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| Submission | | |
| **To:** | Otago Regional Council | |
| **Date:** | 29 August 2019 | |
| **Applicant:** | Luggate Irrigation Co Limited and Lake McKay Station Ltd | |
| **Applications:** | RM18.345 | To take and use surface water from Luggate Creek and Alice Burn at various locations for the purpose of Irrigation, stock water and communal domestic supply. |
| **Description:** | Application to replace multiple deemed permits with two resource consents, one for each of the two applicants. | |
| **Submitters:** | **Te Rūnanga o Ōtākou, Kāti Huirapa ki Puketeraki, Te Rūnanga o Moeraki** | |
| **Position:** | **Ngā Rūnanga oppose this application and wish to be heard in support of this submission.** | |

1. **Mihi**

*Tēnā Koutou,*

*ko tenei mihi atu ki a koutou,*

*nga mema o te komiti,*

*nga kaiwhakawa o nga mea*

*e pa ana tenei kaupapa taumaha,*

*me ki, o tātou nei rohe moana,*

*he taoka o tatou nei whanau,*

*hapu me te iwi.*

*Ki a ratou kua whetu rangitia,*

*te hunga wairua, haere,*

*moe mai, oki oki mai, kati.*

1. **He Kupu Whakataki/Overview**

2.1. Papatipu Rūnanga (Ngā Rūnanga), as manawhenua with whakapapa relationships and kaitiakitanga responsibilities within the entirety of the Mata-au/Clutha River catchment, are seeking to improve upon the long history of over-allocation associated with the legacy of mining privileges in the area.

2.2. These allocations of water, many over a century old, were originally granted under laws that gave no consideration to environmental conditions or to any duty of the Crown to Kāi Tahu as the Treaty partner. Multiple allocations enabled entire streams, creeks and rivers to dry up as water was diverted into a series of race systems, many of which are still in operation. Applications to replace deemed permits with resource consents are the first opportunity for Kāi Tahu to address the impacts of these individual allocations of water, under a sustainable management framework, since they were first granted by the Crown.

2.3. This resource consent application is one of two applications in process to take and use water from the Luggate Creek catchment, a direct tributary of the Mata-au, both of which are based on historic mining privileges. Our understanding is that applications by Luggate Irrigation Company Limited and Lake McKay Station Limited and Criffel Water Limited encompass all existing mining privileges within the Luggate Creek catchment. Ngā Rūnanga wish to ensure that decision-making in relation to these applications appropriately considers:

* the cumulative effects of water abstraction and use in the Luggate Creek catchment, and the wider Mata-au catchment;
* the interactions between these proposals and catchment-wide water management, including managing for environmental flows; and
* the impacts on Kāi Tahu rights, interests and values, including mahika kai.

2.4. Based on information provided to date, and current understanding, Ngā Rūnanga are not satisfied that these matters have been appropriately addressed.

2.5. We welcome further opportunity to explore with the regional council and applicants in the Luggate Creek catchment the means by which management of cumulative effects, environmental flows, and Kāi Tahu whānui rights, interests and values can contribute to improvement within the catchment.

2.6. In the absence of confidence in the current management of cumulative effects from over-allocation, and in the existing minimum flow or proposed residual flows, Ngā Rūnanga request a short term consent that allows for a new regional planning framework to be established before a longer term consent is applied for by the applicant, one that is compliant with:

* the *National Policy Statement for Freshwater Management 2014*, as amended in 2017 (the Freshwater NPS);
* the partially operative *Otago Regional Policy Statement 2019 (Otago RPS)* (including both the already operative parts, and those that still await sign-off from the Environment Court); and
* that properly takes account of Ngā Rūnanga values as expressed through the *Te Rūnanga o Ngai Tahu Freshwater Policy Statement 1999* and the *Kāi Tahu ki Otago Natural Resource Management Plan 2005*.

Without certainty that a new and complaint environmental flow and allocation regime will be fully applied to all water takes in the Luggate Creek catchment, once it is developed, Ngā Rūnanga opposes the granting of any further consents to take water.

1. **Mata-au/Clutha River and Luggate Creek**

3.1. There are rich traditions within the Mata-au catchment associated with each wave of migration of the first peoples of this region, Waitaha, Kāti Mamoe and Kāi Tahu, whose descendants are collectively referred to as Kāi Tahu whānui. Settlements, of both a permanent and temporary nature, kaika and nohoaka, were a feature from the upper reaches of the catchment down to the sea, ki uta ki tai, with settlement patterns shifting and changing over time.

3.2. Waitaha, Kāti Mamoe and Kāi Tahu names in the catchment are associated with tribal histories and references to the resources of the area essential to survival and cultural practices. Written records provide us with some of these histories, noting resources and practices around particular sites or areas. *Kā Huru Manu*, the Kāi Tahu cultural atlas, captures written and oral histories, as well as linking to archaeological finds of kōiwi tangata, taonga and sites of occupation, wāhi tapu and wāhi taonga. We rely on these sources, and pūrākau passed on through storytelling, waiata, karakia, haka and visual forms, to understand the past, connect with the present and lay foundations for the future – mō tātou, ā, mō kā uri ā muri ake nei.

3.3. The Luggate Creek catchment incorporates an area of historic settlement where taonga (cultural artefacts) have been found, and mahika kai traditions are recorded, including harvest of tuna (eel), weka and tī kouka (cabbage tree), such that it can be considered a wāhi mahika kai. This reminds us that when we look at the river and its surrounds today, its settlement and land use activities, we are witnesses to the change that has occurred in the time since European colonisation. The story of Kāi Tahu whānui incorporates land loss and progressive loss of access to mahika kai, here and elsewhere in the Māta-au, with close connection to the history of freshwater management, through the phases of mining, irrigation and primary production.

1. **Te Tiriti o Waitangi me Te Kēreme**

4.1 Kāi Tahu input to resource management decision-making is made in the context of Te Tiriti o Waitangi. We are guided by Treaty principles established in decisions of the courts, including kawanatanga and rangatiratanga, good faith partnership, informed decision-making, active protection and remedy for past wrongs. We note that these are specifically referenced in the OtagoRPS*.*

4.2 The *Ngāi Tahu Report 1991*, a summary of Waitangi Tribunal findings on *Wai 27, Te Kēreme*, the Ngāi Tahu Claim, highlights the impact on Ngāi Tahu whānui of Crown failures to uphold Te Tiriti, including loss of access to resources. Text of the Crown apology contained in the *Ngāi Tahu Claims Settlement Act 1998 (NTCSA)* is included as **Appendix One**, which reminds us of the commitment of the Crown to enter ‘a new age of co-operation’ with Ngāi Tahu, seeking to improve upon the errors of the past.

4.3 Ngā Rūnanga are reliant upon Council decision-makers understanding the Treaty context in which they operate and the need to uphold Crown responsibilities that have been delegated to them. In relation to the Mata-au catchment area, this necessitates reference to Statutory Acknowledgement of the Mata-au/Clutha River (NTCSA, Schedule 40) which records the associations of Kāi Tahu with this river system, as **Appendix Two**.

4.4 Kāi Tahu aspirations for freshwater management are recorded in the *Te Rūnanga o Ngāi Tahu Freshwater Policy Statement 1999,* and the *Kāi Tahu ki Otago National Resource Management Plan 2005,* which specifically references the Mata-au. These documents both allude to water ownership as an outstanding matter for resolution, which is relevant to the manner in which water continues to be allocated. Kāi Tahu iwi management plan objectives and policies provide guidance to decision-makers working within the context of the *Resource Management Act 1991 (RMA)*. Notable priorities include protection and restoration of mahika kai habitats, and ensuring that environmental flows are sufficient to sustain the range of Kāi Tahu rights, interests and values associated with waterbodies.

1. **Resource Management Act**

5.1 The sustainable management purpose of the RMA, and its associated principles, requires consideration of:

* the social, cultural and economic well-being of Kāi Tahu whānui;
* the relationship of Kāi Tahu and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga;
* the principles of Te Tiriti o Waitangi; and
* kaitiakitanga, the exercise of guardianship by Kāi Tahu of the Mata-au catchments in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship.

5.2. The Freshwater NPS requires consideration and recognition of Te Mana o te Wai, through identification of values and management of those values. The Freshwater NPS specifically provides for the involvement of iwi and hapū to ensure that tangata whenua values and interests are identified and reflected in the management of freshwater. Included within freshwater objectives is intent to phase out over-allocation.

5.3. The objectives and policies of the partially operative *Otago Regional Policy Statement 2019* are designed to ensure that Statutory Acknowledgements, customary uses and cultural values are recognised and provided for within regional plans and regional planning decisions.

5.4. Minimum flows for the Luggate Creek catchment, incorporated in the *Regional Plan: Water for Otago* (the Water Plan), predate the Freshwater NPS and do not align with the instream flows recommended in the 2006 council report *Management Flows for Aquatic Ecosystems in Luggate Creek*. The existing minimum flow was set without particular consideration of Kāi Tahu rights, interests and values. It was established at a time when water allocation associated with deemed permits could not be reduced without council providing compensation to deemed permit holders. Although this provision of the Water Plan is overdue for review, it is relied upon by applicants within the Luggate Creek catchment, including Luggate Irrigation Company Limited and Lake McKay Station Limited, seeking to replace deemed permits with resource consents. Ngā Rūnanga consider that any consent granted should be subject to conditions that, at a minimum, ensure the retention of instream flows aligned with the 2006 flows recommended by the Council.

5.5. A ‘visual’ residual flow at the intake points is proposed by Luggate Irrigation Company Limited and McKay Station Limited, in conjunction with managing abstraction to meet the minimum flow requirement below the confluence of the north and south branches of the catchment. It is not clear how this relates to overall flow management within the catchment or provision of values within the branches of Luggate Creek.

5.6. The rate of abstraction applied for by the applicant is higher than average rates of current usage, based on information provided by the applicant (roughly a third higher). Ngā Rūnanga opposes the granting of a new consent that would allow for more water to be taken from the Luggate Creek catchment than currently occurs.

5.7 The application acknowledges a lack of hydrological information regarding flows in the south branch of the catchment, with a single notable low flow gauging in the Alice Burn (25L/s) and a modelled estimate of mean annual low flow (MALF) of 123L/s. Council information indicates a MALF range of between 424L/s and 550L/s at the Luggate minimum flow site, which suggests that the south branch contributes between 20-30% of flow to that site. The proposed 306L/s combined takes from the south branch represent approximately 2.5 times the MALF estimate for the south branch, and between 50-75% of MALF estimates for the minimum flow site. Since all but a ‘visual’ flow is able to be taken, and it is unclear how the combined abstraction rate on the south branch relates to average flows during the irrigation season, our concern is that the proposal enables almost all of the south branch flows to be abstracted over the season, leaving little to support values of interest to Kāi Tahu.

5.8 We are aware, based on hydrological assessment provided in the Criffel Water Limited application, that average inflows in the catchment during the irrigation season (January to March) are lower than the combined proposed rates of abstraction from all applications, indicating that in the absence of a residual flow or minimum flow management, these allocations would enable full abstraction. We consider this to be a clear case of over-allocation, typical of rivers in which mining privileges were granted. While applicants in the catchment are proposing to reduce ‘paper’ allocation, the proposals are still higher than average inflows of the waterbody. This kind of gross over-allocation should not be supported to continue for another generation. Reducing the rates and volumes of abstraction, allowing more water to regularly flow down the natural watercourse, would be an appropriate remedy.

5.8 Decision on this application is an opportunity to begin to reverse the effects of abstraction greater than the waterbody can sustain, whilst maintaining Kāi Tahu values.

**E noho ora mai**

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# APPENDIX ONE: Text of Crown Apology

Text of the Crown apology contained in the Ngai Tahu Claims Settlement Act 1998.

**Part One – Apology by the Crown to Ngai Tahu**

**Section 6 Text in English**

The text of the apology in English is as follows:

1. The Crown recognises the protracted labours of the Ngai Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngai Tahu proverb ‘He mahi kai takata, he mahi kai hoaka’ (‘It is work that consumes people, as greenstone consumes sandstone’). The Ngai Tahu understanding of the Crown's responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngai Tahu ancestors. Tiramorehu wrote:

*“‘This was the command thy love laid upon these Governors … that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily … and remember the power of thy name.”*

The Crown hereby acknowledges the work of the Ngai Tahu ancestors and makes this apology to them and to their descendants.

1. The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngai Tahu in the purchases of Ngai Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngai Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngai Tahu's use, and to provide adequate economic and social resources for Ngai Tahu.
2. The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngai Tahu's use and ownership of such of their land and valued possessions as they wished to retain.
3. The Crown recognises that it has failed to act towards Ngai Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngai Tahu saying ‘Te Hapa o Niu Tireni!’ (‘The unfulfilled promise of New Zealand’). The Crown further recognises that its failure always to act in good faith deprived Ngai Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb ‘Te mate o te iwi’ (‘The malaise of the tribe’).
4. The Crown recognises that Ngai Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngai Tahu's loyalty and to the contribution made by the tribe to the nation.
5. The Crown expresses its profound regret and apologises unreservedly to all members of Ngai Tahu Whānui for the suffering and hardship caused to Ngai Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngai Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngai Tahu under the deeds of purchase whereby it acquired Ngai Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngai Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngai Tahu's grievances.
6. The Crown apologises to Ngai Tahu for its past failures to acknowledge Ngai Tahu raNgatirataNga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngai Tahu as the taNgata whenua of, and as holding raNgatirataNga within, the Takiwā of Ngai Tahu Whānui.

Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngai Tahu.”

# APPENDIX TWO: Statutory Acknowledgement for Mata-au

**Ngai Tahu association with the Mata-au**

The Mata-au river takes its name from a Ngai Tahu whakapapa that traces the genealogy of water. On that basis, the Mata-au is seen as a descendant of the creation traditions. For Ngai Tahu, traditions such as this represent the links between the cosmological world of the gods and present generations, these histories reinforce tribal identity and solidarity, and continuity between generations, and document the events which shaped the environment of Te Wai Pounamu and Ngai Tahu as an iwi.

On another level, the Mata-au was part of a mahiNga kai trail that led inland and was used by Ōtākou hapū including Ngati Kurī, Ngati Ruahikihiki, Ngati Huirapa and Ngai Tūāhuriri. The tūpuna had considerable knowledge of whakapapa, traditional trails and tauraNga waka, places for gathering kai and other taoNga, ways in which to use the resources of the river, the relationship of people with the river and their dependence on it, and tikaNga for the proper and sustainable utilisation of resources. All of these values remain important to Ngai Tahu today.

The river was also very important in the transportation of pounamu from inland areas down to settlements on the coast, from where it was traded north and south. Thus there were numerous tauraNga waka (landing places) along it. The tūpuna had an intimate knowledge of navigation, river routes, safe harbours and landing places, and the locations of food and other resources on the river. The river was an integral part of a network of trails which were used in order to ensure the safest journey and incorporated locations along the way that were identified for activities including camping overnight and gathering kai. Knowledge of these trails continues to be held by whānau and hapū and is regarded as a taoNga. The traditional mobile lifestyle of the people led to their dependence on the resources of the river.

The Mata-au is where Ngai Tahu’s leader, Te Hautapunui o Tū, established the boundary line between Ngai Tahu and Ngati Mamoe. Ngati Mamoe were to hold mana (authority) over the lands south of the river and Ngai Tahu were to hold mana northwards. Eventually, the unions between the families of Te Hautapunui o Tū and Ngati Mamoe were to overcome these boundaries. For Ngai Tahu, histories such as this represent the links and continuity between past and present generations, reinforce tribal identity, and document the events which shaped Ngai Tahu as an iwi.

Strategic marriages between hapū further strengthened the kupeNga (net) of whakapapa, and thus rights to travel on and use the resources of the river. It is because of these patterns of activity that the river continues to be important to rūnaNga located in Otago and beyond. These rūnaNga carry the responsibilities of kaitiaki in relation to the area, and are represented by the tribal structure, Te RūnaNga o Ngai Tahu.

Urupā and battlegrounds are located all along this river. One battleground, known as Te Kauae Whakatoro (downstream of Tuapeka), recalls a confrontation between Ngai Tahu and Ngati Mamoe that led to the armistice established by Te Hautapunui o Tū. Urupā are the resting places of Ngai Tahu tūpuna and, as such, are the focus for whānau traditions. These are places holding the memories, traditions, victories and defeats of Ngai Tahu tūpuna, and are frequently protected by secret locations.

The mauri of Mata-au represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngai Tahu Whānui with the river.