SUBMISSION TO THE NGAI TAHU (POUNAMU VESTING) BILL

BY

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19 June 1997

STATEMENT

As the Crown Minerals Act 1991 is a statutory covenant which provides legislation for all mining provisions and includes transitional provisions for existing mining privileges, applications and land access arrangements under the Mining Act 1971, then pursuant to sections 3, 5(b), 11, 22, 23, 31, 59, 61, 107, 111, 112 and 115 of the Crown Minerals Act, any existing mining privilege granted or applied for under the Mining Act 1971, and any existing permit granted or applied for under the Crown Minerals Act must be deemed as a legal right or legitimate claim to a specific discovery or resource in respect to Crown owned minerals. As applications, fees and licencing procedures are regulated in accordance with statutory policy in conjunction with the respective Acts then once an application has met the preliminary requirements of the licencing or permitting process it attains a priority right. I submit therefore that until these existing privileges, permits and applications are voluntarily surrendered or withdrawn by the applicants or licencees or the Minister of Energy declines any application or any further applications for renewals pursuant to the Crown Minerals Act or any other Act and without prejudice, then these applications and privileges must be considered as legitimate claims to the specific Crown owned minerals, regardless whether or not land access arrangements have yet to be confirmed and should be dealt with according to the Act to which they were classified.

I support the submission by the New Zealand Jade Industry Association and The Jade Miners and Manufacturers Affiliation and wish this submission to include the same criteria, views and opinions.

CONCLUSIONS

I oppose the Bill and its policies in its present context for the following reasons:

1. It blatantly contravenes the statutory rights accorded to existing applicants and licensees under the Mining Act 1971 and the Crown Minerals Act 1991.

2. The Crown is proposing to vest the Crown owned minerals defined as Pounamu when existing applicants and licencees have presently priority rights for mining privileges over these minerals.

3. The Bill proposes to create an Act and amend the Crown Minerals Act 1991 that will prevent existing applicants and licencees from lawfully acquiring access to the minerals they have discovered and laid claim to under the said mining acts.

4. It does not provide compensation for the revoking of existing statutory rights for past or future losses and damages to livelihoods, notwithstanding the compounding interest on the reimbursements offered to date.

5. Because of existing applications filed and accepted by the Crown, in some instances up to nine years ago, the introduction of this Bill could be considered as the catalyst for the Crown to have committed fraud and false pretences against the public. Considering that applicants have acted in good faith, and applied and paid for a service regulated under the mining acts, ie. section 3 of the Crown Minerals Act 1991 states: "THIS ACT SHALL BIND THE CROWN", and section 23 (1) states "ANY PERSON MAY APPLY TO THE SECRETARY FOR A PERMIT IN RESPECT OF A MINERAL IN LAND WHETHER OR NOT THERE IS A MINERAL PROGRAMME FOR THE MINERAL."

6. It is creating a situation which could only be construed as racially bias and prejudicial to those it adversely affects.

7. The proposed recipients of the Pounamu mineral rights Te Runanga O Ngai Tahu is chaired by Sir Stephen (Tipene) Gerard O'Regan. Attached is an alleged statement he has made to an international magazine which is considered as offensive to the New Zealand public. Especially when it is he who is negotiating on behalf of Ngai Tahu for receipt of Crown owned assets.

8. Although the general concept of the Bill is intended to satisfy the historical grievances of the Ngai Tahu people, when converted into legalisation as such, it is considered as recreating a modern injustice to those it disadvantages.

9. The Bill contradicts the Prime Minister and the Minister of Treaty of Waitangi Negotiations when they have stated in letters that the rights of private parties including those with existing mining or other licences are expressly protected to ensure their rights are not adversely affected.

10. It seems from documented evidence that certain conclusions from meetings between Crown Departments and Ngai Tahu during the formulation of this Bill specifically express predetermined policy to intentionally suppress the rights of existing licensees and applicants.

CLAUSE ANALYSIS

Clause 4. RIGHT OF PRIORITY TO APPLY FOR A RENEWAL OF AN EXISTING LICENCE GRANTED UNDER THE MINING ACT 1971.

The Minister of Energy has stated that this Right has not been preserved under the Crown Minerals Act 1991. Contrary to the Minister's opinion, the Mining Act 1971, Section 77 does specify that under the Act 1971, the application for a new licence shall have priority. Pursuant to the Crown Minerals Act 1991, Section 107 including subsection (2) and not withstanding Section 111, subsections (1&2) of that Act 1991. The enactments for the purpose of subsection (1) DO NOT include Section 77 of the Mining Act 1971. This then must substantiate that any existing mining licence under the Act 1971 be considered as CONTINUING to have a Right of Priority for a new licence consistent with Sections 23, 25 & 107 of the Crown Minerals Act 1991 and Section 77 of the Mining Act 1971.

Pursuant to Clause 4 of the Ngai Tahu (Pounamu Vesting) Bill, nothing should prevent the applicant to apply for a further mining licence.

Clause 5 EXISTING APPLICATIONS FOR MINING PRIVILEGES UNDER THE MINING ACT 1971 – SUBJECT TO SECTION 112(1) OF THE CROWN MINERALS ACT 1991.

Where an application for a prospecting or mining licence has been accorded priority rights, public notice has been given and no objections have been lodged then these applications, pursuant to the said Acts 1971 and 1991 should remain unaffected. Given that these Acts in their present form are the only legitimate means by which applicants can secure their Rights to their discoveries in accordance with the efficient allocation of Rights in respect of Crown owned minerals, the revokement of these Rights and transfer of ownership of the specific minerals is considered unacceptable. The policies and in particular Clause 5 of The Bill specifically endeavour to revoke these Rights.

It is considered therefore that under the above mentioned Act's and their relevant sections that any existing applications for mining privileges must remain as such until the applicants are officially advised by the Ministry that they have been declined, including the reasons for this decision.

Applicants have requested access to the minerals and land. The majority of the existing applications were made in the late 1980's. To have them wait so long only to advise them that their applications will not be granted because the mineral ownership has been changed

and a new Act has been passed revoking their rights under the Mining Act's is considered unjust. Clause 5 of the Bill states "NOT WITHSTANDING ANYTHING IN THE CROWN MINERALS ACT 1991, THE MINISTER OF ENERGY SHALL NOT GRANT ANY – (b) MINING PRIVILEGE PURSUANT TO AN APPLICATION TO WHICH SECTION OF THAT ACT APPLIES"

Because some applications under the Mining Act 1971 fall into the category provided under Section 112, subsection (1)(b) these specific applications do not apply to the Crown Minerals Act 1991 and should be treated as stipulated in that Act. Because Clause 5 refers to the statement "NOT WITHSTANDING ANYTHING IN THE CROWN MINERALS ACT 1991", then it must be accepted that Section (1)(b) does not apply. Any other application that does apply to the Crown Minerals Act 1991, as referred to in Clause 5 should also be exempt from Clause 5 pursuant to the wording "NOT WITHSTANDING ANYTHING IN THE CROWN MINERALS ACT 1991" Reference is herein provided for this, under Section 3 of the said Act. ACT TO BIND THE CROWN – "THIS ACT SHALL BIND THE CROWN."

Clause 5 EXISTING APPLICATIONS PURSUANT TO THE CROWN MINERALS ACT 1991

The Clause by Clause Analysis of the Bill, page (iii), Clause 5, states in part – "PROHIBITS THE GRANTING OF PERMITS UNDER SECTION 32 OF THE CROWN MINERALS ACT 1991" and yet the BILL, page 4, Clause 5, states in part "(a) PERMIT PURSUANT TO AN APPLICATION MADE UNDER SECTION 23.

If Clause 5(a), legislates that the Minister shall not grant a Permit pursuant to an application made before the commencement of the proposed Ngai Tahu (Pounamu Vesting) Act, then we question the existence of current legislation that has enabled the Minister not to grant those applications for permits and mining privileges that he has had before him since 1989.

Because Clause 5 specifically relates to the revokement of all applications and related granting of permits or mining privileges we must object to this Clause on the grounds that that Clause states – "NOT WITHSTANDING ANYTHING IN THE CROWN MINERALS ACT 1991" and therefore if the Bill is enacted, then subsequent to it's content including the relevant amendments to the Crown Minerals Act 1991, applicants will not have any recourse as they presently have under the Acts 1971 and 1991 in which to base their objections and individual claims for adequate compensation.

At present we consider the Crown Minerals Act 1991 to be binding to the Crown in respect to the existing legislation that allows for any person to apply and be granted without prejudice a permit or mining privilege pertaining to Crown minerals on Crown land. This will not be the case if this Bill is passed in it's present form.