

Derechos de los Pueblos Indigenas y derechos de los Ríos

Perspectiva Neozelandeza

XX Jornadas Internacionales en Derecho Medioambiente

Universidad Externado de Colombia, 25 Octubre 2018

Dra Elizabeth Macpherson

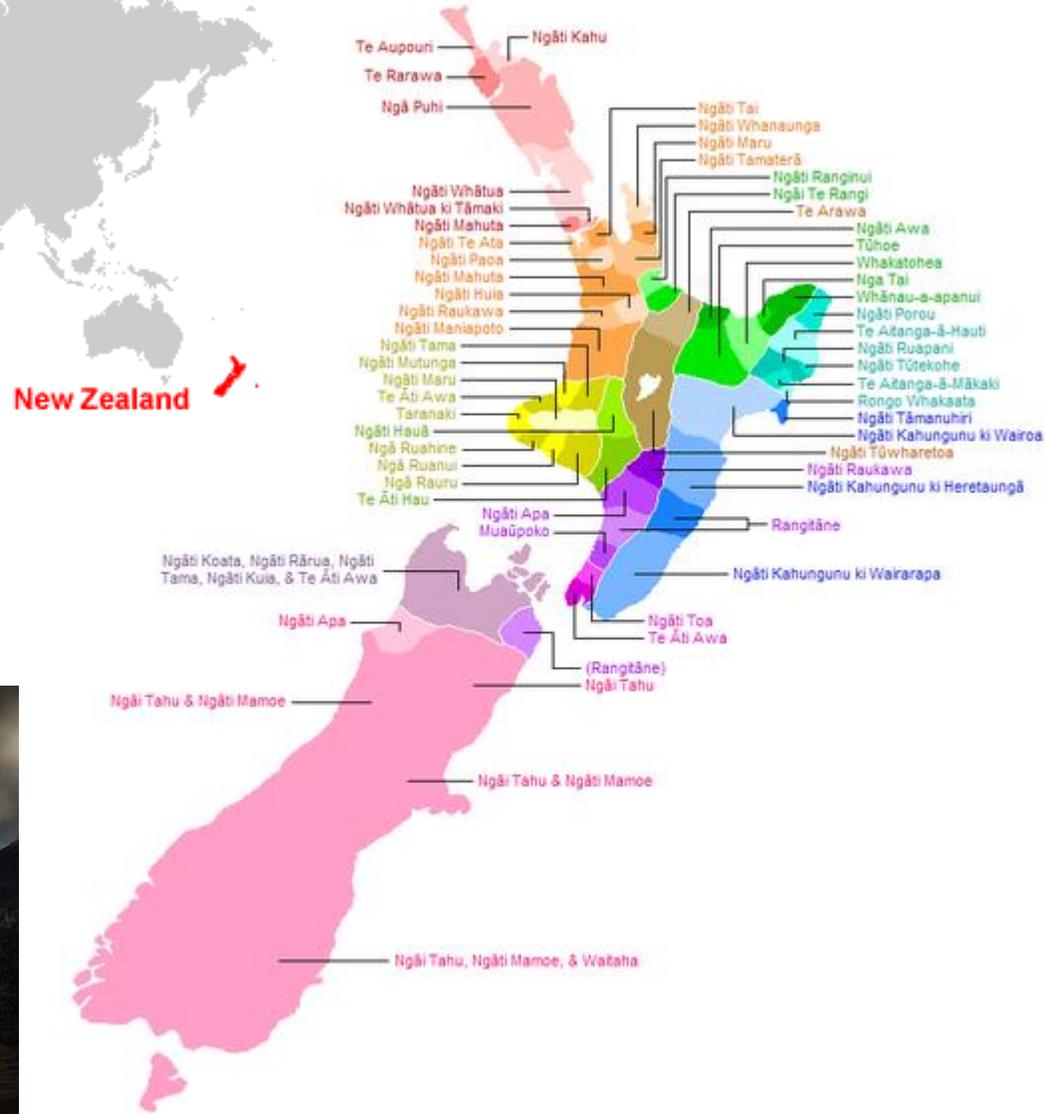
Profesora de Derecho, University of Canterbury, Aotearoa Nueva Zelanda

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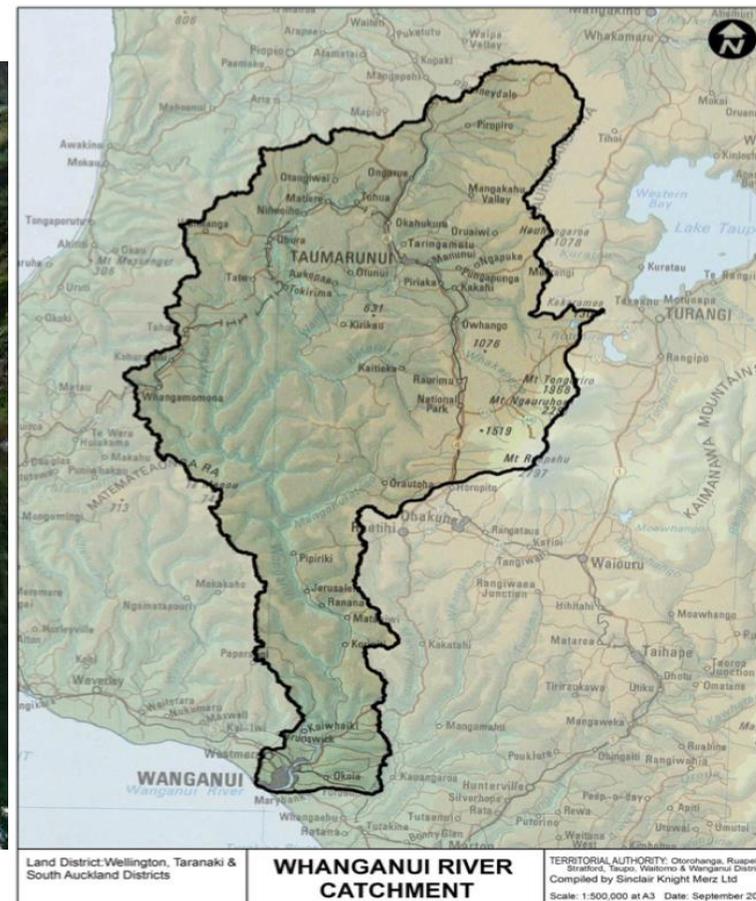
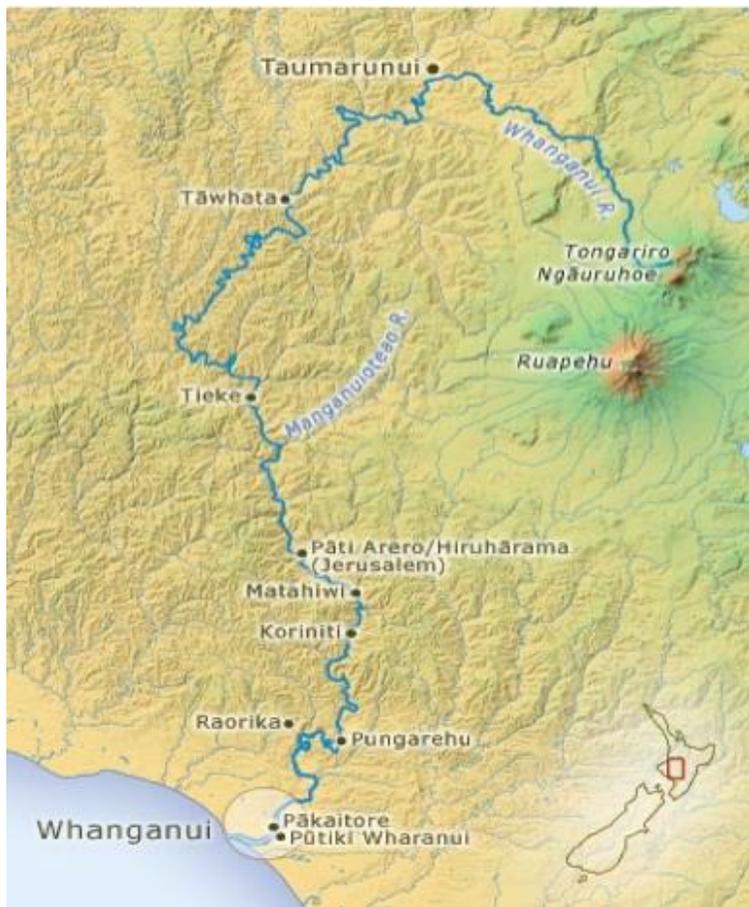
Acuerdo del Rio Whanganui Te Awa Tupua



El Tratado de Waitangi 1840



Historia del caso Whanganui



Whanganui River Report 1999

‘In Maori terms, the Whanganui River is a water resource, a single and indivisible entity comprised of water, banks, and bed. There is nothing unexpected in that. It is obvious that a river exists as a water regime and not as a dry bed. The conceptual understanding of the river as a tupuna or ancestor emphasises the Maori thought that the river exists as a single and undivided entity or essence. Rendering the native title in its own terms, then, **what Atihaunui owned was a river, not a bed, and a river entire, not dissected into parts.**’

Waitangi Tribunal, Whanganui River Report, 1999 (Wai 167), 337



El río es ‘Te Awa Tupua’

S 12 Te Awa Tupua recognition Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and meta-physical elements.

Te Awa Tupua (Whanganui River Claims Settlement) Act 2017

El rio es una ‘persona juridica’

Section 14 (1) Te Awa Tupua declared to be legal person

Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person.



Te Awa Tupua (Whanganui River Claims Settlement) Act 2017



Educator Turama Hawira

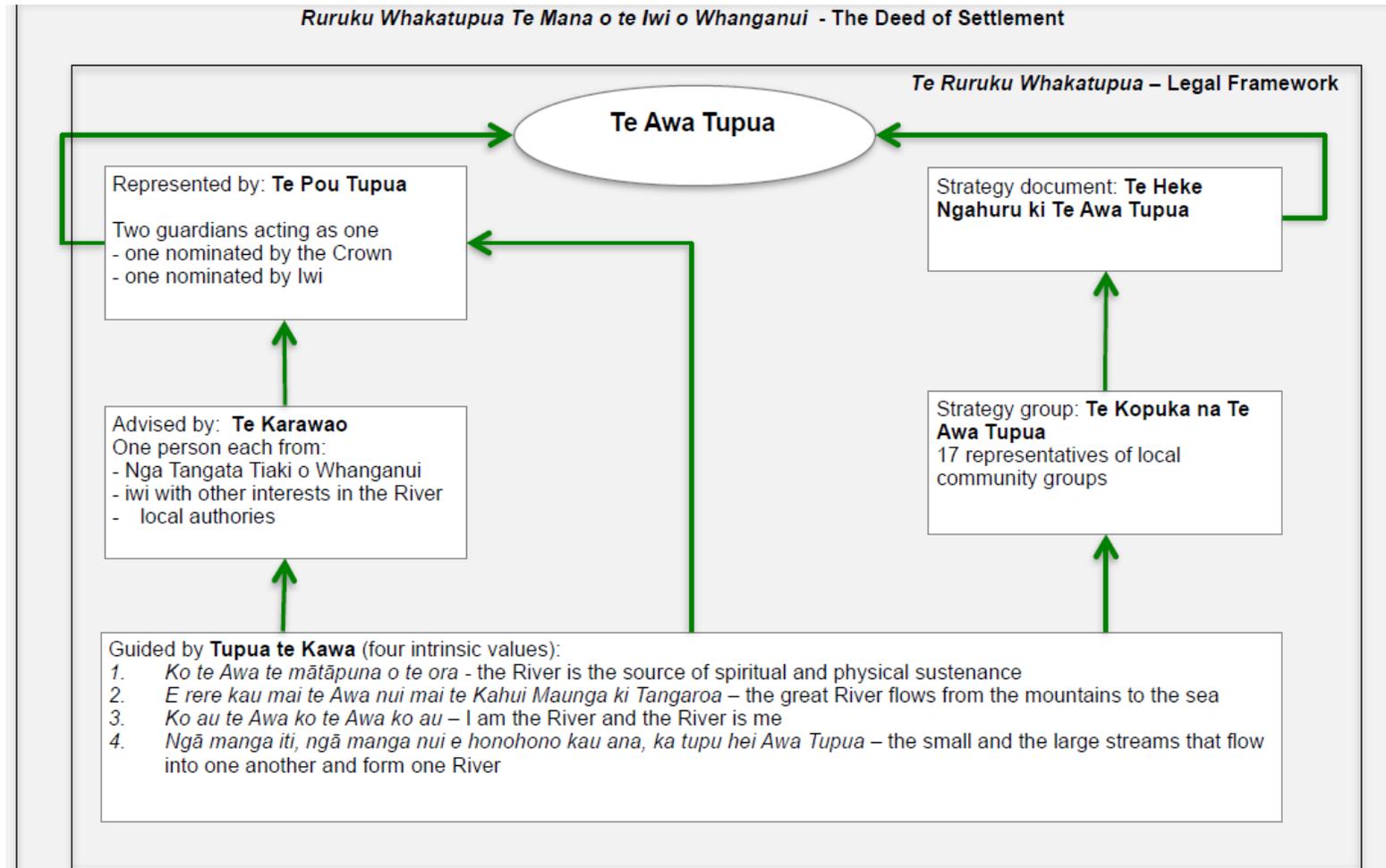


Former MP Dame Tariana Turia

Valores - ‘Tupua te kawa’

- 1. *Ko te Awa te mātāpuna o te ora:*** the River is the source of spiritual and physical sustenance: Te Awa Tupua is a spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and well-being of the iwi, hapū, and other communities of the River.
- 2. *E rere kau mai i te Awa nui mai i te Kahui Maunga ki Tangaroa:*** the great River flows from the mountains to the sea: Te Awa Tupua is an indivisible and living whole from the mountains to the sea, incorporating the Whanganui River and all of its physical and metaphysical elements.
- 3. *Ko au te Awa, ko te Awa ko au:*** I am the River and the River is me: The iwi and hapū of the Whanganui River have an inalienable connection with, and responsibility to, Te Awa Tupua and its health and well-being.
- 4. *Ngā manga iti, ngā manga nui e honohono kau ana, ka tupu hei Awa Tupua:*** the small and large streams that flow into one another form one River: Te Awa Tupua is a singular entity comprised of many elements and communities, working collaboratively for the common purpose of the health and well-being of Te Awa Tupua.

Gobernanza colaborativo



Titulo del suelo del rio para Te Awa Tupua

S 41 Vesting

(1) On the settlement date, the fee simple estate in the Crown-owned parts of the bed of the Whanganui River vests in Te Awa Tupua.

PERO....

S 46 Certain matters not affected by vesting

(1) The vesting of the Crown-owned parts of the bed of the Whanganui River by section 41(1) or under section 53(3) or 55(3)(a) does not create or transfer—

(a) a proprietary interest in water; or

(b) a proprietary interest in wildlife, fish, aquatic life, seaweeds, or plants (except in relation to plants attached to the bed of the Whanganui River).

(2) The following matters are preserved and not affected by the vesting of the Crown-owned parts of the Whanganui River by section 41(1) or under section 53(3) or 55(3)(a):

(a) existing public use of, and access to and across, the Whanganui River, including navigation rights; and

(b) existing private property rights, including customary rights and title; and

(c) the existing rights of State-owned enterprises and mixed ownership model companies; and

(d) existing resource consents and other existing statutory authorisations; and

(e) fishing rights recognised under—

- (i) the Conservation Act 1987;
- (ii) the Fisheries Act 1996;
- (iii) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; and

(f) the existing ownership of, and consents for, lawful structures in or on any part of the Whanganui River, and any existing lawful rights to use, access, occupy, maintain, remove, repair, or demolish those structures; and

(g) the statutory functions, powers, and duties of the relevant local authorities, except as otherwise provided in this Act; and

(h) the application of any other enactment, unless expressly provided otherwise by this Act.

A photograph of a dense forest with tall, slender trees. Sunlight filters through the canopy, creating a warm, golden glow in the center of the image. The foreground is dark and filled with green foliage and ferns. The overall mood is peaceful and natural.

Derechos para la naturaleza?

O Derecho Indigena?



Limitaciones



Propiedad o dominio Māori en agua?

Waitangi Tribunal Inquiry on the National Freshwater and Geothermal Resources Claims

<https://waitangitribunal.govt.nz/inquiries/urgent-inquiries/national-fresh-water-and-geothermal-resources-inquiry/>





Centro de Estudios para la Justicia Social “Tierra Digna” y otros v el Presidente de la Republica y otros, No T-5.016.242, Corte Constitucional, Sala Sexta de Revision (Colombia) (10 November 2016)



Harmony with Nature

United Nations

<http://harmonywithnatureun.org/welcome/>



New Zealand gives Mount Taranaki same legal rights as a person

The sacred mountain in the North Island is the third geographic feature in the country to be granted a 'legal personality'



▲ Eight local Māori tribes and the government will share guardianship of the sacred mountain. Photograph: David Frampton/AP

Mount Taranaki in **New Zealand** is to be granted the same legal rights as a person, becoming the third geographic feature in the country to be granted a "legal personality".

Eight local Māori tribes and the government will share guardianship of the sacred mountain on the west coast of the North Island, in a long-awaited acknowledgement of the indigenous people's relationship to the mountain, who view it as an ancestor and whanau, or family member.



<https://thespinoff.co.nz/atea/atea-otago/27-11-2017/if-the-hills-could-sue-jacinta-ruru-on-legal-personality-and-a-maori-worldview/>

Te Urewera Act 2014 s 3

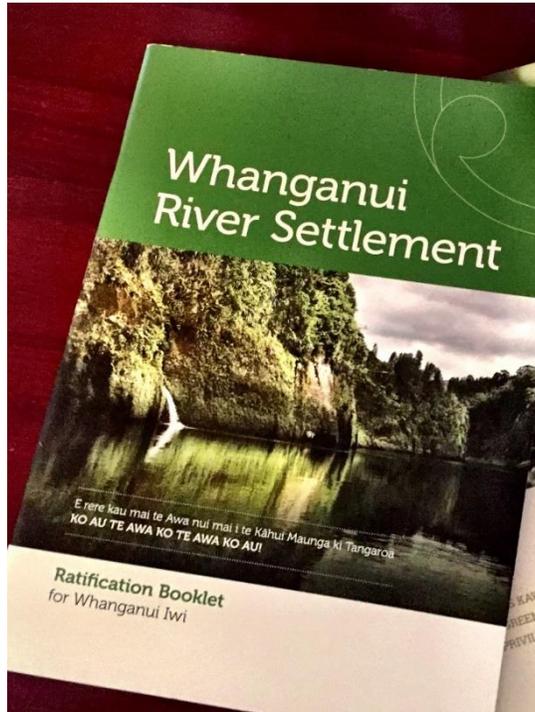
Te Urewera

(1) Te Urewera is ancient and enduring, a fortress of nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty.

(2) Te Urewera is a place of spiritual value, with its own mana and mauri.

(3) Te Urewera has an identity in and of itself, inspiring people to commit to its care...

El desafío sigue...



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3 AUGUST 2018

Kahui Wai Māori group to work on freshwater

 HON DAVID PARKER

Environment

The Government is establishing a new group to broaden the conversation with Māori on freshwater.

Environment Minister David Parker today briefed the Iwi Chairs Forum meeting on plans to establish the group, to be known as Kahui Wai Māori – the Māori Freshwater Forum.

"Freshwater is a taonga of huge significance for Maori and all New Zealanders.

"This Government is committed to protecting and restoring our freshwater for future generations. We want to

New Zealand Government



Next steps for fresh water
CONSULTATION DOCUMENT



Preguntas?



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