# The Background to WAI 262

Prepared by Oliver Sutherland and the late Murray Parsons in conjunction with Moana Jackson and the whanau of claimants, June 2011

He Poroporoaki

John Hippolite
Witi McMath
Tama Poata
Del Wihongi
Saana Murray
Murray Parsons
Gina Rudland
Martin Dawson

The Native Flora and Fauna Claim, WAI 262, had its origins in the ideals and visions of a group of land rights activists of the 1970s and before — Saana Murray (Ngāti Kuri), Del Wihongi (Te Rarawa), John Hippolite (Ngāti Kōata), Tama Poata (Te-Whanau-o-Ruataupare), and Witi McMath (Ngāti Wai). Acting as individuals, and with the assistance of lawyer Moana Jackson (Ngāti Kahungunu), they lodged the Native Flora and Fauna Claim — WAI 262 - in October 1991. Of these, the two women of the Far North, Saana Murray of Te Hapua, Te Rerenga Wairua, and Del Wihongi of Otarihau, Orira, Hokianga, were to become the unshakeable champions for the claim.

For many years Saana had challenged the actions of the Crown in depriving her people of access to their lands and coastlines. Besides the loss of ancestral land, the denial of access to the native plant and animal life threatened the survival of the skills and knowledge of the traditional arts and crafts and medicinal remedies based on those species. The story of Saana's personal and inspirational crusade to retain and regain the ancestral lands of Ngāti Kuri can be found in *Te Karanga o te Kotuku*, published by her long-time friend Tama Poata, for the Māori Organization On Human Rights, in 1974.

Te Karanga o te Kotuku documented, through her correspondence, Saana's struggle to have the issues she raised acknowledged by the Crown, by the authorities and, at times, by her own people. The publication of this work helped to raise awareness about — and to provide documented evidence for - the genuine issues Māori faced, and also the difficulty they had in the late 1960s and early 1970s in having these issues heard and considered. The book provided a major impetus for the 1975 Māori Land March, and one of the reasons that the Land March began in the Far North. The core subject-matter of the book eventually proved to be one of the bases for the development of the WAI 262 claim.

Del Wihongi drew her impetus and vision from the tohunga Toki Pangari who held one of the last whare wananga at Utakura on 26 November 1949. Toki was Del's grandfather, and he passed down a considerable body of matauranga to Del who lived with him as a child – she later received his extensive writings from her uncle Joe Toki, and re-recorded them. These writings are significant to the claim in that the connection to Kupe Nuku is established

and represented in the taonga or maaka left by this great navigator. Del was of the view that each iwi has their own version of the Kupe korero, and as such she viewed the claim as belonging to nga iwi katoa. Del believed that the restoration of rangatiratanga, kaitiakitanga, matauranga Māori and traditional knowledge is imperative to ensure future generations will continue to benefit from the wisdom passed down from former generations.

# Mid-1970s

The Auckland Committee on Racism and Discrimination (ACORD), including Oliver Sutherland, established a relationship with Saana Murray, her whanau and the people of Te Hapua, supporting Saana's efforts to retain ancestral Ngāti Kuri land at Te Hapua and Kapowairua. Saana's injunction, lodged in 1975, supported by kaumatua Herewini and Neta Paraone, to prevent cross-lease with Crown, led to the shareholders of the Te Hapua 42 Incorporation finally rejecting the Crown's efforts to alienate ancestral lands — Murimotu and Muriwhenua.

Carmen Kirkwood of the Huakina Trust wrote to Oliver Sutherland at the Department of Scientific and Industrial Research (DSIR) saying 'it's not just finance stopping my people returning to their homes, it's knowledge of what they can do with their lands'. Saana's whanau who were re-occupying their land at Te Hapua/Kapowairua, also wanted to explore options for land use other than the pine plantations of the Northern Pulp Company.

Entomology and Plant Diseases Divisions of DSIR assisted the Department of Māori Affairs Marae Enterprise Scheme by establishing experimental gardens at Te Hapua. Under leadership of Herewini and Neta Paraone and the guardianship of Saana Murray, her brother Ross & Lucy Norman and Dave & Josephine Neho, trials of pineapples, peanuts and of other horticultural crops were undertaken at Te Hapua and Kapowairua (Spirits Bay).

'Te Hapua Traditional Arts and Crafts Trust' weavers' collective was established at Te Hapua. Sales of kete, whariki, piupiu and poi in Auckland and elsewhere encouraged the retention of traditional knowledge and skills, conservation of the associated plants and provided stable, ongoing income for the women of Te Hapua and neighbouring communities for many years. But Crown restrictions (if not outright prohibitions) on the harvesting of pingao, kiekie, hoihere, raupo and kakaho from lands in the Far North were a continuing impediment to the weavers.

John Hippolite (Ngāti Kōata) accompanied ACORD on visits to Te Hapua and Kapowairua and so established his links with Saana and Ross and Lucy Norman and their whanau. He stayed with them in one of the traditional raupo whare constructed by Saana which she hoped would one day house an 'Out Post School' for the young people of Otara she was teaching at Hillary College. Like Saana, John was a long-time land rights activist, and was particularly concerned over the actions of the Crown over its the acquisition of Takapourewa (Stephens Island) by the Crown as a reserve for tuatara and for the Crown's assumption of the right to manage the species.

In the mid-1970s Del was one of the four women known as 'Nga Hau e Wha', who worked to restore relationships with descendants from the Mataatua waka, known as the Mataatua Confederation. She was also Chairwoman for the Confederation of Chiefs, who were entrusted with upholding the mana of He Whakaputanga, the Declaration of Independence, 1835.

Meanwhile, Witi, Tama, Saana and John were all active participants in the 1975 Land March, led by Whina Cooper, and in the fight for Māori land rights which led up to it.

# 1980

The Social Responsibility of DSIR at Mt Albert was published by Oliver Sutherland and others, arguing for greater responsiveness of government science agencies, particularly DSIR, to the needs of Māori. It was the first challenge to the monocultural policies of the department.

#### 1983

Botany Division of DSIR established a relationship with weaver Cath Brown (Ngai Tahu, Taumutu Marae, Te Wai Pounamu) and the 'Aotearoa Moananui-a-Kiwa Weavers' (including Saana, Emily Schuster, Digger Te Kanawa and Te Aue Davis) particularly to ensure conservation of harakeke, pingao and kiekie and to protect and promote traditional knowledge regarding the arts and crafts which utilized these plants. A year later, in 1984, DSIR botanists attended a weavers' hui at Te Teko which focused on the availability of plants traditionally used for weaving, and on access to those plants.

# 1985

Māori leaders from the north, including Saana Murray, Carmen Kirkwood, Nganeko Minhinnick, Titewhai Harawira, Hon. Matiu Rata, Jim Nichols, Sir Hugh Kawharu, Rev. Māori Marsden, Dr Ranginui Walker, Neville Baker, Sir Norman Perry and Pita Rikys, met for the first time ever with Director General and other senior leaders of DSIR at Mt Albert, at a hui jointly organised by Sir Graham Latimer and Oliver Sutherland. The hui aimed at bridging the gulf between Māori and the scientific community and focused on ways in which government science agencies, particularly DSIR, might direct some of their efforts towards issues of importance to Māori, especially the utilization of land to provide work and income for some impoverished rural communities. For the first time, DSIR acknowledged that its functions and activities should be based on the principles of The Treaty of Waitangi.

# 1987

Plant Variety Rights Act passed, opening the way for commercial plant breeders to gain proprietary rights to 'new' varieties of native species

# 1988

**22-28 February:** Commonwealth Science Council Hui on Ethnobotany, *Nga Mahi Māori o te Wao Nui a Tane*, was held at Rehua Marae, Christchurch. The five-day, landmark, *International Workshop on the Traditional Uses of Plants* brought Saana Murray (of Te Hapua Traditional Arts and Crafts Trust), Del Wihongi (of the Pu Hao Rangi Trust) and John Hippolite all together for the first time, along with two hundred other Māori, Pacifica and Commonwealth kaumatua and leaders. It was organized by Warwick Harris, Murray Parsons, Geoff Walls and Oliver Sutherland, all of DSIR, and Promila Kapoor, of the Commonwealth Science Council. The hui showcased Barry Barclay's film *The Neglected Miracle*, which exposed the commercial exploitation by multi-national seed and horticultural companies of traditional plant varieties, particularly those from South America. The hui also revealed publicly the fate of ancient kumara, especially DSIR's sale of the large collection of kumara varieties assembled by Dr Douglas Yen, to a research institution in Tsukuba, Japan. Both Saana and Del voiced their concerns at the risks to traditional knowledge and at the commercial exploitation of native plants. The hui recommended:

- the principle that science must flourish for the benefit of all people, not for the profit of a few;
- the conservation of species of importance to Māori and other indigenous people, and the retention and protection of traditional knowledge regarding the utilization of these species;
- the need for consultation with Māori prior to any further commercial exploitation of native plant species;

# 1988

**November:** Del Wihongi led an ope including Jerry Moana, Adelaide Cherrington and Hori Sutherland, representing the Pu Hao Rangi Trust, to Japan to retrieve nine of the ancient kumara varieties transferred from DSIR to Japanese researchers at Tsukuba Science City in 1964. Their mission was ridiculed by politicians who refused to support it, as did other conservation organisations. In the end, the well-known TV botanist Dr David Bellamy provided funding for the trip and was present when the kumara were welcomed home at Te Puea Marae in late November 1988.

#### 1989

March: Following concerns over the 'patenting' of native species under the new Plant Variety Rights Act (e.g. pohutukawa 'Carousel') and the activities of DSIR in the international commercialization of a number of native species, especially koromiko, manuka and puawananga, Murray Parsons, Oliver Sutherland and John Hippolite met with Moana Jackson at Nga Kaiwhakamarama I Nga Ture in Wellington to discuss ways of protecting native plants and animals and their genetics as well as the traditional knowledge pertaining to them.

John discussed the issue with his army and trade union mates, Tama Poata and Witi McMath, both of whom had long had concerns regarding the actions of the Crown in alienating ancestral land and 'managing' threatened and non-threatened native species in their rohe. Witi for years had challenged the Crown regarding its confiscation of Hauturu (Little Barrier Island), and the eviction of the island's tangata whenua, to turn it into a reserve for tuatara. Meanwhile, Tama had actively pursued tino rangatiratanga issues since the early 1970s through his roles with the Māori Organisation On Human Rights and Te Roopu Matakite o Aotearoa, and was also concerned in general about the creeping (and sometimes not so creeping) erosion of Māori rights by the Crown through legislation and executive power unfettered by any deference to Māori tino rangatiratanga, as guaranteed by the Treaty. Saana, Del and Kataraina Rimene (who represented Ngāti Kahungunu on the original claim) were equally concerned over Crown control of access to, and commercialisation of, taonga plant species. Prohibitions on the 'cultural harvest' of traditional foods such as kereru and kuaka, and the appropriation of ancestral lands by the Crown to create 'reserves' to conserve species such as the flax snail, pupu harakeke, was a major concern for Saana.

Moana Jackson began drafting WAI 262 in March 1989; Claimants: Saana Murray, Del Wihongi, Witi McMath, Tama Poata, Kataraina Rimene, John Hippolite. Each claimant to focus on one particular area of interest/species as the basis for a co-coordinated claim. The six claimants acted collectively, but as individuals, not representing their various iwi. In

most, cases their own iwi were sceptical over the claim, as were other iwi, even though it was a claim which would benefit nga iwi katoa.

# 1990

Del Wihongi and the Pu Hao Rangi Trust established *Te Wao Nui A Tane National Ethnobotanical Garden* at Mangere. Del was successful in gaining government science funding for a research programme to propagate and study the pre-European kumara she had retrieved from Japan, and she established a mara at Mangere. Tubers of the different varieties grown by Del were given to those who wanted to help safeguard and grow them. Del's supporters at the time in Pu Hao Rangi, a community-based Trust, were Jerry Moana (Chairman), Te Pere Curtis, Solomon Tipene, Arthur Toki, Adelaide Cherrington and Brownie Williams.

DSIR 'Māori Responsiveness Committee' established, including Del Wihongi, John Hippolite, Murray Parsons and Oliver Sutherland. The Committee advised the Crown regarding the roll-over of DSIR's Māori-focused initiatives during the disestablishment of DSIR and the creation of ten new Crown Research Institutes (in July 1992).

Work continued on drafting of WAI 262 claim. Moana Jackson and Del Wihongi attended Indigenous Intellectual Property Conference in New York, to discuss international implications of claim and broader issues of intellectual property it raised. Del continued to highlight the issue outside New Zealand, e.g. as keynote speaker at the World Indigenous People's Peace Conference in Oregon USA, accompanied by her daughter Hema Broad and Te Pere Curtis.

At the same time, Tama Poata and John Hippolite (who had both been arrested earlier when demonstrating for the return of the Raglan golf course [Whaingaroa]) joined forces with Eva Rickard and, again with the assistance of Moana Jackson, drafted and lodged a claim for the 'Queen's Chain' (WAI 172) in October 1990. The claim asserted that the Crown had no authority to establish the Queen's Chain, as it had not approached the various iwi, hapu and whanau in their tribal areas. The claim is in abeyance. As with WAI 262, Tama, Eva and John were acting as individuals in a claim which was not iwi-based but which would ultimately benefit all iwi.

# 1991

**October:** Native Flora and Fauna Claim (WAI 262) lodged with the Waitangi Tribunal. Saana and Del, particularly, explained the basis of WAI 262 at hui around the motu but gained very little support for the kaupapa. National Māori organisations, such as the New Zealand Māori Council and the Māori Congress were largely unsupportive of the claim.

# **The Original Claim**

A CLAIM relating to the Protection, Conservation, Management, Treatment, Propagation, Sale, Dispersal, Utilisation and Restriction on the use of and transmission of the knowledge of New Zealand Indigenous Flora and Fauna and the genetic resource contained therein.

The claimants argue that they have been and are prejudicially affected by the actions and omissions of the Crown and its representatives in denying the tino rangatiratanga o te lwi Māori, and particularly seventeen points relating to tino rangatiratanga and breaches of the Treaty of Waitangi.

Seven representative plant and animal species are named in the claim, together with all the indigenous forests of Aotearoa. Examples of breaches relating to these species are:

- The DSIR disposing of the known kumara varieties to Japan and the Crown's actions and inactions removing the ability of Māori to preserve biodiversity and denying Māori control of the intellectual cultural property rights in flora which are an inherent part of te tino rangatiratanga.
- With Pohutukawa the action of the Crown in vesting proprietary rights in species, or varieties of species, specifically the grant of Plant Variety Rights over the Pohutukawa Var. 195 "Carousel" is contrary to the Treaty of Waitangi and a denial of te tino rangatiratanga o te lwi Māori as it relates to indigenous flora.
- Permitting the sale, export and commercial exploitation of Hebe species Koromiko by
   New Zealand and overseas interests is a denial of te tino rangatiratanga.
- Permitting the selling, disposal and export of the species Puwananga or Clematis spp.
  and thereby subjecting it to the application of genetic modification (in this case plant
  cross breeding) is a denial of conservation, proprietorial and development rights.
- Actions by the Crown to adopt conservation measures in relation to indigenous timbers are the denial of te tino rangatiratanga prevents Māori exercising kaitiakitanga in relation to indigenous forests.
- Actions and inactions by the Crown remove the ability of Māori to preserve biodiversity within indigenous flora and thus deny Māori control of intellectual and cultural property rights in flora, which are an inherent part of te tino rangatiratanga.
- The policies of the Crown prevent Māori exercising kaitiakitanga in relation to Pupu harakeke, the flax snail; the establishment of scientific reserves and protected areas prevent or inhibit Māori access to the species Pupu harakeke and is a denial of the right to maintain those cultural and spiritual concepts which are an inherent part of te tino rangatiratanga o te lwi as it applies to indigenous fauna.
- The export of Tuatara for scientific or diplomatic purposes have been carried out without negotiation or input from Māori; the establishment of scientific reserves and protected areas prevent or inhibit Māori access to Tuatara and the passage of the Wildlife Act 1953 and all other legislation for the protection of Tuatara are a denial of te tino rangatiratanga.
- Crown actions that prevent Māori exercising kaitiakitanga over Kereru, the passage of the Wildlife Act 1953, the establishment of scientific reserves and protected areas which prevent Māori access to Kereru, are denials of te tino rangatiratanga.

THE GENERAL CLAIM is that the Crown dismissal of te tino rangatiratanga, as a sovereign political authority exercised by the Iwi, is a breach of the Treaty of Waitangi. Such a dismissal can only be remedied by Crown acknowledgement and recognition of te tino rangatiratanga as reaffirmed in the 1835 Declaration of Independence, and as recognised in the Treaty of Waitangi.

The REMEDIES SOUGHT are:

- (i) The **acceptance** by the Crown of **te tino rangatiratanga** as adumbrated [or represented] in Māori law, as reaffirmed in the 1835 Declaration of Independence, and as recognised in the Treaty of Waitangi/Te Tiriti o Waitangi
- (ii) **Compensation**, the extent and degree of which shall be negotiated between Iwi and the Crown
- (iii) **Control of indigenous flora and fauna** in a manner which recognises te tino rangatiratanga o te lwi Māori.

#### 1993

The nine tribes of Mataatua convened the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples (12-18 June 1993) in Whakatane, which led to the *The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples (1993)*.

John Hippolite died in Nelson, 17 November 1993.

First Amendment to WAI 262 elaborated on the information about the species of the original claim and added International Law - Gatt:Trips Agreement, Intellectual Property Rights Law Reform Bill, a list of other Legislation and International Agreements, International recognition of Indigenous Peoples Rights and associated protocols.

#### 1995

The claim WAI 262 was given urgency.

# 1997

The first hearing occurred in the Far North on 15 September 1997.

# 1998

Witi McMath died on 26 August 1998.

Second Amendment to WAI 262 - Concerning Ngāti Porou.

# 2000

May: Third Amendment to WAI 262 - Concerning Ngāti Kahungunu.

#### 2003

By early 2003 all the claimant evidence had been heard and the Waitangi Tribunal was expected to develop a Draft Statement of Issues by mid-2003.

# 2004

The Tribunal intended to put out a draft Statement of Issues for consultation with claimants and the Crown, after which a final definition of the issues would be made.

#### 2005

Tama Poata died 9 November 2005.

# 2006

July The Tribunal released the final version of the *Statement of Issues*. Hearings in the inquiry subsequently resumed, with claimants' refresher evidence having been heard in

August-September 2006, interested persons or group's evidence in late September 2006, and finally Crown evidence in December 2006 and January 2007.

# 2007

June: Closing submissions. Tribunal entered into its report writing phase.

In 1991, the claim was seen as revolutionary. Now the World Intellectual Property Organisation (WIPO), through the IGC (Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge, and Tradition Cultural Expressions), has been addressing the issues surrounding the protection of biological resources, traditional knowledge, and traditional cultural expressions. The Convention on Biodiversity is one of the outcomes of this process. WIPO has also set in place deadlines to advance treaties for the protection of traditional knowledge and traditional cultural expressions.

In 2005, the Government proposed some amendments to the Patents Act in the Patents Amendment Bill 2005 to help address the issues raised in the WAI 262 claim. The Bill introduced a 'Māori Consultative Committee', which will advise the Commissioner whether an invention draws from Māori knowledge. If so, the Committee must advise whether exploitation of the invention is contrary to Māori values. The Bill gives no legislative backing to the findings of the Committee, and the Commissioner could ignore the advice given. In addition, there is no benefit sharing provisions in the Bill.

# 2008

Del Wihongi died on 26 July 2008.

# 2011

Murray Parsons died 10 May 2011.

**2** July: The Waitangi tribunal releases its report on WAI 262. **Saana Murray** is the only claimant left to hear the Tribunal's findings.

3 September: Saana Murray died

# **He Maumahara**

The whanau and iwi of the claimants also acknowledge the following people for their kaitiakitanga of the claim, many of whom gave evidence to the Tribunal.

Te Rarawa	Ngāti Wai	Ngāti Kurī	Kahungunu	Te-Whanau-o- Ruataupare /	Ngāti Kōata
				Ngāti Porou	
- Haana Murray - Te Hema Nui a Tawhaki Witana - Bruce Gregory - Ross Stirling Gregory - Houpeke Piripi - Catherine Davis - Pā Henare Tate	- Witi McMath - Laly Paraone Haddon - Whetu Marama McGregor - Raukura Robinson - Hori Te Moanaroa Parata - Richard Wisker - Wiremu McMath - Te Warihi Hetaraka - Himiona Peter Munroe	- Dell Wihongi - Ropata Romana - Rapine (Robin) Murray - Mata Ra- Murray - Merereina Uruamo	- Kataraina Rimene - Aperahama Clark - Murray Hemopo - Pita Hukinga Walker- Robinson - Sue Maude Wolff - Sandy Adsett - Takirirangi Smith - Wally Kupa - Te Atarangi Matuakore Allen - Koea Pene - Kate Parahi - Aggie Nuku - Ngaire Culshaw - Ross Young Scott - Rerekohu Ahiahi Robertson - Alice Hopa - Frederick Roy Maadi Reti - William David Blake - Wero Karena	- Te Kapunga Matemoana (Koro) Dewes - Tama Te Kapua Poata - Meipara Te Ao Kapurangi Poata - Wayne James Ngata - Iranui Ada Haig - Piripi Rairi Aspinall - Maggie Ryland - Dr Apirana Tuahae Mahuika - Rapata Rauna Kaa - Laura Takukino Awatere Thompson - Reverend Eru Potaka Dewes - Hone Meihana Taumaunu - Matehuatahi Kaiwai - Joseph McClutchie - Hirini Te Aroha Pani (Syd) Clarke	- John Hippolite - Alfred Madsen Elkington - Terewai Grace - Puhanga Patricia Tupaea - Benjamin Turi Hippolite - Priscilla Paul - Huia Elkington - Kathleen Hemi - Ruruku Joe Hippolite - James Hemi Elkington - Rosemary Sutherland Hippolite - Hori Turi Elkington - Angeline Greensill - Maraea Teariki - Piripi Walker - Frank Hippolite - Benjamin Hippolite - Oliver Sutherland - Te Ariki Kawhe Wineera - Martin

Te Rarawa Ngāti Wai	Ngāti Kurī	Kahungunu	Te-Whanau-o- Ruataupare / Ngāti Porou	Ngāti Kōata
On behalf of all Te Tai Tol Niki May Lawrence Robert Edward McGo Mana Manuera Crack Sir Ian Hugh Kawha Professor Mason Du Haami Piripi Sandy Gauntlett Dr Mere Roberts Patu Hohepa Rapine Simon William Nicholas Moana Maniapot	kerau iwi e owan knell ru urie	- Piri Sciascia - Bevan Taylor - Jacob Scott - Waka Gilbert - Abel (Apera) George Clark - Edryd Breese - Charles Kohitu King - Dennis Iti Lihou - Ruruarau Heitia Hiha - Paora Ropiha (Monti) Paku - Bevan Mohi Te Ata Hikoia Tipene-Matua - Murray Hemi - Matthew Matuakore Petuha Bennett - Niniwa Kahurangi Neva Munro - Peter Joseph Chanel Flynn - Brian Morris - Joseph Te Rito - Te Rina Sullivan-Meads - Marei Boston Apatu	Ruataupare /	Dawson - Loretta Lovell - Liana Poutu - Paranihia Walker - Ngarau Tupaea - Api Hemi - Tim Castle - Gerrard Albert
		<ul><li>Mere Joslyn</li><li>Whaanga</li><li>Nigel William</li><li>How</li><li>Toro Waaka</li></ul>		

Te Rarawa	Ngāti Wai	Ngāti Kurī	Kahungunu	Te-Whanau-o- Ruataupare / Ngāti Porou	Ngāti Kōata			
			- Nellie Norman					
			- Himiona					
			Munroe					
			- Ngahiwi Tomoana					
			- Ngatai Huata					
			- Tamati Mangu Clarke					
			- Maurice Wayne Black					
			- Mark Ross					
			- Philip Lewis					
			Rasmussen					
			- Jacob Manu Scott					
			- Piri Sciascia					
			- Moana Jackson					
On behalf of all claimant iwi								
Ani Mikaere								
David Williams								
David Stephenson								
Darrell Posey								
Henrietta Lillian Marrie								
Alejandro Agumedo								
	Stephan Schnierer							
Peter Rowland Wills								
Tracey Whare								
Claire Charters								