waterbodies and waterways. This ancient connection between Kā Tiritiri o te Moana and Kāi Tahu whānui, establishes pūtake mauka (ancestral source), the responsibility of healthy Te Waipounamu waterbodies. The prevalence and relevance of rakatirataka for Kāi Tahu whānui is then considered within Māori Lore and European Law, enshrined in Te Tiriti o Waitangi, the Treaty of Waitangi (1840). The article then draws on the founding concepts of rakatirataka and pūtake mauka, and how the current accumulating water crises led to the lodgement of the Ngāi Tahu High Court Wai Māori Freshwater (2020) claim. The Declarations sought by the Plaintiffs and Ngāi Tahu seek to provide legal recognition of are assertions of Kāi Tahu rakatirataka and pūtake mauka - tikaka obligations to actively protect wai māori as a taoka within the Kāi Tahu takiwā, and to co-design future regimes over freshwater management rights and responsibilities for the sustainable benefit of all. The Ngāi Tahu case is explored alongside Crown Law arguments, drawing on the media coverage of this Māori-Crown legal case. Whilst the case is still under judicial consideration, this article does not undertake legal analysis or suggest a particular outcome, rather it encourages the Crown and Kāi Tahu whānui, irrespective of the judicial decision to uphold their Te Tiriti partnership to collectively and effectively address the current water crises.

## AORAKI TIPUNA: ANCESTOR AORAKI

In ancient times, southern tribal histories recall how Aoraki led his younger brothers on a fishing expedition through the dark and desolate Southern oceans. As Aoraki began his karakia to launch their waka Huruhurumanu back into the heavens, his incantation faltered, and their waka was overturned. As the brothers climbed onto Aoraki's back, they were all turned to stone, thus creating Kā Tiritiri o te Moana, the Southern Alps, and forming the South Island, also known as Te Waka o Aoraki (D. Higgins, personal communication, May 17, 2025).

Aoraki is the connecting link between Rakinui, his Sky Father, and Papatūānuku, his Earth Mother, and the eternal tears of Rakinui for their separation:

Waitaki literally means “the waterway of tears” and the name is often said to represent the tears of Aoraki... The wai māori of the valleys and basins of the takiwā of Ngā Rūnaka descend from Aoraki and the mauka of Te Waipounamu to the sea. The awa are the lifeblood of the surrounding land and its peoples. The catchments and streams are the veins of the whenua; a source of nourishment, and a living system connecting the peoples of Ngāi Tahu with their ancestor, with mahika kai, with countless taonga, and with each other (Waitaki Rūnaka Letters of Support, 2023).

## TIMATAKA – BEGINNING

Nā Te Pō, ko Te Ao  
Nā Te Ao, ko Te Ao Mārama  
Nā Te Ao Mārama, ko Te Ao Tūroa  
Nā Te Ao Tūroa, ko Te Kore Te Whiwhia  
Nā Te Kore Te Whiwhia, ko Te Kore Te Rawea  
Nā Te Kore Te Rawea, ko Te Kore Te Tāmaua  
Nā Te Kore Matua, ko Te Mākū  
Nā Te Mākū, ka noho ia Mahoranui ātea  
Ka puta ki waho ko Raki  
Nā Raki, ka nohio i a Poko harua te Pō  
  
Ko Aoraki me Rakamaomao, tana a Tawhirimatea  
Ko Tū Te Takiwhanoa  
Ui ra ki Te Maha-a-nui a Maui  
Ko Te Ao Takata!  
Tihei mauri ora!  
Ko te kākahu o te Mauka Ariki o Aoraki  
Me tōna whānau o Rakiroa, Rakiroa, Rarakiroa  
Nā te Mauka o Kaikiroa me Horokoau  
Ko te whānau o Kā Tiritiri o Te Moana  
Nā te tane a Haupapa  
Raua ko te wahine a Aroaro kaehe  
Huri noa ki te awa tapu ki Kā Roimata o Aoraki  
Nā te roto o Pukaki, ko te roto tapu o Takapo  
Nā te roto o Ohou, ko te whenua o Te Manahuna  
Ki kā huarahi ki te tihi on te Mauka o Te Rua Taniwha  
  
Huri noa ki Te Ao Mārama!  
Nā te whareniui o Te Whakaahua-a-raki nō Te Maihāroa  
Ko Te Poho o Rakitamau  
Nā Te Kai Hikihiki, ki Otamatakou  
Nā Te Wharekuri, ki Te Awakino  
Nā Te Kohurau, ki Oteake  
Nā Otekaieke, ki Te Maerewhenua  
Nā Te Awamoko, ki Te Puna o Maru  
Nā Te Korotuaheka te kaika tuturu,  
ko te whare Tapu o Matiti  
Tēnā koutou, tēnā koutou, kia ora tātou katoa!

From eternity came the Universe  
From the Universe, the bright clear light  
From the bright clear light, the enduring light  
From the enduring light, the void unattainable  
From the void unattainable, the void intangible  
From the void intangible, the void unstable  
From the void of paternity, came moisture  
From moisture, came limitless thought  
Then came the visible heavens  
The visible heavens combined with the great abyss  
to produce the numberless sorceries and the  
ultimate calamity!!!  
Thence to Aoraki and the winds and weather  
To the creator of the land  
And the canoe of Maui  
And finally to people!  
I cough the breath of life!  
To the cloak that covers the mountain, Aoraki  
To the family and brothers  
Over to Mt Sefton and Mt Tasman  
And to the rest of the family of the Southern Alps  
To the male side of the Tasman Glacier  
And to the female side and the Hooker Valley  
Then over to the source of the “Tears of Aoraki”  
And on the the sacred lakes of Pukaki and Takapo  
And to the Lake Ohau and the valley of Te Manahuna  
And travelling the ancient path to the mountain,  
Te Ruataniwha  
And then to the world of light, Te Ao Mārama!  
And on to the place of the whare of the chief, Te Maihāroa  
And the burial mound on Māori Hummock  
And on to Otematata  
And Te Wharekuri and Te Awakino  
And the mountain Te Kohurau and the place, Oteake  
And Otekaieke and Duntroon  
On to Te Awamoko and the settlement of Te Puna a Maru  
And finally arriving at the Waitaki river mouth and  
the house of Matiti  
Greetings to you all, greetings to us all!

(Higgins, n.d., p. 2-5).



Figure 1. Aoraki. Photograph: Kelli Te Maihāroa, 28 April, 2025.

## RĀKAIHAUTŪ: FOUNDING RAKATIRA

Rākaihautū was the first person of the Waitaha tribe to lay claim to the whenua at Tahuna, Te Ihu, the top of Te Waipouamu. “Me timata mai tenei korero i te Kāhui-rongo me te Kāhui tipua i haere mai i runga i te waka, ko Uruao te ingoa – We should start this tradition with the Kāhui-rongo and Kāhui-tipua who came here on the canoe – its name was Uruao” (Paipeta, c. 1920, as cited in Prendergast-Tarena, 2008, p. 60). Rākaihautū is the founding ancestor who established and claimed ahi kā roa, the uninterrupted burning fires of occupation in Te Wai Pounamu. Tribal records recall the three groupings who arrived on the Uruao waka captained by Rākaihautū. They were: Kāhui Waitaha, Kāhui Roko, Kāhui Tipua or Kāhui Mauka; the Waitaha; a group of peaceful beings, and a group of spiritual beings. It was Rākaihautū who established ahi kā (occupational rights), the first person to consecrate, name and carve the southern whenua, creating the interior lakes of Te Waipounamu with his ko (spade) Tūwhakaroria:

Ko Rakaihautu te takata nana i timata te ahi te ruka ki tenei motu. Ka noho tenei motu i Waitaha. Katahi a Rakaihautu ka haere ra waekanui o te motu nei haere ai me ka takata. Ka riro tonu ko te roto a uta, te roto a tai: Takapo, Pukaki, Ohau, Hawea, Wanaka, Whakatipu-wai-māori, Wakatipu-wai-tai. Haere tonu Te Anau wai tai tae noa atu ki te matuka mai o te moutere. Ka waioha kao kaitiaki i reira, ko Noti raua ko Nota. Ka hoki mai Rakaihautu te roto nui a whatu; Kai Maruanuku, Waihora, Wairewa, Kai Taieri, Kai-Karae, Wainono-a-Kahu, Te Aetarakahi, Waihora, Wairewa i konei. (Kahu, 1880, as cited in Beattie, n.d.)

As the highest peak of Kā Tiritiri o te Moana, Aoraki is the source from whom wai māori (freshwater) flows down the valleys and into the great southern lakes that were carved out by Rākaihautū, into the rivers and sea. The journey of ‘ki uta ki tai: from the hinterland to the sea’, was and remains the traditional waterways and trails that sustain life through the mahika kai food sources by utilising the southern tribal māramataka (Māori calendar). In his personal manuscripts, Rāwiri Mamaru (1808-1887: Kāi Tahu, Kāti Māmoe, Waitaha) described Kā Tiritiri o te Moana as ‘pūtaka mauka’, the source of wai māori. His direct descendant, David Higgins, (2025, p. 2) identifies pūtaka mauka as a tradition or cultural practice that dates back to the beginning of time, even before our ancestors came to Aotearoa me Te Waipounamu. Professor Te Maire Tau (2025, p. 73) points out that pūtaka mauka is a specific term used by Teone Mamaru, an elder of the Moeraki Kāi Tahu who was grounded in the Waitaha traditions. He notes that “Pūtaka mauka is used to represent our underlying entitlements to water because our ancestors understood that our water bodies and mahinga kai were sourced from our ancestral sources.” He states that the more common term used by Ngāi Tahu and other iwi is ‘kahui-tipua’ and other iwi may use ‘kāhui-maunga’ (Tau, 2025, p. 1). Therefore, pūtaka mauka can be defined as the foundational wellspring of wai māori and the ensuing mahika kai cultural practices that flow from the ancestral sources of Kā Tiritiri o te Moana.

As descendants of Aoraki, the whakapapa layers of Waitaha, Kāti Māmoe and Kāi Tahu are interwoven within these tribal bloodlines. The three primary iwi are recognised statutorily as ‘Ngāi Tahu Whānui’ in the Ngāi Tahu Claims Settlement Act (1998). Waitaha established ahi kā roa, the uninterrupted occupational rights, latterly joined by the southern migrations of Kāti Māmoe and Kāi Tahu. Through the Settlement Act (1998), Ngāi Tahu whānui hold the authority and responsibility of mana whenua within the most southern tribal takiwā.

## RAKATIRATAKA: CHIEFTAINSHIP AND SOVEREIGNTY

Rangatiratanga is identified by Hirini Mead (2003, pp. 366–368) as political sovereignty, chieftainship, leadership, self-determination and self-management. It also includes individual qualities of leadership and chieftainship over a social group such as a hapū or iwi, and defines tino rangatiratanga as the right to self-determination. Tribal leadership includes political aspects such as chieftainship, self-determination and sovereignty which could also be applied to individuals (Mead, 2003). Rakatira qualities or characteristics are said to be inherited through senior arikitaka and/or acquired status through the demonstration of great mana to authoritatively lead and implement social and political decisions. Mead (2003, p. 37) acknowledges the vision and legacy of Te Rangikaheke:

... a child born of te moenga rangatira (the chiefly marriage bed) would include the essential abilities to lead and conduct meetings of the tribe, know all about agriculture, be brave in battle, be very familiar with military strategies, know the arts, build up the resources of the tribe and be hospitable to visitors.

A rakatira is a chiefly person who has the authority and rights to express and exercise tino rakatirataka, self-determination over their tribal takiwā. The word 'tino' placed before rakatirataka intensifies the term, therefore making tino rakatirataka the highest level of chieftainship, the ultimate expression of self determination, authority and sovereignty. To uphold rakatirataka across a tribal boundary, the chief and his tribe also hold the authority and responsibility to advance their chiefly reign over the security and prosperity of their whānau, hapū, iwi and resources across their takiwā, and sometimes extending beyond such boundaries.

Rakatirataka ... is about self-determination ... It means being able to maintain management and control ... to restore, or maintain mana, over our natural resources (Higgins, 2025, p. 2)

Tino rakatirataka was traditionally demonstrated through the strategic tribal leadership of ariki (chiefly whakapapa lines), kaumātua (elders), rakatira, tohuka (expert specialist), and experienced warriors to advance the mana (prestige) of the tribe.

Whilst all Māori are born with mana, Mead (2003) states that the inheritance of mana (power, prestige) to a child rests on their parental achievements, social positioning and tribal assistance. 'Mana is always a social quality that requires other people to recognise one's achievements and accord respect' (Mead, 2003, p. 51). Tau (2025, p. 1) states that 'rangatira cannot be separated from mana, it is the functional arm of mana'. Tino rakatirataka is the exercise of mana, authoritative power and influence. The mana of a chief is acknowledged by their hapū and iwi through respect, recognition of his achievements, and his authority and influence over the people, land, water and available resources.

In te ao Māori, all gifts are derived from the atua, handed down as i tuku iho, gifts for the generations to come. Therefore, not only does rakatirataka reflect the mana of self-determination, it also encompasses wider considerations for the ongoing success and flourishing of the tribe (Higgins, 2025). Service to the tribe relies upon a broader understanding on how decisions made for today could impact on generations to come; it involves strategic, multi-generational planning and execution to ensure the future wellbeing of the tribe; iwi-led and mokopuna-driven. Intergenerational thinking for Kāi Tahu whānui is encapsulated in the whakataukī: Mo tatou, ā, mo ka uri a muri ake nei – For us, and our children after us (Te Rūnanga o Ngāi Tahu (2025).

For Ngāi Māori to endure and flourish, a balance of kaitiakitaka (stewardship) over customary domains such as land, water, flora, fauna, must be sustained for future generations (Mead, 2003). Kaitiakitaka is the protection of Māori customary interests, it is the overarching environmental sustainability framework to sustain natural and physical resources to ensure resources for future generations. "It denotes the burden incumbent on tangata whenua to be guardians of a resource or taonga for future generations. The act of guardianship, kaitikaitanga, requires clear lines of accountability to whānau, hapū or iwi, and is more frequently associated with obligation than authority" (Durie, 1998, p. 23). Both obligation and authority is now expressed through tiakitaka (Higgins, 2025).

The sentiment of accountability is recalled by Tau (2025) who reminds us that the modern constructs of 'ownership' often forget the ongoing obligations and responsibilities owed to past, present, and future generations. That is, the actions undertaken by tribal leaders today will have far-reaching impacts for the grandchildren of tomorrow.

Mason Durie (1998, p. 5) states that "Māori self-determination is the protection of the environment for future generations ... clean air, fresh water, access to traditional lands, forests, rivers, the sea, are all on the Māori agenda for tomorrow." Access to traditional waterways and landscapes are relied upon to uphold the cultural, spiritual and economic practices of mana whenua. Ko ō mātou kāika nohoaka, ko ā mātou mahika kai, me waiho mārie mō ā mātou tamariki, mō muri iho i a mātou – Our places of residence, cultivations and food-gathering places must still be left to us, for ourselves and our children after us (Ngāi Tahu Pepeha Resources, 2025). The aim of environmental protection for future generations encompasses land and forests, rivers and lakes, harbours and sea, air and environmental links with humankind (Durie, 1998, p. 6).



## TINO RAKATIRATAKA: LORE AND LAWS OF SURVIVAL

As First Nations people arriving in Te Waipounamu around 840 AD, Māori lore and tikaka was the overarching framework to provide order, authority and guidance. The arrival of European traders to Te Waipounamu near the turn of the 19th century resulted in the expansion of southern trading posts for seals and whales, flax and timber resources. Kāi Tahu whānui at this time were already trading with Australia. The trade expansion attracted European traders and settlers seeking more permanent settlements and the introduction of European law. British interests were declared with the appointment of James Busby in May 1833 who arrived in the Bay of Islands with the King's letter offering "the protection of Māori and the better control of British subjects" (Orange, 2021, p. 19). A paternalistic approach was adopted by the British Government who seemed keen to recognise Indigenous sovereignty, in the spirit of protection and good faith, prior to other competing nations. The optimistic promise of protection and independence was further enshrined in He Whakaputanga o te Rangatiratanga o Nu Tirene: A Declaration of the Independence of New Zealand, signed by 52 hereditary chiefs and heads of tribes between 1835-1839. In the original te reo Māori Declaration of Independence (1835) text, the word 'rangatira' is translated in English as 'independence' (Orange, 2021).

He Whakaputanga and the United Tribes flag were both visual signs of tino rakatirataka, a national and international assertion of Māori sovereignty and authority to trade internationally.

The constitutional relationship between the Crown and Māori was established 6 February 1840, when Te Tiriti o Waitangi, The Treaty of Waitangi, was signed at Waitangi by Captain Hobson on behalf of the British Crown, and over 40 rakatira signed the document with their moko or a signature. Several different 'copies' travelled around New Zealand to collect signatures from almost 500 rakatira. In Te Waipounamu, Te Tiriti was signed by Ngāi Tahu rakatira at Akaroa on 30 May 1840, and Ruapuke on 9 and 10 June 1840 (Ngāi Tahu Claims Settlement Act, 1998). Te Tiriti was also signed at Ōtākou peninsula by two rakatira – Kōrako and Hone Karetai on 13 June 1840 (Evison, 1993). Te Tiriti (1840) Article 2 enshrines the concept of rakatirataka: the Māori text of Article 2 uses the word 'rangatiratanga' in promising to uphold the authority that tribes have always had over their lands and taoka.

It was inevitable that the two versions of Te Tiriti would cause ensuing problems with the definition of rangatiratanga and kāwanatanga. Claudia Orange (2021, p. 35) interprets the English draft of the Treaty as reflecting Hobson's intention to establish a government (kāwanatanga) for Europeans only, while Māori authority would remain intact. Claudia Orange (2021, p. 35) confirms the intention of the English draft treaty: "Scholarly research suggests that Hobson sought specifically the authority to set up a government (kāwanatanga) which would be only for Europeans, leaving Māori authority guaranteed in the Treaty." The mana of chiefs who exercised their tino rakatirataka, was promptly undermined by government rules and regulations that continually challenged rakatira over the running of their own affairs (Orange, 2021). Kāwanatanga was a totally foreign English concept to Māori, who had the understanding that the term referred to governance over Europeans only. The Treaty of Waitangi (1840) used the phrase "all the rights and powers of Sovereignty," which is translated in the Treaty as "te Kāwanatanga katoa" ... there are serious shortcomings since kāwanatanga (governance) has a lesser meaning (Durie, 1998, p. 2).

Rakatirataka was exercised for hundreds of years through tribal management and use of water long before Te Tiriti was signed, along with the accompanying responsibility of protection and preservation for future generations (Tumahai, 2020). For Kāi Tahu whānui, rakatirataka is also explicitly embedded within the Te Rūnanga o Ngāi Tahu Deed of Settlement (1997): "... the settlement does not diminish or in any way affect the Treaty of Waitangi or any of its articles or the ongoing relationship between the Crown and Ngāi Tahu in terms of the Treaty of Waitangi or undermine any rights under the Treaty of Waitangi, including rangatiratanga rights" (Te Rūnanga o Ngāi Tahu Deed of Settlement, Section 2, 1997, cl 2.2.2).

The challenge to share power and resources, and to protect what Kāi Tahu whānui hold and cherish as valued taoka is a continuing conversation with the Crown, whereas it is clear to Kāi Tahu whānui what that looks like.



Figure 2. Image from Freshwater Strategy, Te Rūnanga o Ngāi Tahu, Te Kura Taka Pini.  
The river runs between Greymouth and Castle Hill.

Photograph: Dean Mackenzie, 14 October 2021.

<https://ngaitahu.iwi.nz/te-runanga-o-ngai-tahu/our-work-pou/ngai-tahu-rangatiratanga-over-freshwater/>.

## TINO RAKATIRATAKA: NGĀI TAHU WAI MĀORI WATER CLAIM

While rakatirataka is clearly a founding concept within Te Tiriti, how this is applied within Aotearoa me Te Waipounamu today is less explicit. Although rakatirataka was specifically and explicitly recognised in the Ngāi Tahu Claims Settlement Act (1998), decision-making power over freshwater has been controlled by Councils through the resource consent process (Corbet, 2023). Ngāi Tahu whānui hold grave concerns over the continual degradation of wai māori (freshwater), and the Crown's seemingly ineffective policies and procedures to restore and revitalise the waterways in Te Waipounamu. "Ngāi Tahu has lodged a statement of claim in the High Court seeking recognition of rangatiratanga over its awa and moana, to address the ongoing degradation caused by the environmental mismanagement" (Tumahai, 2020).

The heart of the Ngāi Tahu Wai Māori Water claim is Kāi Tahu rakatirataka. "Rangatiratanga as a concept and a practice encompassing rights, responsibilities and obligations. And that includes the obligation to do what we can to stop the continued degradation of our freshwater systems" (Tumahai, 2020). The view Tumahai holds supports Mason Durie's (1998) recognition of protecting taonga for future generations, and Tau's (2025) identification of future obligations and responsibilities owed to past, present and future generations. The water quantity and quality throughout Te Waipounamu is declining at such a rapid rate that the health and wellbeing of the southern waterways is now critically unsustainable. Within one generation, the water systems have been so greatly diminished that not only are most of the rivers and lakes highly polluted, people can no longer swim in, let alone drink, the water. The waterways have become so highly toxic that there are now signs warning people not to walk dogs along river banks, and people can literally smell from a distance the pungent water pollution which continues to contaminate ecosystems in Te Waipounamu (Higgins, 2025).

Kāi Tahu whānui have been increasingly concerned at the lack of proactive and meaningful Crown engagement with Kāi Tahu on shared programmes, policies and courses of action. Following a tribal mandate Te Kura Taka Pini, the Ngāi Tahu freshwater group, was established to advance Kāi Tahu rakatirataka over freshwater strategy (Te Rūnanga o Ngāi Tahu, 2019).

Wetlands in Ngāi Tahu Takiwā are on the front lines of the freshwater crisis. Around 90% of New Zealand's wetlands have been lost since settlement. Between 1996 and 2018, around half of the country's wetlands lost during this period was in Murihiku (Huria, G., 14 March 2025, Freshwater Law Pānui).





To address the freshwater crises, Ngāi Tahu applied to the High Court in 2020 seeking declarations to provide legal recognition of Kai Tahu rakatirataka over freshwater resources and allocations. The Ngāi Tahu 2020 statement of claim addresses the ongoing degradation of awa (rivers) and moana (lakes) caused by environmental mismanagement (Te Rūnanga o Ngāi Tahu, 2025). “We believe the current system of water allocation is unsustainable, and we’ve been ignored for decades. This is about putting a stake in the ground and working with the government to create a better system for the future of freshwater in the South” (Tipa, 2025).

Court declarations are an available legal mechanism that clarifies the legal rights, obligations or status of parties involved in a dispute, in this case between Kāi Tahu and the Crown. Kāi Tahu reminded the Crown that they have been good Treaty partners, and held high hopes that the Crown and their agencies would reciprocate in good faith and work meaningfully towards re-setting the Crown and Ngāi Tahu partnership over wai māori, water governance. Kāi Tahu whānui rights are derived through whakapapa, which are legally required to be upheld by the Crown through statutory rights and obligations to mana whenua through Te Tiriti (1840) and the Ngāi Tahu Claims Settlement Act (1998).

The fifteen First Plaintiffs, and Te Rūnanga o Ngāi Tahu, the Second Plaintiff sought several declarations under the first cause of action:

1. Ngāi Tahu has rangatiratanga over wai māori.
2. The present freshwater regime constrains Ngāi Tahu rangatiratanga.
3. The Crown ought to design and implement in co-operation and partnership with Ngāi Tahu a better regulation regime for wai māori that recognises, safeguards and accommodates Ngāi Tahu rangatiratanga over wai māori within its takiwā.

On 10 February 2025, the High Court proceedings between the 15 First Plaintiffs and Te Rūnanga o Ngāi Tahu as Second Plaintiff began against The Attorney General, representing the Crown. The Crown’s legal case relied upon a) disagreement with Ngāi Tahu’s definition of rakatirataka; b) the Crown holds the mandated ‘kāwanatanga’; c) Ngāi Tahu historical claims have already been settled in the Ngāi Tahu Claims Settlement Act (1998), and d) Ngāi Tahu have multiple input opportunities to address water concerns. From the Crown’s perspective, they claim that the Crown ‘has kāwanatanga’ as recorded in The Treaty of Waitangi.

The Crown argued that Ngāi Tahu have already settled their historical grievances in relation to waterways through the Ngāi Tahu Claims Settlement Act (1998), and that the Ngāi Tahu Wai Māori Water claim was an attempt to gain further resources. This point was unequivocally disputed by King’s Counsel Chris Finlayson on behalf of the Plaintiffs, who reminded the Crown that during settlement negotiations water rights were ‘parked for a later date’ so that the proposed settlement could progress. Ngāi Tahu also subpoenaed the then Crown’s Chief Negotiator during the Ngāi Tahu negotiations, Dr Maria-Ana Teariki, who confirmed water rights were removed from the negotiations, and water rights are not specified within the Ngāi Tahu Claims Settlement Act (1998).

The Crown also challenged judicial processes as to whether the Judge had jurisdiction to make such rulings or Declarations, as the Crown claimed Parliament sits over and above the High Court. And whilst the debate on governorship, ownership, management, interests and rights continues to remain highly contested, Corbett (2023) reminds us that in the meantime, New Zealand Parliament is taking a leading hand in shaping the future role of Māori and freshwater through their Water Services Reform (Department of Internal Affairs, 2021) and resource management reform.

Figure 3. Maitai River, 19 May 2023. Reproduced in *Te Karaka*, February 12, 2025.  
Photograph from the Unutai e! Unutai e! exhibition by Kāi Tahu and Anne Noble.  
Photograph: Anne Noble, ONZM, Āhua o Te Wai Photographic Project for Te Kura Taka Pini.

Another tenet to the Crown's case was their rejection of the legal status of rakatirataka. The Crown claimed that the concept of rakatirataka and pūtake mauka are vague concepts which are unclear and that Ngāi Tahu rakatirataka rights, interests and entitlements are uncertain, and therefore not enforceable. Despite the Crown claiming that rakatirataka was too ambiguous, Mr Finlayson pointed out in his closing arguments that each of the Crown witnesses were able to share their understandings of the term rakatirataka. The Crown further claimed that pūtake mauka or rakatirataka entitlements have no legal basis and that laws such as the Resource Management Act (1991) state that the "sole rights" to water are vested in the Crown (Williams, 2025). The Waitangi Tribunal has several reports and recommendations that contribute to views on rakatirataka, including the management and control of people and resources, such as the Ngāi Tahu Deed of Settlement (1997, cl 2.1(7); The Waitangi Tribunal on the Motunui-Waitara Claim (Wai 6, 1983, p. 51); and the Ngāi Tahu Sea Fisheries Report (Wai 27, 1992, p. 111).

The Crown further claimed that Māori concerns should be heard through public petitioning, Resource Management Act (1991) processes or Waitangi Tribunal claims, not the High Court. The Waitangi Tribunal hold recommendation only powers to the Government, which are neither binding nor enforceable. Corbett (2023, p. 1) states: "For the judiciary ... the best way the courts can elevate the status of tino rangatiratanga in decision-making is through the explicit recognition of tikanga as another legitimate legal system alongside common law." Barrister Matanuku Mahuika (2025) asserted on behalf of intervenors Tātau Tātau o te Wairoa that the Ngāi Tahu case does not challenge Crown sovereignty or the ability of Parliament to make laws, but more accurately seeks declarations of legal rights specific to Ngāi Tahu. Mahuika stated "tikanga rights...have not been extinguished as a matter of law ... When considered through the lens of rights based on tikanga, this proceeding is neither a radical extension of the rights of Māori nor, we say, an unprecedented application of the common law" (Williams, 2025).

In 2018, Minister for the Environment, David Parker, and Minister for Māori-Crown Relations, Kelvin Davis, were privy to a "Shared Interests in Freshwater" Cabinet paper, which acknowledged Māori had rights and interests in freshwater, but also raised the question: "What more may be required to meet the obligation to provide for rangatiratanga in relation to freshwater?" (Williams, 2025). In his evidence for the Crown, Mr Bryan Smith, Chief Freshwater Adviser for Ministry for the Environment, agreed that this Ministry is increasingly faced with challenges to improve the health of waterways, with increasing contaminants entering waterbodies since 2014. Smith outlined two significant areas within the Ngāi Tahu takiwā; parts of the Canterbury Plains and Southland lowlands "... those areas where the reduction in loads of one contaminant or another are so great that current and emerging mitigations cannot achieve the desired environmental outcome, short of widespread de-intensification of land use" (Williams, 2025). Mr Finlayson posed: "Might the declarations sought by Ngāi Tahu, essentially, help the Crown make better freshwater policy?" (Williams, 2025).

In his evidence for the Crown, Chief of Staff at the Ministry for the Environment, Mr Martin Workman, quoted excerpts from the "Fresh Start" Cabinet paper (2011) which aimed to set water quantity and quality limits. Workman noted "effective limits are required to deliver on New Zealanders' values and expectations for water and to provide investment certainty" (Williams, 2025).

King's Counsel Mr Finlayson pointed out to Mr Workman that he failed to include the following sentence: "If action on freshwater management is not taken now, existing problems will become increasingly difficult and expensive to address, and new problems will emerge" (Williams, 2025). Further to this point, Workman confirmed that under the National Policy Statement for Freshwater Management (2011), water was not allowed to degrade further.

A Principal Planner for the Crown, Mr Tim Ensor, suggested that meaningful influence can be gained through the resource consent process and that Ngāi Tahu has substantial policy and decision influence over freshwater issues. Crown witness Gerard Willis also suggested "... Ngāi Tahu's involvement in, and influence on, regional plan-making has been substantive and sets it apart from other parties" (Williams, 2025). Whilst Mr Ensor situated iwi in a different position to other stakeholders, he noted that it is mandatory to consult with tangata whenua prior to plan notifications.

In closing arguments, the Crown stated that Ngāi Tahu claims are historic, that Te Rūnanga o Ngāi Tahu are trying to relitigate the water issue when it has already been dealt with in the Ngāi Tahu Deed of Settlement (1997). King's Counsel Finlayson argued that was not the case, and that the issue of water was specifically and categorically left out of the Ngāi Tahu Deed of Settlement. Mr Finlayson pointed out that "no witness for the Crown offered a constructive path forward with Ngāi Tahu. No minister provided an affidavit [to] confirm that his or her ministry would engage with Ngāi Tahu in good faith', and that tribal members could no longer partake in traditional mahika kai practices, with a potential loss of tikanga for generations to come" (Williams, 2025).

He further claimed that recognition and affirmation of Ngāi Tahu rakatirataka within the context of wai māori must be a partnership approach, requiring more effort from the Crown than just consultation. "It may require Ngāi Tahu being involved from the problem definition stage according to its needs and inclination, actively participating in the development and interpretation of freshwater policies, framing laws for their water bodies, and exercising authority in the development and control of wai māori" (Williams, 2025).

After the proceedings closed, Moeraki Ūpoko, David Higgins, when thanking the Court for hearing this landmark claim, reminded those in attendance of the vital importance of wai māori, as he recounted the daily struggle for 92-year-old Sissie Te Maihāroa Dodds, who has lived on the banks of the Waitaki River for most of her life yet has been unable to use her tap water for the last two and a half years, and is forced to rely on a Council water truck. As a senior elder, Mrs Te Maihāroa Dodds has a right to clean, fresh, healthy water. As a rakatira, her rights have been handed down from her direct tīpuna Rākaihautū; her legal rights to fresh water exist as a right and matter of tikanga. Ngāi Tahu argued that the Crown has breached its obligation to actively protect wai māori, a sacred taoka handed down from the atua Aoraki for all to enjoy. Regardless, the Crown continues to treat Kāi Tahu whānui as another community stakeholder, which is a clear breach of the spirit in which Ngāi Tahu rakatira signed Te Tiriti (1840) and the Ngāi Tahu Deed of Settlement (1997). The High Court Declarations currently being sought will provide further clarity on the legal recognition of Kāi Tahu tino rakatirataka and the authority of Kāi Tahu to participate meaningfully in freshwater co-design and co-management for future generations. The Kāi Tahu Whānui legal rights sought from the four Declarations are declarations of rakatirataka, derived from pūtake-mauka, and the tikaka that flows from these ancestral sources established and exercised for over a millenia.

Mō tātou, ā, mō kā uri ā muri ake nei – for us and our children after us.

**Te reo Māori:** Where possible, the authors use the southern te reo Māori dialect, which privileges the use of the 'k' over 'ng'. When referring to official documents and/or quotes, if 'ng' is used, then the authors maintain the integrity of the original text and use 'ng' as written.





Figure 4. Ngāi Tahu leaders, tribal members and supporters, gathered outside the Christchurch High Court.  
5 April 2025.

From left:

Front row: Elizabeth Macpherson, (woman - unknown), Jessica Riddell, (woman - unknown),

Oha Manuel (with the bright pink blazer), Gabrielle Huria, (unknown), Evelyn Cook and Ranui Ngarimu.

Middle row: Elizabeth Brown, Michael Skerrett, Kelli Te Maihāroa, Edward Ellison, Te Maire Tau, Mel Henry,  
John Henry, James Russell, Anake Goodall and Ben Bateman.

Back Row: Seb Linscott, (man - unknown), Richard Thomas, David Higgins, Wayne Alexander, Justin Tipa and Tania Wati.

Photograph supplied. *Newsroom*.

<https://newsroom.co.nz/2025/04/05/judge-says-theres-merit-in-crown-argument-on-water-declaration/>

**Professor Kelli Te Maihāroa** (Waitaha, Kāti Māmoe, Kāi Tahu, Ngāti Rārua Ātiawa, Taranaki; Tainui Waikato) (ORCID ID: <https://orcid.org/0000-0002-9586-0657>) holds the role of Kaihautū: Te Kāhui Whetū at Te Kura Matatini o Otago, Otago Polytechnic. She attended the Kāi Tahu Whānui (2025) court case as whānau tautoko.

**David Higgins ONZM** (Rapuwai, Waitaha, Kāti Māmoe, Kāi Tahu, Te Arawa, Ngāi Tuhoe and Ngāti Manawā) is the Ūpoko Rūnaka o Moeraki. He is the Fourth named First Plaintiff, along with Te Rūnanga o Ngāi Tahu against The Attorney-General, the Crown.



## REFERENCES

- Beattie, H. (n.d.). *John Kahu or Arowhenua, Temuka. 2nd Pepuere, 1880. Pukapuka o wāhi mahika kai etc.* (MS582/F/11) [Unpublished manuscript]. Hocken Library, University of Otago.
- Chin, J. (2025, March 15). Time of Transformation for Ngāi Tahu. *Otago Daily Times*. <https://www.odt.co.nz/regions/north-otago/time-transformation-ngai-tahu>
- Corbett, I. (2023). *Tino Rangitiratanga: A Legal Basis for the Expansion of Māori Decision-Making Authority Over Water in Aotearoa*. [Bachelor of Laws (Honours) dissertation, University of Otago – Te Whare Wānanga o Otago]. <https://hdl.handle.net/10523/47102>
- Department of Internal Affairs (2021). *About the Water Services Reform Programme*. <https://www.dia.govt.nz/Water-services-reform-about-the-reform-programme>
- Durie, M. (1998). *Te Mana, Te Kāwanatanga. The Politics of Māori Self-Determination*. Oxford University Press.
- Durie, M. (2005). *Ngā Tai Matatū: Tides of Māori Endurance*. Oxford University Press.
- Higgins, D. (2025). *Definitions of Pūtake-mauka* [Unpublished manuscript]. Private collection.
- Higgins, D. (n. d.). Statement of Evidence of David Thomas Higgins.
- Mamaru, R. (n.d.). Unpublished personal manuscript]. In possession of David Higgins, Ngāi Tahu whānui, Moeraki.
- Mead, H. M. (2003). *Tikanga Māori. Living by Māori Values*. Huia Publishers.
- Ministry for Environment. Manatū Mō Te Taiao. 8 April 2025. Our environment 2025 Report. Ministry for the Environment and Stats NZ. <https://environment.govt.nz/publications/our-environment-2025/>
- Ministry for Environment. Manatū Mō Te Taiao. 19 March 2024. *National Policy Statement for Freshwater Management*. <https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-freshwater-management/>
- Ministry for Environment. Manatū Mō Te Taiao. 26 December 2023. *Natural and Built Environment Act 2023*. <https://environment.govt.nz/acts-and-regulations/acts/natural-and-built-environment-act-2023/>
- Ngāi Tahu Claims Settlement Act 1998. <https://www.legislation.govt.nz/act/public/1998/0097/latest/DLM429090.html>
- Ngāi Tahu Plaintiffs' Opening Submission. (2025). Declaration C., 4.27. p18.
- Orange, C. (2021). *The Treaty of Waitangi | Te Tiriti o Waitangi. An Illustrated History*. Bridget Williams Books.
- Prendergast-Tarena, E. R. (2008). *He atua, he tipua, he takata rānei: The dynamics of change in South Island Māori oral traditions* [master's thesis, University of Canterbury]. University of Canterbury Research Repository. <https://ir.canterbury.ac.nz/handle/10092/1572>
- Tau, R. T. M. (2025). *Definitions of Pūtake-mauka*. RTM Tau Archives. Private collection.
- Te Rūnanga o Ngāi Tahu (2019). *Te Kura Taka Pini – Freshwater Strategy*. <https://ngaitahu.iwi.nz/te-runanga-o-ngai-tahu/our-work-pou/ngai-tahu-rangitiratanga-over-freshwater/>
- Te Rūnanga o Ngāi Tahu (2025). Ngāi Tahu Pepeha Resources. *Whakatauki*. <https://ngaitahu.maori.nz/whakatauki/>
- Te Rūnanga o Ngāi Tahu and Her Majesty the Queen in right of New Zealand. 21 November 1997. Deed of Settlement. <https://www.govt.nz/assets/Documents/OTS/Ngai-Tahu/Ngai-Tahu-Deed-of-Settlement-21-Nov-1997.pdf>
- Te Rūnanga O Ngāi Tahu And Her Majesty The Queen In Right Of New Zealand. *Deed Of Settlement Section 2*. 21 November 1997. [https://www.whakatau.govt.nz/assets/Treaty-Settlements/FIND\\_Treaty\\_Settlements/Ngai-Tahu/DOS\\_documents/Ngai-Tahu-Deed-of-Settlement-Section-2-Crowns-apology-acknowledgements-and-agreements-21-Nov-199.pdf](https://www.whakatau.govt.nz/assets/Treaty-Settlements/FIND_Treaty_Settlements/Ngai-Tahu/DOS_documents/Ngai-Tahu-Deed-of-Settlement-Section-2-Crowns-apology-acknowledgements-and-agreements-21-Nov-199.pdf)
- Toitū Te Whenua - Land Information New Zealand (2025). *Rākahautū – Naming great lakes of the canoe of Aoraki*. <https://www.linz.govt.nz/regulatory/place-names/about-new-zealand-geographic-board/nzgb-place-name-maps-and-publications/he-korero-p%C5%ABr%C4%81kau-mo-ng%C4%81-taunahanahatanga-ng%C4%81-t%C5%ABpuna/r%C4%81kaihaut%C5%AB-naming-great-lakes-canoe>
- Tumahai, L. (2020, 20 December). Enough is enough. Why Ngāi Tahu is suing the Crown over its waterways. Te Karaka. <https://ngaitahu.iwi.nz/opportunities-and-resources/publications/te-karaka/enough-is-enough-why-ngai-tahu-is-suing-the-crown-over-its-waterways-tk87/>
- Waaka, J. (2016). *Aoraki – Ancestral Mountain*. Mackenzie District Plan 1999. Te Rūnanga o Arowhenua. <https://arowhenua.org/blog/aoraki>
- Waitaki Rūnaka Letters of Support. (23 June, 2023). In Waitaki Catchment Relationship Agreement. (28 October, 2023).
- Waitangi Tribunal. (n.d). *About the Treaty*. <https://www.waitangitribunal.govt.nz/en/about/the-treaty/about-the-treaty>

- Waitangi Tribunal. March 1983. Report Findings and Recommendations of the Waitangi Tribunal on a n Application by Aila Taylor for and on Behalf of Te Atiawa Tribe in Relations to Fishing Grounds in the Waitara District. [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_68496669/Motunui-Waitara%20Report%201983.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68496669/Motunui-Waitara%20Report%201983.pdf)
- Waitangi Tribunal. The Ngāi Tahu Sea Fisheries Report 1992. (Wai 27) Waitangi Tribunal Report. [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_68472628/NT%20Sea%20Fisheries%20V.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68472628/NT%20Sea%20Fisheries%20V.pdf)
- Williams, D. (2025, March 17). Top environment ministry official 'played down' water urgency. *Newsroom*. <https://newsroom.co.nz/2025/03/17/top-mfe-official-played-down-water-urgency-lawyer-says/>
- Williams, D. (2025, March 17). Chief water adviser warns over clean-up disruption. *Newsroom*. <https://newsroom.co.nz/2025/03/17/chief-water-adviser-warns-over-clean-up-disruption/>
- Williams, D. (2025, March 25) Water control by Ngāi Tahu 'potentially disastrous'. *Newsroom*. <https://newsroom.co.nz/2025/03/25/water-control-by-ngai-tahu-potentially-disastrous/>
- Williams, D. (2025, March 26). Just how much influence does Ngāi Tahu have? *Newsroom*. <https://newsroom.co.nz/2025/03/26/just-how-much-influence-does-ngai-tahu-have/>
- Williams, D.. (2025, 1 April). Interveners clash over freshwater court claim. *Newsroom*. <https://newsroom.co.nz/2025/04/01/interveners-clash-over-freshwater-court-claim/>
- Williams, D. (2025, April 4). Gloves come off in Ngāi Tahu water case. *Newsroom*. <https://newsroom.co.nz/2025/04/04/gloves-come-off-in-ngai-tahu-water-case/>
- Williams, D. (2025, April 5). Judge says there's merit in Crown argument on water decision. *Newsroom*. <https://newsroom.co.nz/2025/04/05/judge-says-theres-merit-in-crown-argument-on-water-declaration/>