TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

TE MANUTUKUTUKU

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The Whanganui River Report *Released*

photo credit: Alexander Turnbull Library (Margaret A Maynard collection, c15422)

The Ātihaunui struggle to gain official recognition of rangatiratanga over the river has been running for years, as detailed in the report. Above are Whanganui representatives at a 1945 Māori Appellate Court hearing over the matter. Back row (left to right): Kaiwhare Kiriona, Tanginoa Tapa, Tekiira Peina, Tonga Tume, Hohepa Hekenui and Henare Keremeneta. Middle row: Te Rama Whanarere, Hekenui Whakarake, D G B Morrison (solicitor), Titi Tihu and Ponga Awhikau. Front row: Taka-te-iwa Anderson and Kahukiwi Whakarake.

The Waitangi Tribunal released its report on the Whanganui River (Wai 167) at a moving ceremony at Pūtiki Wharanui marae on 26 June.

Te Ātihaunui-a-Pāpārangi had claimed that they had possessed and controlled the Whanganui River and its tributaries for many hundreds of years and that, since 1840, they had never freely and knowingly relinquished their rights and interests in it. The critical question for the Tribunal had been whether the interests that Whanganui Māori had in the river had ever been extinguished and, if so, whether it had been done in accordance with Treaty of Waitangi principles.

The Tribunal found that 'in Māori terms, the Whanganui River is a water resource, a single and indivisible entity, which was owned in its entirety by Atihaunui in 1840'. The Ātihaunui people had never knowingly or willingly relinquished their Treaty rights over the river. The Tribunal concluded that the Crown had breached the Treaty in various ways by depriving Ātihaunui of their possession and control of the Whanganui River and its tributaries and by failing to protect Ātihaunui rangatiratanga in and over the river. As a consequence, it found that Ātihaunui had been and continued to be prejudicially affected.

See proposals and recommendations from the report on page 4.

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From the Director

600 years to settle claims?

In the *Northern Advocate* and other papers recently, one politician claimed it would take 600 years to settle the 779 claims currently before the Tribunal. She was wrong on several important points. There are not 779 claims currently before the Tribunal; rather, this is the total number of claims that the Tribunal has registered since 1975. Over 170 of those claims have now been disposed of, while another 134 are in hearing and a further 19 are in the report writing stage. Nor, of course, does the Tribunal settle claims. That is the job of the Government, assisted by the Office of Treaty Settlements, but this fact seems to escape some politicians. And the 600-year estimate for settling claims is dramatically over-exaggerated. It is this point that I want to discuss further in this article.

Morris Love

As far as its role is concerned, the Tribunal's current estimate is that it will have reported on all historical claims (whether registered or yet to be lodged), as well as many of the contemporary claims and some of the generic claims, by the year 2012. It will achieve this by continuing to apply the casebook method of inquiry, which the Tribunal first introduced in 1996. By this method, claims are grouped for contemporaneous inquiry within geographical hearing districts. This allows the claims to be heard in a group and reported on together. For instance, in the 1998/99 year, the Tribunal has dealt with over 130 claims in six district inquiries. While these inquiries have not been completed, they are in the hearing stage and are therefore nearer to the end of the process. It is this process that will enable all historical claims to be dealt with by the year 2012, leaving only some of the generic claims and any arising contemporary claims. It will take the Government further time to settle the claims, however. In the meantime, settlement negotiations will go on between the Government and claimants who choose not to come through the Tribunal process. These negotiations may bring forward the completion date for historical claims.

It should be noted that the life cycle of a claim from the start of active research to the release of a report is typically around six years. That includes three years in research and in preparation for hearing, 2 1/2 years in the hearing process and a further six months to be reported on. By 2000, the Tribunal will be reporting on the first of its inquiries under the casebook method, starting a cycle where it will report on an average of 60-100 claims each year until 2012. The casebook process has significantly sped up the pace of hearing claims. Although that pace is high, it is manageable. A higher rate of hearing and reporting on claims would require a much greater input of financial resources to all the agencies involved in the claims resolution process, not just to the Tribunal.

It has been said that, 'There are lies, damned lies and statistics.' These are a few statistics that I hope do tell a true story. The claims process will not take forever and as a result of detailed planning we believe that with current resources claims can be predominantly reported on by 2012. Details of how this will be achieved will be outlined in the Tribunal's *Business Strategy 1999* (enclosed).

Morris Te Whiti Love
Director

Final Spectrum Report Released

The Tribunal recently issued its final report on the Radio Spectrum Management and Development claim (Wai 776).

In March, the Tribunal granted the claim an urgent hearing in light of the Crown's proposal to auction management rights to the 2GHz range of the radio spectrum. As a result of the Tribunal's interim report, which upheld the claim on a preliminary basis, the Crown postponed its auction for three months while a full hearing of the claim took place.

The final report confirmed the Tribunal's preliminary finding that the claim was well-founded. The Tribunal agreed with an earlier Waitangi Tribunal report on the allocation of radio frequencies that the radio spectrum was a taonga. It also accepted claimant counsel's submission that the right to develop comprised the three following levels:

- the right to develop resources to which Māori had customary use before the Treaty;
- the right, under the partnership principle, to the development of resources not known in 1840; and

Trust Board Evidence All Heard

The Hauraki Tribunal heard the last of the overview evidence for Wai 100, the claim submitted on behalf of the Hauraki Māori Trust Board, when it sat from 2-6 August at Ngahutoitoi marae, Paeroa.

During the first seven hearings of the inquiry, the Wai 100 claimants presented evidence covering a wide range of issues including pre-treaty transactions, raupatu, the operation of the Native Land Court, gold ownership and administration, public works, and loss of control over rivers, the foreshore and other resources. The most recent evidence presented at Paeroa covered the socio-economic effects that Hauraki Māori have suffered as a result of the loss of their resources.

The next phase of the Hauraki inquiry will begin in October when the Tribunal will start to hear the first evidence from the thirty or so other claimant groups involved in the inquiry. It is expected that it will take between eighteen months and two years to hear the rest of the claims.

Ngāti Hako claimant Pauline Clarkin (left) expands on a piece of evidence to the Hauraki Tribunal and Crown Counsel.

- the right of Māori to develop their culture, language and social and economic status using whatever means available.

The Tribunal considered that each of these levels applied to this claim, as did the principles of partnership, rangatiratanga, fiduciary duty and mutual benefit. It again recommended that the Crown suspend the auction of the 2GHz range of frequencies until such time as it has negotiated with Māori and set aside a fair and equitable portion of the range for Māori use.

As with the Tribunal's interim decision, the presiding officer, Judge Pat Savage, issued a minority finding. Although he could not find that the radio spectrum was a taonga within the ambit of the Treaty, nor that there was a general right to develop as formulated by claimant counsel, he did find that the Crown was continuing to breach the Treaty in relation to te reo Māori and culture. He recommended that the auction proceed and that the Crown devote a generous portion, if not all, of the net proceeds of the auction to the promotion, development and protection of Māori language and culture.

Copies of the report are available from GP Publications, tel. 04-496-5603 or free fax 0800-804-454, or at Bennetts Bookshops for RRP $49.95.

Proposals from the Whanganui River Report

The Tribunal's primary recommendation was that the Crown negotiate a settlement of the claim with Ātihaunui through the Whanganui River Māori Trust Board. To that end, it set out several proposals as to how the rightful interests of Ātihaunui in the river might be restored. Although the Tribunal tried to find a solution within the present scheme of the Resource Management Act 1991, it considered that 'none could do justice to the issues involved'. The Tribunal maintained that any solution developed within the bounds of the Act would not provide Te Ātihaunui with a meaningful decision-making role. Despite this, the Tribunal did consider that it would be useful for Ātihaunui to collaborate with the regional and territorial authorities in order that the iwi might utilise the experience and competence the bodies have in river management.

Amongst other things, the Tribunal proposed that:

- the authority of Ātihaunui in the Whanganui River should be recognised in appropriate legislation. The legislation should recognise Ātihaunui ownership of the river, as an entity and as a resource, without reference to the English legal conception of river ownership in terms of riverbeds.
- a settlement should protect existing use rights for their current terms and provide for continuing public access. It should be clear that the public right is not as of right but by permission.
- a settlement may require joint management of the Whanganui River on a regular basis, and in that event, it should allow for the deployment of Ātihaunui people. It would be necessary to provide funding for the Whanganui River Māori Trust Board.

The Tribunal put forward two options that could form the basis of negotiation. Under the first option, the river in its entirety would be vested in an ancestor or ancestors representative of Ātihaunui, with the Whanganui River Māori Trust Board as trustee. This would give effect to Ātihaunui's rangatiratanga and would maintain the 'management' regime of the Resource Management Act 1991 as a resource consent would still have to be sought if the owner's approval were given. By the second option, the Whanganui River Māori Trust Board would be added as a 'consent authority' in terms of the Resource Management Act 1991, where the Whanganui River is involved. The Resource Management Act would preserve rights of appeal to the courts. The Act would need to be further amended to reflect the Crown's Treaty obligations and the option would require a plan, prepared by the relevant consent authorities, that would be specific to the Whanganui River.

Tribunal member John Kneebone issued a dissenting opinion on the proposals for negotiation. He was not able to support any proposal that Ātihaunui should own natural water or be designated a consent authority in respect of the river under the Resource Management Act 1991. His reasons and proposed alternative remedy are in chapter 11 of the report.

Copies of the report are available from GP Publications, tel. 04-496-5603 or free fax 0800-804-454, or at Bennetts Bookshops. Parts of the report may be viewed on our website at: www.knowledge-basket.co.nz/waitangi/welcome.html

New Guide to Preparing Claimant Evidence

Every claimant who has a claim registered with the Tribunal has to engage with research issues. What claimants need to do, and by when, are two of the most frequently asked questions. In response to this, the Tribunal's Chief Historian, Dr Grant Phillipson, has prepared a booklet entitled *Preparing Claimant Evidence For the Waitangi Tribunal.*

The booklet provides guidelines for claimants about the information they need to prepare for the Tribunal, and how. It focuses on traditional history reports, which are designed to inform the Tribunal about the claimant, the interests the claimants have (or had) in land and resources, and sites of special significance that are of relevance to the claim.

Research for a traditional history report should cover two types of source: oral evidence, gained from interviewing kaumātua and others with specialist knowledge, and written evidence, especially evidence

Kaipara Inquiry

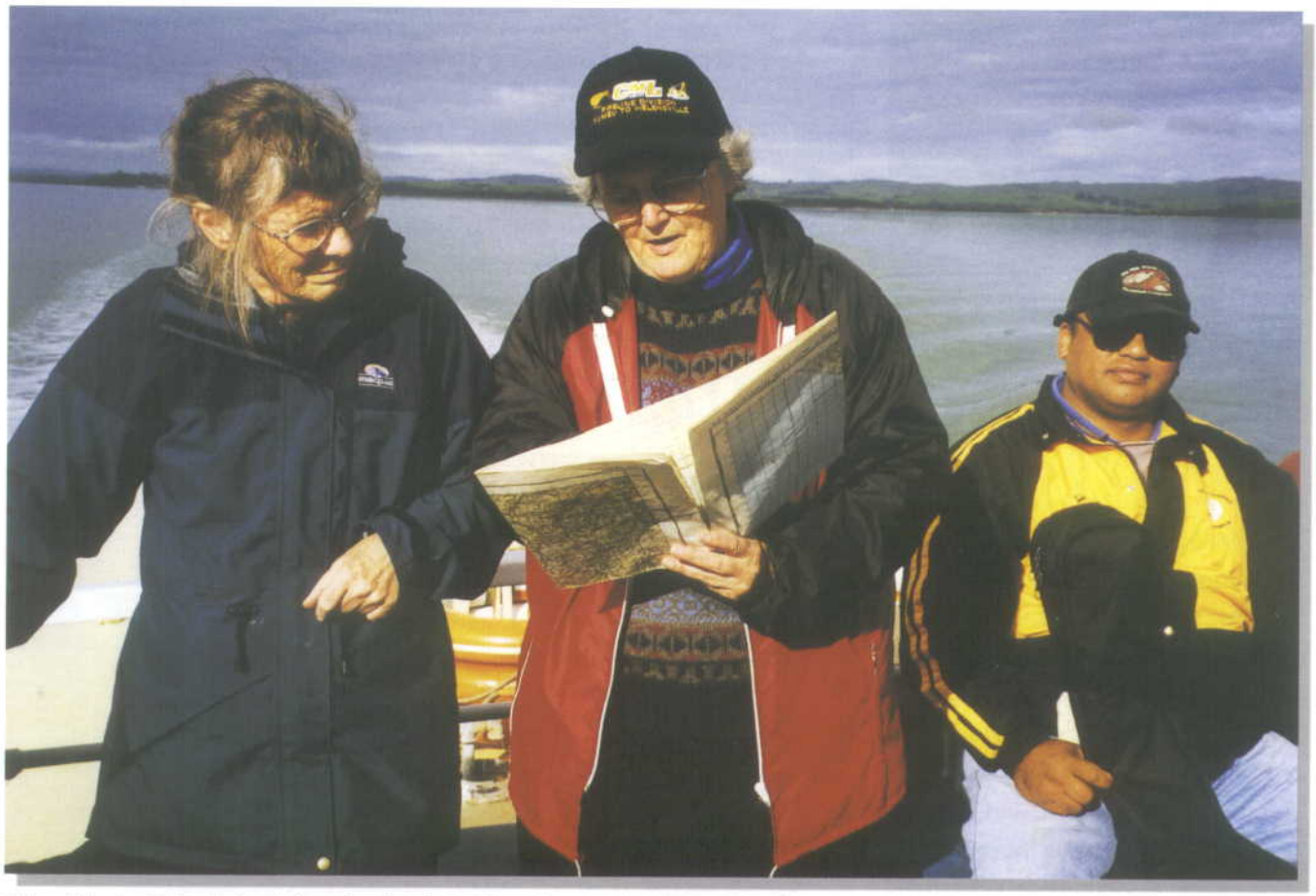
The Tribunal has already held three hearings this year in stage two of its Kaipara inquiry.

At the most recent hearing, from 8-11 June, Moira Jackson presented evidence on mapping issues and Dr Wynne Spring-Rice presented an archaeological report on Māori settlement in the south Kaipara peninsula for Ngāti Whātua o Kaipara (Wai 312). Other Ngāti Whātua witnesses presented oral socio-economic evidence.

On the third hearing day, the Tribunal moved to the Te Keti Block to hear evidence on the history of the block from Wai 279 claimant, Eriapa Maru Uruama. The fourth day featured a harbour visit to enable the Tribunal to get a better understanding of the harbour's geography. Claimants pointed out places of significance that they had given evidence about at previous hearings and relayed further stories and history of particular sites.

The next hearing is scheduled for 8-12 November. The venue for this hearing is yet to be confirmed.

Tribunal members on this inquiry are Dame Augusta Wallace (presiding officer), Evelyn Stokes, Brian Corban, Te Ahikāiata John Turei, Dr Michael Bassett and Areta Koopu.



Tribunal Member Evelyn Stokes (left) and archaeologist Wynne Spring-Rice explore a map of historic sites along the shores of the Kaipara harbour. Richard Nahi, Ngāti Whātua ki Puatahi claimant right.

held by the claimant group and in Māori Land Court minute books. The booklet discusses the skills that authors and researchers of traditional history reports need. It also discusses the relationship claimants should have with the professional historians writing land alienation and other historical reports.

The booklet includes a useful guide about each step in the research phase of a claim and when it should be undertaken.

Booklets are available from the Waitangi Tribunal, PO Box 5022, Wellington, tel. 04-499-3666, fax 04-499-3676, e-mail: tribunal@courts.govt.nz.

Errata from *Te Manutukutuku* 48

Page 3 Caption to photograph: *Allan Sargison (Crown Witness)* should read: *Colin Knox (Lecturer at Te Wānanga o Raukawa).*

Page 4 *Wellington Tenths Claim in Closing Phases.* Final submissions were also heard from Rangitane.

Page 5 Caption to photograph: *Nellie Wright* should read: *Nellie Rata.*

Glass Raroa Murray

Kua Whetūrangi a Glass Murray

Kua hinga tētahi o ngā kauri o Muriwhenua, a Glass Murray. Ki ngā hunga kāinga me tātou mā kua tūtaki i a ia, he tangata 'whai mana poutiriao'. I kapohia e te ringa o Tangaroa i tōna kāinga i Whangapē. E ono tekau mā rua ōna tau. Kua ūhia ngā mihi whānui ki runga i tēnei kauri ikeike mō āna mahi i waenganui i tōna iwi o Muriwhenua. Hei ko tā Dr Barry Rigby, te kaiwhakarite i ngā take e pā ana ki Muriwhenua mō te Taraipiunara, he tangata manawa reka me te hārikehi engari, he tangata whakaihi mō tōna iwi i te tau 1998. Ki a Tau Henare, 'He kaiārahi e āhei ana ki ngā tikanga o mua, e kore anō e kitea e tātou.

Glass Murray, a key peacemaker in Muriwhenua, died tragically in a diving accident near his home in Whangape in March. He was aged 62.

Many people have praised the contribution that Glass made to the Muriwhenua people. Dr Barry Rigby, the Waitangi Tribunal's claims facilitator for the Muriwhenua inquiry, said that the Tribunal will always remember Glass for his hilarious sense of humour, and for his passionate advocacy of reconciliation between contending groups during 1998.

Minister of Māori Affairs and Tai Tokerau MP, Tau Henare, said Glass was 'an old style leader, the likes of which won't be seen again'.

Landmark in the Mohaka ki Ahuriri Inquiry

The Mohaka ki Ahuriri district inquiry achieved a landmark in June 1999 with the hearing of the Wai 692 Napier Hospital Services claim. This means that all claimant and Crown evidence has now been heard, concluding a process that has seen more than twenty claims brought before the Tribunal over a three-year period in the Tribunal's first casebook district inquiry.

Evidence was presented in the War Memorial Centre, Napier, over six days from 26 July to 1 August. Closing submissions are scheduled for November 1999, after which time the Tribunal will write its report.

The hearing district covers some 800,000 acres of land situated in central-northern Hawkes Bay. The area includes the Mohaka-Waikare raupatu district and two large Crown purchases, the Ahuriri and Mohaka blocks. It also encloses the large Esk and Mohaka Forests.

Napier Hospital Services (Wai 692) claimants and counsel get ready for a site visit of the disused parts of the hospital.

The claimants include Ngā Hapū o Ahuriri, Ngāti Paarau, Ngāti Tū, Ngāti Tatara, Ngāti Kurumokihi, Ngāti Hineuru, Ngāti Tūtemohuta, Ngāti Pahauwera, Ngāi Tane and a number of whānau from inland Tarawera and Tataraakina.

Members of the Mohaka ki Ahuriri Tribunal are Judge Wilson Isaac (presiding officer), Keith Sorrenson, Evelyn Stokes, John Turei, Roger Maaka and John Clarke.

End of an Era

The release of the *Whanganui River Report* marked the end of an era for outgoing Waitangi Tribunal member Mary Boyd.

Mrs Boyd was appointed to the Waitangi Tribunal when its membership expanded from 7 to 16 in 1988. Her first inquiry was the Te Roroa claim which started in March 1989.

'At that time I had just retired as a reader in history at Victoria University and was wondering what to do next. I'd been teaching courses on New Zealand race relations and doing research on decolonisation in the South Pacific. I welcomed the opportunity to learn more about Māori,' says Mrs Boyd.

Mary Boyd

'First and foremost, I have learnt an enormous lot about Māori history and customs in listening to the oral evidence presented by claimants at marae hearings and in talking to Māori members of the Tribunal. I've greatly appreciated their unfailing kindness, courtesy, hospitality, patience and tolerance. If I had my life over again I would become bilingual and encourage more New Zealand history students to do the same. I'd also adopt a different approach to teaching New Zealand history, incorporating more Māori history based on oral history narratives, not just written documents, and on Māori perceptions and understandings of past events. At marae hearings and on site visits, I moved into a world I never knew existed as a Pākehā. Indeed, I felt wonderfully privileged to be a participant in, and observer of, Māori life and relationships, past and present, and to learn something about Māori ideas and values.

'As Alan Ward has written in *An Unsettled History*, New Zealand is fortunate to have a founding statement of the principles by which relations between Māori and Pākehā can be mediated. Through the Treaty-based claims process, major and minor historical claims have been investigated and settled since 1975.'

Mrs Boyd sat on a number of inquiries involving customary and Treaty fishing rights, natural resources and the conservation estate. These have included the Mohaka River, Ika Whenua Energy Assets, Ika Whenua Rivers, Te Whanganui a Orotū and Whanganui River inquiries.

'The settlement of such claims clearly presents a major challenge both to future governments and to firmly entrenched public views over the ownership of water, the recognition of Māori customary law and Māori aspirations of rangatiratanga. For this reason my parting hope is that *The Whanganui River Report* which relates to these matters will be widely distributed and read not only by all those involved in the settlement process but also by the public at large.'

New Report Writer

Ewan Morris joined the report writing staff of the Waitangi Tribunal in May. He has a Ph.D. in history from the University of Sydney.

By his third week at the Tribunal, Ewan had been assigned to the Kaipara inquiry and was on his first marae visit and tribunal hearing. He will also be assisting the Wellington Tenths Tribunal.

'I'm looking forward to the challenge of working in a different type of environment and using a different style of writing; I've really only worked in universities before and worked very much on my own. Now I will be working with other people and interacting with people as part of the claims process.

'My undergraduate degree was in history and Aboriginal studies. I did my honours thesis on Aboriginal history and my Ph.D in Irish history. I have a general interest in indigenous rights issues. That, and the fact that I can continue to use my historical skills, attracted me to the job.'

Ewan's parents emigrated to Palmerston North from Australia in 1986. His father is a Professor of Veterinary Medicine and his mother a retired law lecturer. He also has a sister who lives in Tauranga and works as an occupational therapist.

'The Waitangi Tribunal is a really interesting body. There is nothing exactly like it in Australia. The process is very interesting. I have the opportunity of being involved in that and of being closer to my family.'

Ewan Morris

From Tainui to the Tribunal

Wayne Taitoko began work as a researcher at the Tribunal in June. He has been assigned to the Urewera inquiry. This will involve discussing research issues with claimants, organising facilitation hui with some of the major claimants and undertaking commissioned research.

Wayne Taitoko

Born in Te Awamutu of Ngāti Maniapoto and Waikato descent, he was educated at St Stephens School where he later became a prefect. After leaving school, Wayne started work at the Department of Social Welfare doing claims processing. He then moved on to work for the Māori Land Court in Rotorua and Hastings before heading back home again to Hamilton. 'My time there was highlighted by my appointment as Registrar,' says Wayne.

In 1988, Wayne was seconded to the Tainui Māori Trust Board as a researcher for the Tainui raupatu claim. 'It was an exciting time for me and one of constant change. I would go to work in the morning and not know what part of the country I might be going to that day.'

After his stint at the Trust Board, he held a position as a research fellow with the Centre for Māori Studies at Waikato University. Shortly afterwards he completed a Bachelor of Social Science degree in Māori and geography. He continued research and negotiation work for the Tainui settlement. He finished at the Trust Board in 1996 and since then has assisted his own and other iwi with treaty claims research through private consultancy, which included research commissions for the Tribunal.

His new job at the Tribunal as a reseacher will have a strong focus on the translation and interpretation of 19th century documents for internal research purposes. 'I wouldn't call myself fluent,' he comments. 'I think of myself as somebody with some language skills and skills in interpretation of old archival documents.'

On top of this, Wayne has also dabbled in politics and was nominated as a National Party list candidate at the last election in 1996. 'The experience was great. Politics is a hard game, and as one of the few Māori in a party like National it wasn't easy making our presence felt. There were only a handful of other Māori candidates in the party including Georgina Te Heuheu who is now the Minister for Courts. It is a very worthwhile experience for anyone.

NEW CLAIMS REGISTERED

Wai No.	Claimant	Claim
784	G Kereama-Baker	Kauwhata Lands and Resources claim
785		Combined record of inquiry for Northern South Island claims
786	Moananui Rameka and another	Atiamuri Ki Kaimanawa (Rameka) claim
787	John (Hoani) Simon and another	Atiamuri Ki Kaingaroa (Simon) claim

HEARING SCHEDULE as at August 1999 (These dates may change)

Hauraki claims **4–8 October 1999**	Mohaka ki Ahuriri claims **29–30 November 1999**
Kaipara (Stage 2) claims **8–12 November 1999**	Hauraki claims **6–10 December 1999**
Mohaka ki Ahuriri claims **22–26 November 1999**	Tauranga Moana claims **13–17 December 1999**

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