

CHAPTER 3

LAKE HOROWHENUA

3.1 Introduction

Lake Horowhenua lies on a sand plain near present-day Levin in the centre of Muaupoko's rohe. The lake covers an area of approximately 390 hectares, and is at no point much deeper than a couple of metres. It is fed by various small streams, springs, and associated swamps. Hokio Stream drains the lake. Once surrounded by podocarp forest, the lake was by all accounts a thing of wondrous beauty.¹ Today, however, with the forest gone and the lake significantly lowered, Lake Horowhenua is situated in a somewhat forlorn rural landscape – its permanently muddied waters testament to the radically altered ecology of the area.

Unlike many other lakes in the North Island of New Zealand, Horowhenua has always been in Maori ownership. However, at various times confusion has existed as to the legal status of the lake. This confusion appears to have resulted from some rather haphazard, incremental legislation, and the predilection of various Government officials to try and limit the rights of Maori. In that no serious attempt has been made by the Crown to extinguish the rights of Maori to the bed of Horowhenua, and that its ownership by Muaupoko has been confirmed by legislation, the case of Lake Horowhenua represents something of an aberration in the history of the ownership and control of New Zealand's lakes.

This chapter begins with a summary of Muaupoko's use and occupation of Lake Horowhenua. From the limited secondary sources available to the present author pertaining to the use of the lake, some tentative conclusions about the nature and extent of Muaupoko's rights are made. After a cursory look at the history of the lands surrounding Lake Horowhenua up until 1895, a detailed history of the ownership and management of the lake is presented. This section examines how the lake came to be first a recreational reserve and later a public domain; conflicts between the lake's Muaupoko owners and the Crown and various local authorities; and how these conflicts were resolved.²

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1. G Leslie Adkin, *Horowhenua: Its Maori Place Names and their Topographic and Historical Background*, Wellington, Department of Internal Affairs, 1948, p 18; James Cowan, 'Report on Horowhenua Lake to Department of Tourist and Health Resorts', AJHR, 1908, h-2a, p 1
 2. This chapter draws primarily on the history of Lake Horowhenua written by Keith Pickens contained in Robyn Anderson and Keith Pickens, *Wellington District: Port Nicholson, Hutt Valley, Porirua, Rangitikei and Manawatu*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), August 1996. Virtually no primary research was undertaken by the present author.

3.2 Muaupoko and Lake Horowhenua

For several centuries the lakes of Horowhenua and Papaitonga have been the centre of Muaupoko settlement in the Horowhenua. Muaupoko whakapapa to three main groups: the people of the Kurahaupo waka, who migrated to the west coast from Mahia; descendants of the Aotea waka resident in south Taranaki; and the people resident in the Horowhenua prior to Muaupoko (described by Adkin – a scholar of the topography and archaeology of the Horowhenua – as being Ngati Mamoe).³ In the early nineteenth century, Muaupoko suffered serious defeats at the hands of groups migrating from the north, principally Ngati Toa under the leadership of Te Rauparaha and Te Rangihaeata. However, after being vanquished by war parties from the north, Muaupoko were reinstated by their victors on a strip of land centred around Lake Horowhenua.⁴ These lands were shared with members of both Ngati Apa and Ngati Raukawa.

Fishing appears to have always been a crucial aspect of the Muaupoko economy. The lake supported eel, flounder, whitebait and kakahi fisheries. Adkin observes that as well as supplying a large local population, the fisheries were capable of ‘exciting the dangerous envy not only of neighbouring tribes but also of those occupying territory far distant’.⁵

Eel fishing was a major activity throughout the Horowhenua district. Evidence presented to the Native Land Court in the course of its 1873 inquiry into the ownership of the Horowhenua block, shows that Muaupoko caught eels in lakes and streams throughout the district. Eels were also introduced to waterways where they did not naturally occur.⁶ In this inquiry, the exercise of eel fishing rights was clearly a major determinant of the customary tenure of the land.

But of all the eel fisheries in the district, those of Lake Horowhenua and its associated waterways, appear to have been the most significant. Adkin records that eels were caught in such large numbers that there were often more than could be consumed immediately. The surplus was either dried or kept alive in artificial ponds.⁷

Eels were caught in the lake by the use of rau matangi. Adkin describes these as being a series of fences that channelled eels into a hinaki. He contends that ‘the rau-matangi type of weir could be operated at pleasure by anyone so desiring’, and that they appear not to have had names bestowed upon them.⁸

Most eels, however, were not caught in the lake itself, but in Hokio Stream. Adkin states that from ‘time immemorial the pa-tuna (eel weirs) of the Hokio Stream have been famed for their productivity . . . forming an important part of the food-supply of the Mua-upoko people’.⁹ Unlike the rau matangi of the lake, the pa

3. Anderson and Pickens, p 5; Adkin, pp 124–125

4. Ibid, p 127

5. Ibid, p 18

6. Otaki Native Land Court minute book 2, 29–31 March 1873, fol 5–24 (mention of eel husbandry was made by Humia Riwana Te Hakeke at folio 6)

7. Adkin, pp 18, 19

8. Ibid, p 20

9. Ibid, p 20

tuna of Hokio Stream ‘were jealously guarded family or individual property’.¹⁰ At the outlet of the lake, the stream was divided into three channels. At this point there was a post called Pou-Te-Mou, named after the ancestor who placed it there. This pou was held to possess the power to cause the seaward running eels to divide in equal numbers between the channels. From this point to the coast (a distance of five kilometres), Adkin details the location and names of 24 eel weirs. Only a handful of these weirs were still in use at the time that he was writing in the 1940s. He claims that the:

extensive series of *pa-tuna* on a stream of short length such as the Hokio, is an impressive indication of the magnitude of the old-time eel-supply of Lake Horowhenua. The *inanga* also, in season, furnished food for this then populous locality and at the appropriate periods when *tuna* and *inanga* were running seaward to breed, these now almost-disused weirs were the scene of industrious and joyful activity.¹¹

James Cowan, in a report to the Government on Lake Horowhenua in 1903, refers to Maori catching kakahi with a type of dredge known as a ‘rou-kakahi’. At the time he made his investigations, fishing was still an important aspect of the local Maori economy. In addition to fishing, he records that Maori shot and snared waterfowl on the lake.¹²

As well as being an important source of food, Horowhenua also had a strategic significance to Muaupoko. By the early nineteenth century, significant changes had occurred in tribal dynamics in the lower North Island. Perhaps most important were the successive waves of northern taua and heke that passed through the Horowhenua – especially those led by Te Rauparaha. In the face of uncertain relations with these northern iwi, Muaupoko built several artificial islands in Horowhenua upon which fortified pa were situated. Adkin describes seven such artificial island pa: Mangaroa, Karapu, Namu-iti, Wai-kiekie, Roha-a-te-kawau, Waipata and Puke-iti. The biggest of the pa appear to have been up to a quarter of an acre in area. Of the pa, Adkin considers Managaroa to be the oldest, possibly predating the invasions of the northern iwi. The islands were constructed by logs being laid in the water. The interstices between the logs were then filled with an amalgam of earth, rock, shells and vegetation. Many of the pa relied on marginal swamps as moat-like defences. Wooden stakes were often placed in the waters surrounding the island pa to repel attackers. By the 1940s when Adkin was writing, the pa had all but disappeared: the organic matter with which they were constructed having decomposed causing the islands to subside into the lake.¹³

In his treatise on the Kapiti district, Carkeek describes the passage of the 1819 to 1820 Nga Puhī–Ngāti Toa taua through the Horowhenua. On this occasion a battle was fought at the island pa of Wai-kiekie.¹⁴ Cowan states that despite Muaupoko

10. Ibid, pp 19–20

11. Ibid, pp 21–23

12. Cowan, p 2

13. Adkin, pp 32–35

taking refuge in their island pa, Ngati Toa inflicted great carnage upon them. He recounts in his typically populist style, ‘that as the old Maoris describe it, the waters were red with blood, and the seagulls came in from the coast to feast on what Ngati Toa left’.¹⁵

Historically the lake was frequently navigated by canoe. Adkin describes 21 named canoe landing sites. Mostly these were located either at the heads of small inlets (where relatively firmer ground ran down to the lake), and at points where cultivations abutted the lake.¹⁶ Cowan reported that at the time of his investigations, there were still several canoes in use on the lake. Amongst these was an old war canoe capable of carrying between 50 and 60 people.¹⁷

Another interesting phenomenon recorded by Adkin in connection with Horowhenua was the discovery of large numbers of artefacts in the lake bed. He postulates that there were ‘a number of undoubted instances in which single objects or hoards were deliberately buried in the mud of the island margins’. These, he contended, were of the Muaupoko phase of occupation; whereas many of the other objects found were thought to belong to the pre-Muaupoko occupants of the Horowhenua. Most of the relics were wooden, but some made of bone and stone have been found. The artefacts recovered include ko, spears, paddles, adze handles, clubs, pounders, burial chests, god sticks, fish hooks, spinning tops, net floats, pumice bowls, and stone patu.¹⁸

From Adkin’s descriptions of Horowhenua, a clear picture emerges of extensive use having been made of the lake by Muaupoko – even to the extent of having literally ‘occupied’ it. The evidence available to the present author (namely that of Adkin and Cowan) is of a very general nature, and by and large, is insufficient to support many conclusions as to the precise nature of Muaupoko’s rights in the lake. However, Adkin’s assertion that any person was free to establish eel weirs in the lake is an important point. Whether this meant Pakeha were free to establish eel weirs in the lake is doubtful: presumably he meant any member of Muaupoko. Whether it was only hapu of Muaupoko who occupied riparian lands that had rights to fish in the lake, or hapu from the wider Horowhenua hinterland, remains unclear. The existence of such non-exclusive fishing rights suggests a very different situation to lakes such as Rotorua and Rotoiti. These lakes were divided into sections in which particular hapu exercised exclusive fishing rights. Further, the fishing grounds of the Rotorua lakes were named. It is possible that the existence of non-exclusive fishing rights in Horowhenua reflected the fact that by comparison to Hokio Stream, the lake was much less important as an eel fishery. The relatively lesser importance of the actual lake fishery may also be the reason why the weirs in the lake were not named.

14. W Carkeek, *The Kapiti Coast: Maori History and Place Names*, Wellington, A H & A W Reed, 1966, pp 7–9

15. Cowan, p 1

16. Adkin, p 36

17. Cowan, p 2

18. Adkin, pp 35, 83–104

3.3 Background to the Lands Surrounding Lake Horowhenua

Subsequent to Ngati Raukawa's invasion and settlement of the Horowhenua and Manawatu, the Raukawa chief, Te Whatanui, allocated Muaupoko about 20,000 acres of land centred around Lake Horowhenua. In spite of this land being handed back to Muaupoko, tensions between Ngati Raukawa and Muaupoko as to their relative rights to Horowhenua lands persisted throughout the nineteenth century. But in relation to these disputes, the Government took no action. Eventually the dispute was taken to the Native Land Court in 1872. The case was heard the following year.¹⁹

At the hearing, Ngati Raukawa conceded that Muaupoko had a right to the 20,000 acres granted to them by Te Whatanui but claimed the land to both the north and south by virtue of conquest. Curiously though, the court awarded not just the 20,000 acres to Muaupoko, but also 30,000 acres of land to the north and south – land which Ngati Raukawa had occupied since their arrival from the north. Ngati Raukawa were awarded just 100 acres. The decision was inconsistent with the Native Land Court's 1872 decision as to the ownership of the nearby Kukutauaki lands. In this decision Raukawa had received title as a consequence of their conquest and subsequent occupation.²⁰

In 1886, the Horowhenua block was subdivided into 14 blocks. The lake was situated within the Horowhenua no 11 block – a block containing 15,000 acres that extended from the lake to the sea, and where the majority of Muaupoko were resident. The western boundary of Horowhenua no 2 also abutted the lake. In the same year, Major Kemp (Kepa te Rangihwinui) offered to sell Horowhenua no 2 to the Crown to enable a town to be established. Among the conditions upon which he offered the land for sale was that a reserve of 100 acres abutting the lake be established for the purpose of a public reserve. The Government declined the offer. When block 2 was eventually sold to the Crown by Kemp in 1867, he appears not to have insisted on any of the conditions previously agreed upon.²¹

In September 1896, pursuant to the Horowhenua Block Act 1896, the Native Appellate Court determined the ownership of block 11. In doing so it reserved as a fishing easement, the lake, the Hokio Stream, and a one chain strip running along the north bank of the Hokio Stream and around the lake. The reserve was to be vested in trustees for all members of Muaupoko found by the court to be owners of block 11. The lake was formally vested in trustees as a fishing easement for the owners of Horowhenua no 11 in October 1898. However, despite it being stated in the 1896 partition order that it was similarly intended to vest the Hokio stream and the one chain strip, it appears that this was not done.²²

The decision to vest the lake in the owners of the Horowhenua no 11 block stands out as something of an aberration in the context of the Crown's attitudes to Maori

19. Alan Ward, *National Overview*, vol iii, Waitangi Tribunal Rangahaua Whanui Series, GP Publications, 1997, p 241

20. Anderson and Pickens, pp 213–214

21. 'Report and evidence of the Horowhenua Commission', AJHR, 1896, g-2, pp 5–6

22. Reserves and Other Lands Disposal Act 1956, s 18

claims to lakes around this time. Elsewhere in New Zealand the Crown was tacitly asserting its assumed rights as the owner of lakes, and appears to have been increasingly eager to establish a legal basis for being the owner of all lakes. In the case of the Wairarapa lakes, the Crown only admitted the lakes were Maori property in the face of strenuous protest by Maori. It appears that no such claim was asserted by the owners of Lake Horowhenua in the nineteenth century. Why this was remains a mystery to the present author. When lakes are contained within a single block – as was the case with the original Horowhenua appellation and the later no 11 block – title to the lake resided with the owners of the block. So perhaps the Crown thought that as it owned no land adjacent to the lake, it would have great difficulty in establishing a claim to it. When the Crown tried to establish a claim to a lake in the late nineteenth century, it was usually by virtue of owning riparian lands and the rule of *ad medium filum aquae*, rather than by an assertion of a prerogative right. Another possible reason why the Crown acknowledged the Maori ownership of Horowhenua, rather than try and vest it in itself, was that the lake, in being relatively small, was not considered to be of any particular use to the Crown. Also at this time, pressure was not being exerted by Pakeha land owners in the Horowhenua to drain wetlands. In fact evidence exists that farmers were in fact preserving swamps in view of the economic value of flax.²³ Had this not been the case, the Government could have been under pressure to acquire rights in the lake sufficient to enable it to drain the lake and its associated swamps. Another theory is that in view of the lake's importance to the pre-contact economy, Muaupoko would be more inclined to cede their lands if they were guaranteed continued access to the lake. But all this aside, it remains a peculiarity that the Crown, with apparent alacrity, simply admitted the existence of a Maori title to the lake and established what could have become an important precedent.

3.4 Moves to make Horowhenua a Public Reserve

With the establishment of Levin in the immediate vicinity of Lake Horowhenua, local Pakeha began to consider it desirable to make the lake and its adjacent lands a reserve for public use. In November 1897, John Stevens, member of the House of Representatives for Manawatu, asked the Minister of Lands:

If he will, so soon as the title there to has been ascertained, acquire by purchase from the Native owners the whole of the Horowhenua Lake, together with a suitable area of land around its shores, for the purpose of a public park, reserving to the Native owners and their descendants the right to their eel and other fisheries, and dedicate the lake and land so to be acquired to the local body within whose boundaries they are situate?

23. Geoff Park, *Nga Uruora—The Groves of Life: Ecology and History in a New Zealand Landscape*, Wellington, Victoria University Press, 1995, p 178

He continued, informing the House that not only was the lake eminently suitable for local recreation, but also as a site for regattas: there not being such a place so well suited within two or three hundred miles of Wellington. He cautioned that if action was not taken soon, similar difficulties may arise as were experienced in the case of the Wairarapa lakes – difficulties that ‘had cost the Natives a great deal of trouble, and had also cost the colony a great deal of money to get the matter settled’. The Minister of Lands, John McKenzie, responded that the question had been considered by the Government and that reports had been received advising it to acquire the lake along with another not far from Horowhenua (presumably Papaitonga). If Parliament was prepared to appropriate the necessary funds, he saw no difficulty in the Crown acquiring the lake as proposed by Stevens.²⁴

Pressure from the like of Stevens was presumably a factor in the decision of the Department of Tourist and Health Resorts to commission James Cowan to prepare a report on Lake Horowhenua. In his report to Parliament, Cowan described how at the time of his investigations, public access to the lake was at the sufferance of Maori who owned the land surrounding the lake. Although the local rowing club leased land from Maori for the purpose of a boatshed, the club was unable to obtain a formal lease.²⁵

Cowan observed that although most of the native forest on the lake’s margin had already been destroyed, there remained significant stands of forest on the eastern and southeastern shores. All this forest was on Maori land; the owners of which were selling the trees to a local saw miller. Cowan was of the opinion that what forest remained should be carefully preserved. He also described how there were still several Muaupoko and Ngati Apa settlements on the shores of the lake and opined that the:

Native life, the canoeing, &c, should enhance the interest of the lake in the eyes of visitors, and if care is taken to guarantee the Maori their rights of fishing &c., they could, no doubt, be induced to co-operate with the Europeans in the preserving of the attractive features of the place for all time.

In this regard, Cowan recalled Major Kemp’s proposal of 1886 that a 100 acre public reserve be established between the lake and the township of Levin, which he noted was unfortunately never given effect to. He cautioned that ‘the public are at anytime liable to be denied the privilege even to access the Levin peoples’ boatshed on the lake-side’.²⁶

Cowan recommended that all remaining bush on the eastern and southeastern shore of the lake be made a reserve, along with Pipiriki pa and the islands which still existed in 1905. In relation to the islands he warned that because Maori were cutting flax from them, they were in danger of eroding away. He advised that in creating such a reserve, Maori ‘should be guaranteed their present rights of fishing for eels, dredging with their rou-kakahi for the shellfish which abound on the

24. NZPD, 1897, vol 100, pp 143–144

25. Cowan, p 1

26. Ibid, pp 1–2

bottom of the lake, and of snaring and shooting wild ducks'. Cowan reported that he had spoken to the Muaupoko chief Te Rangimairehau, who had lamented the disappearance of birds from the area due to deforestation. Thus the chief favoured the forest being protected. However, it was Cowan's view that the Ngati Apa who resided on the lake shore would object to whatever Muaupoko did. Therefore, rather than 'arguing with two factions', Cowan proposed that the best plan was to create the reserve under the 'new Act dealing with scenic reserves', and 'to explain to the Maoris afterwards that their ancestral rights will not be interfered with beyond forbidding them to destroy the bush or vegetation'.²⁷

Keith Pickens records that subsequent to Cowan's report, plans were set in motion by the Tourist and Publicity Department for a reserve to be created. It was proposed that the reserve would include about 150 acres of bush on the lake's southern and eastern shores and the islands in the lake, but not the lake itself. These lands were to be acquired under the Scenery Preservation Act 1903.²⁸ Although unable to find any Native Department records pertaining to this proposal, Pickens adduced evidence that the proposal was approved by cabinet.²⁹ But before the reserve could be proclaimed, plans had to be produced by the Department of Lands and Survey. Delays in the preparation of these documents transpired; apparently because the department was not prepared to give priority to the creation of scenic reserves over work pertaining to land settlement.³⁰

Around this time there was much lobbying both from Maori and politicians in relation to Horowhenua. In 1903, Hoani Puihi and 31 others petitioned Parliament praying that the present title of Lake Horowhenua remain undisturbed. In response, the Native Affairs Committee made no recommendation.³¹ In the same year, William Field, the Member of Parliament for Otaki, asked the Government when they proposed 'to proceed with the promised nationalisation of the Horowhenua Lake and the dedication of the same as a public park?' Field recounted how on a recent visit to the district by the Premier, Seddon had been taken for a row on the lake and had 'expressed himself as [being] much struck with the beauty of this splendid sheet of water and its surroundings'. And at a function that evening Seddon had apparently said that steps would be taken to acquire the lake and to make it a national park. Thomas Duncan, the Minister of Lands, responded that legislation was to be introduced to the house to enable reserves to be created like that which had been proposed for Horowhenua.³² Presumably Duncan was referring to the Scenery Preservation Act that was passed later that year.

27. Ibid, pp 1–2

28. Acting Superintendent of Department of Tourism to Under-Secretary of Lands and Survey, 29 July 1904, to 1 20/148; Acting Superintendent to Minister of Tourist and Health Resorts, 10 January 1905, to 1 20/148, NA Wellington; 'Scenery Preservation, Department of Lands', AJHR, c-6, 1906, p 6, cited in Anderson and Pickens, p 272

29. Acting Superintendent of Department of Tourism to Under-Secretary of Lands and Survey, 1 February 1905, to 1 20/148, NA Wellington, cited in Anderson and Pickens, p 272

30. Under-Secretary of Lands and Survey to Acting Superintendent of Department of Tourism, 22 August 1905, to 1 20/148, NA Wellington, cited in Anderson and Pickens, p 273

31. Petition no. 891/1903, AJHR, 1904, i-3, p 19

32. NZPD, 1903, vol 124, p 477

The following year Field again asked about Seddon's promise that Horowhenua would be made a national park. On this occasion he noted that when such a park was created, the fishing and other rights of Maori would be preserved. In response Seddon stated that until such time as the Government was empowered to compulsorily acquire Native land for such purposes, the Government could not act. He anticipated that Parliament would be asked to authorise such takings in the present session.³³ By 1905, when Field again asked the same question, the manner in which the Government anticipated acquiring the land appears to have changed. Rather than compulsorily acquiring it, Native Minister Carroll stated that the concurrence of the lake's Native owners had to be obtained before the lake could be secured for public use. He said that this matter would be raised with the owners at the next favourable opportunity, and that the bush on the land abutting the lake would be brought to the attention of the Scenery Preservation Commissioners.³⁴

In August 1905, the tenacious Field asked the Native Minister about when a meeting would be arranged with the:

... Natives of Levin ... with a view to securing to the public, subject to Native Rights, the free use of Horowhenua Lake and the preservation of the fast-vanishing bush scenery of the lake?³⁵

Later in 1905, Seddon and Carroll met with various Muaupoko and a delegation of local Pakeha. As well as Field's agitation, Pickens contends that a possible catalyst for the meeting could have been problems experienced by Pakeha attempting to boat on the lake.³⁶ The meeting was held in the Levin boating club's boatshed averted to in Cowan's 1903 report to Parliament. The meeting resulted in an agreement, the terms of which were as follows:

1. All native bush within the reserve to be preserved.
2. Nine acres adjoining the lake – where the boatsheds are and a nice titoki bush standing – to be purchased as public ground.
3. The mouth of the lake to be opened when necessary, and a flood-gate constructed, in order to regulate the supply of water in the lake.
4. All fishing rights to be conserved to the Native owners (lake not suitable for trout).
5. No bottles, refuse, or pollutions to be thrown or caused to be discharged into the lake.
6. No shooting to be allowed on the lake. The lake to be made a sanctuary for birds.
7. Beyond the above reservations, the full use and enjoyment of the waters of the lake for aquatic sports and other pleasure disportments to be ceded absolutely to the public, free of charge.
8. In regard to the preceding paragraph, the control and management of the lake to be vested in a Board to be appointed by the Governor; some Maori representation thereon to be recognised.

33. NZPD, 1904, vol 128, p 141

34. NZPD, 1905, vol 133, pp 551–552

35. NZPD, 1905, vol 134, p 62

36. Anderson and Pickens, p 263

9. Subject to the foregoing, in all other respects the mana, rights and ownership of the Natives to the Horowhenua lake reserve to be assured to them.³⁷

No records of this meeting have been uncovered by the present author. Therefore it remains unclear whether the terms were freely negotiated, or if they were imposed upon Muaupoko by the Government. The comment in the agreement that the lake was an unsuitable habitat for trout suggested that, had this not been the case, Muaupoko's fishing rights may not have been guaranteed to them. But as is detailed below, by the next decade trout were present in the lake and conflict between Pakeha and Maori anglers was apparent. The banning of bird shooting would, in light of the importance of the lake as a source of game birds for Muaupoko, seem to be either an expropriation or a cession of an important right.

3.5 The Horowhenua Lake Act 1905

The agreement reached between the Ministers and Muaupoko formed the basis of the Horowhenua Lake Bill that was introduced to Parliament in 1905. When the Bill was before the Legislative Council, John Rigg, the Member for Wellington, remarked that the legislation 'practically meant that the Natives of Muaupoko Tribe were making a splendid and generous gift to this colony'. It was recorded that Rigg stated he would have:

preferred that the Government had purchased the lake outright from the Natives and make it a public reserve. The mana of the Natives – whatever that might mean – they were told, was preserved. What is that mana worth when this Bill is passed and the control of the lake handed over to a Board? Nothing. They have, of course, their fishing rights in the lake, and under the Treaty of Waitangi those could not be taken from them. He did not, of course, oppose the Bill, but he did marvel at the generosity of the Natives in making such an arrangement for the benefit of the people of this colony.³⁸

Similarly, Thomas Kelly, the Member for Taranaki, expressed the view that the generosity of the Maori owners should be acknowledged – 'either by giving them a grant of land or by monetary consideration'. The Attorney General, Albert Pitt, responded that he was certain the Native Minister had already acknowledged the generosity of the lake's owners, but took it upon himself to represent the views of Rigg and Kelly to cabinet. He himself was of the view that there 'was no doubt the Natives had acted handsomely and generously'.³⁹

The Act was passed on 30 October 1905. The preamble stated that it was 'expedient that the Horowhenua Lake should be made available as a place of resort for His Majesty's subjects of both races, in as far as it is possible to do so without unduly interfering with the fishing and other rights of the Native owners'.⁴⁰ Thus

37. NZPD, 1905, vol 135, p 1206

38. Ibid

39. Ibid

Lake Horowhenua, ‘containing nine hundred and fifty one acres, more or less’, was declared to be a recreation reserve. Although the Act guaranteed that the ‘owners shall at all times have the free and unrestricted use of the lake and of their fishing rights over the lake’, the exercise of such rights was not ‘to interfere with the full and free use of the lake for aquatic sports and pleasures’.⁴¹ A clear tension is evident between this clause and the preamble’s emphasis upon the public’s use rights being constrained by the rights of the lake’s owners. As per the 1905 agreement, the Act also prohibited shooting or destroying any game on the lake or reserve; established a board to manage the reserve (a third of whose members were to be Maori appointed by the Governor); and empowered the Governor to acquire ten acres of land adjacent to the lake for the purpose of building a boatshed or other buildings.⁴² This last provision was a variation to the original agreement which had stipulated nine acres. That it be ten rather than nine acres had been proposed by Field during the Bill’s second reading in the House of Representatives.⁴³ Although a relatively small change, it appears to have been made without the consent of Muaupoko.

Several matters covered by the agreement were not included in the Act: for example, the provisions to preserve native bush on the one chain strip, the construction of flood gates, banning the disposal of rubbish in the lake, and acknowledging that rights and mana over the lake remained with the Muaupoko owners. Pickens suggests that the first three of these provisions could have been considered to ‘come under the control of the board, and so did not require specific enumeration’.⁴⁴ As for the acknowledgement of Maori rights and mana over the lake, the situation is somewhat less clear. As noted above, when the Bill was before the Legislative Council, Rigg had pointed out that this aspect of the agreement would mean very little once the control of the lake was vested in the reserve board.⁴⁵ However, it is possible that the Government was keen to avoid the inclusion of any terms in the Act that could be construed as being an overt acknowledgement that either the bed or the waters of the lake were Maori property. Rather they may have preferred to leave the question of ownership somewhat ambiguous. In its final form, aside from reference to the lake’s ‘Native owners’ in the preamble, the Horowhenua Lake Act was silent on the point of who owned the lake subsequent to the creation of the reserve.

Tame Parata, the Member for Southern Maori, was clearly of the mind that under the Horowhenua Lake Act, the ownership of the lake had passed from Maori to the Crown. In 1906 he asked Carroll if the Government would repeal the legislation ‘which appropriates a valuable estate without the consent of the Native owners’. Carroll responded that the matter would be looked into, but that it was not proposed to interfere with the Act in anyway.⁴⁶

40. Horowhenua Lake Act 1905, preamble

41. *Ibid*, s 2(a)

42. *Ibid*, ss 2–4

43. NZPD, 1905, vol 135, p 1134

44. Anderson and Pickens, p 274

45. NZPD, 1905, vol 135, p 1206

Pickens details how during 1905, the Scenery Preservation Commissioners and the Department of Tourist and Health Resorts had been working towards the acquisition of 150 acres of lake-side land along with the lake's islands. This was to enable the preservation of the forest growing beside the lake, which in turn, would enhance the area's attractiveness to tourists. Under this scheme, compensation for Maori would have been computed by the Native Land Court. Pickens speculates that the Horowhenua Lake Act was an effort by the Native Department to prevent the more ambitious Tourist and Health Resorts Department's proposal going ahead; a proposal that would have caused more disruption to the lake's owners. After the passage of the Act, the Tourist Department's scheme appears to have been abandoned.⁴⁷

During the 1906 parliamentary session, Field asked whether the Lake Horowhenua Act could be amended to enable the Crown to acquire a further 20 acres of land abutting the lake. Field claimed that this land was of no value, and that its owners were anxious to sell it. Carroll responded that the Act would not be amended because the Native Department opposed the proposal to acquire the additional land. He stated that if the owners wanted to sell the land, they were free to make an application to do so.⁴⁸

3.6 Conflict over Fishing in the Lake

By 1911, conflict had emerged between Maori and Pakeha in connection with fishing rights in Horowhenua. Pakeha apparently resented the fact that the right to fish in the lake was confined to the lake's Maori owners. Maori reportedly were preventing Pakeha from fishing for trout, and were refusing to obtain licenses to do the same.⁴⁹ In January 1911, the *Chronicle* reported that:

If the present embargo against fishing the lake waters (which operates in the case of all but men with Maori blood) were removed, a great deal would be done to attract week-end visitors to our midst. Already Horowhenua Lake contains trout in large numbers and of abnormal size; and there is no good reason why perch should not be acclimatised and made numerous in its waters, pending the time when Natives of the district shall consent to a widening of the present privileges which they possess. The old type of Maori – jealous of all his privileges, of life habits remote, and of disposition exceedingly exclusive – has passed away; and his educated successor is clear-sighted enough to know that a prosperous community means more to him than any jealously-guarded but seldomly-used privilege could do. We have very little doubt that the present embargo will be lifted amicably as soon as the endeavours develop sufficient strenuousness.⁵⁰

46. NZPD, 1906, vol 137, p 508

47. Anderson and Pickens, p 274

48. NZPD, 1906, vol 137, p 506, cited in Anderson and Pickens, p 275

49. Field to Native Minister, 24 January 1911, ma 5/13/173, w2459, NA Wellington, cited in Anderson and Pickens, p 275

50. 'Horowhenua Lake', *Chronicle*, 17 January 1911

Later that month, Field wrote to the Native Minister enclosing the above article and advocating that the law be changed.⁵¹

Around 1914, presumably as a result of this agitation, the Native Department sought an opinion from the Crown Law Office on the question of fishing rights in Lake Horowhenua. The opinion observed that the ‘question of fishing rights had for some time been a bone of contention between Native and European anglers’. It was recounted how in connection with this same matter the Department of Lands and Survey had previously obtained an opinion from the Crown Law Office. This opinion had held that:

The Horowhenua Lake Act, 1905, is not an Act conferring any rights on the Natives; its purpose is to take away all rights previously held by the Native owners, excepting those expressly reserved. Prior to the passing of the Act the lake, being a comparatively small one, probably belonged to the owners of the adjoining land *ad medium filum*, but in 1905 some of those owners were Europeans, and no Native owner of adjoining land could point to any defined portion of lake as owned or lawfully occupied by him.

The opinion prepared for the Department of Lands and Survey concluded that the 1905 Act only confirmed Maori’s access and fishing rights, not the ownership of the actual lake. On the question of whether Maori could fish for trout without a license, the author considered that Maori, like Pakeha, could only fish for trout without a license on land which they owned that abutted a waterway. This was provided for by section 90 of the Fisheries Act 1908. It was stated that:

as the Horowhenua Lake Act only preserves such rights as they had, and no Native is now in lawful occupation of any of the lake now, no Native can now fish for trout without a licence without committing an offence against Part II of the Fisheries Act, 1908.

The author of the opinion requested by the Native Department concluded that the fishing rights confirmed to Maori by the 1905 Act applied to all freshwater fish except salmon and trout. Further, it was held that fishing for trout by Pakeha would not interfere with those rights.⁵²

Both the opinion obtained by the Native Department and the earlier one upon which it was based, are quite incredible. It is hard to see how the claim that the Horowhenua Lake Act extinguished all the rights of Maori other than those it expressly confirmed can be sustained. Admittedly the issue of ownership was obfuscated somewhat by the Act, but nowhere does it say that the ownership of the lake ceased to reside with Maori. Clearly, all that passed to the reserve board was the right to control the reserve; not the ownership of the lake. Further, the claim that Maori had no right to fish for trout without a licence – an activity permitted from one’s own land under the Fisheries Act 1908 – would appear to be similarly

51. Field to Native Minister, 24 January 1911, ma 5/13/173, acc w2459, NA Wellington, cited in Anderson and Pickens, p 275

52. ‘Horowhenua Lake: the Question of Fishing Right’, nd, ma 5/13/173, acc w2459, NA Wellington

erroneous. Firstly, the lake remained a Maori property, and at common law, a lake is regarded as simply being land covered with water.⁵³ Section 90 of the Fisheries Act 1908 states that any ‘person in lawful occupation of any land may fish without a licence . . . upon that land’. And in this context, ‘occupation’ would appear to mean a person residing, or importantly, with the right to reside upon a particular piece of land.⁵⁴ Therefore an owner of the lake fishing for trout on, or from the margin of the lake, could be exempted from the requirement of holding a licence. And secondly, it appears that some land adjoining the lake was at this point in time still in Maori ownership. Significantly in this regard, the one chain strip had not been made part of the reserve. Had it been so, Maori would not have been able to fish from their own land. However, the Government, perhaps keen to preclude such possibilities or to stymie any claims by riparian landowners to the lake bed, shortly afterwards introduced legislation to make the one chain strip a part of the reserve.

3.7 Reserves and Other Lands Disposal and Public Bodies Empowering Acts 1916 and 1917

In 1916, the Horowhenua Lake Act 1905 was amended by the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916. While the 1916 legislation was still a bill, Hema Henare and 33 others petitioned Parliament concerning the proposed legislation. They asked that the proposed clause that would have extended the reserve board’s sphere of control to the Hokio Stream and the one chain strip surrounding the lake be removed from the Bill. The Native Affairs Committee made no recommendation on the petition, and the clause was passed into law.⁵⁵ Consequently the board’s authority was extended to the one chain strip and the Hokio Stream, and the reserve was redefined as being the lake plus the one chain strip. The Act also changed the constitution of the reserve board. The 1905 Act had provided that a minimum of one-third of the board’s members were to be Maori. Section 2 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916 set the membership of the board at nine, no more than three of whom were to be Maori. In this fashion, what had been a minimum quotient of Maori board members became the maximum.

The clause of the Act affecting Horowhenua was a late addition to what was described as a ‘washing up bill’. When Massey discussed the clause he stated that it ‘settled an old dispute between the local bodies of the district concerned with respect to Horowhenua lake’. He observed that it had been referred to the Native Affairs Committee, and that the ‘Native members had had an opportunity of looking into the proposal, and he understood, no objection was raised’.⁵⁶

53. Section 2 of the Land Transfer Act 1952 holds that ‘land’ includes ‘messuages, tenements, and hereditaments, corporeal and incorporeal, of every kind and description, and very estate or interest therein, together with all . . . waters, [and] waterways . . . unless specifically excepted.’

54. Peter Spiller, *Butterworths New Zealand Law Dictionary*, Wellington, Butterworths, 1995, p 205

55. Petition no. 251, AJHR, 1916, i-3, p 16

56. NZPD, 1916, vol 177, pp 697, 795

Significantly though, the inclusion of the one chain strip in the reserve was not part of the 1905 agreement. As Pickens observes, the ‘effect whether intended or not, was that a substantial and strategically placed area of land was removed from Maori control.’⁵⁷ An opinion on Lake Horowhenua furnished by the Crown Law Office in 1932 stated that the one chain strip was appropriated to preclude any claims to the lake being made by riparian owners. Of particular concern was that such owners should not benefit if the lake was lowered.⁵⁸ But as is discussed below, at different times over successive years, a committee of inquiry, the Chief Judge of the Maori Land Court, and the Commissioner of Crown Lands, all expressed the view that under the 1905 and 1916 legislation, both the lake and the one chain strip remained the property of Muaupoko.

A further 13 acres were transferred to the control of the board by an Act of Parliament in the following year. Although this land was purchased,⁵⁹ when legislation affecting the lake came before Parliament in 1956, Eruera Tirakatene, the Member for Southern Maori, claimed that no payment was ever made for it.⁶⁰

3.8 The Lowering of Lake Horowhenua

In 1925, pursuant to the Land Drainage Act 1908, the lands surrounding Lake Horowhenua were constituted a land drainage district under the control of the Hokio Drainage Board. The Hokio Drainage District appears to have included all of the original Horowhenua block 11. The *Gazette* notice proclaiming the district stated that a majority of ratepayers in the area had petitioned the Governor praying that the district be constituted a drainage district.⁶¹ Local farmers had suffered losses as a consequence of their lands being inundated with water when the lake flooded. Interestingly, some Ngati Raukawa who farmed land in the vicinity of the lake favoured the Hokio Stream being widened to reduce the incidence of flooding.⁶²

The 1908 Land Drainage Act provided for the establishment of drainage boards that were empowered to construct, maintain, and repair drains and watercourses. Under section 3(1) of the Act, the Governor could constitute a drainage district upon being petitioned by a majority of ratepayers in an area. Under the Act, landowners on whose properties it was proposed to construct drains or other works could object to such operations. However, there appears to have been no provision for objections to be made by other people who would have suffered injury as a

57. Anderson and Pickens, p 275

58. Crown Solicitor to Under-Secretary, Department of Lands and Survey, 31 May 1932, to 1 20/148, NA Wellington

59. Memoranda attached to Crown Purchase Deed 972, cited in Anderson and Pickens, p 276; Anderson and Pickens, pp 275–276

60. Reserves and Other Lands Disposal and Public Bodies Empowering Act 1917, s 64; Anderson and Pickens, pp 275–276; NZPD, 1956, vol 310, p 2713

61. 25 June 1925, *New Zealand Gazette*, 1925, no 49, p 1955

62. Anderson and Pickens, p 276

consequence of drainage works being undertaken. Consequently the Muaupoko owners of Horowhenua had no recourse under the Land Drainage Act if drainage works adversely affected their fisheries.

Maori could also have suffered prejudicially under the Land Drainage Act's provision for drainage boards to be constituted if this was favoured by a majority of ratepayers. In the case of the part of Horowhenua no 11 that included the lake, there were several owners. However, because the land was held in trust, the trustees alone would have been the ratepayers and hence only they would have been counted in a decision to constitute a drainage board. Given the deleterious effect that drainage operations had upon an economy based upon freshwater resources, the Act's bias towards ratepayers, as opposed to other interested parties, is particularly unjust.

At the time the Hokio Drainage Board was constituted, Muaupoko raised concerns about any interference with the Hokio Stream and the effect this could have on the lake and their fisheries. A meeting was held between them and an official of the Department of Lands at which some sort of agreement appears to have been reached in connection with protecting their fisheries. However, when the Drainage Board began work, Muaupoko felt that the agreement was not being observed, and intervened to stop operations. This resulted in a second meeting and another agreement being signed.⁶³ This second agreement presumably resulted in the provisions in the 1926 Local Legislation Act protecting Maori fishing rights.

In 1926, the Local Legislation Act was passed. Inter alia, this Act contained provisions for the Hokio Drainage Board to carry out drainage operations on lands adjacent to Lake Horowhenua and Hokio Stream. It also provided for the safeguarding of Maori fishing rights and certain other rights enjoyed by public users of the lake. Section 53(1) stated that any proclamations made under the Land Drainage Act 1908 in respect of Hokio Stream were to contain such provisions as were necessary to protect Maori fishing rights and public use rights. According to the Act, such proclamations could provide for: the widening or deepening of Hokio Stream; regulating the removal and replacement of eel weirs; regulating works that would lower the lake level; or protecting the existing rights of users of the lake.⁶⁴

The Drainage Board then recommenced its work on the Hokio Stream, creating a narrow, deep, and fast flowing channel. During the course of a 1934 inquiry into matters concerning Lake Horowhenua, representatives of Muaupoko stated that where there had once been 13 eel weirs on the Hokio. Only two survived after this first phase of work undertaken by the Drainage Board. According to counsel for the Muaupoko owners at the inquiry, the Drainage Board commenced this work before proclamations were issued. The claim was made that 'the board trampled on native rights and then got legislation to justify their actions'.⁶⁵ As well as affecting the eel

63. Memorandum re Hokio Stream by R M Watson, 28 November 1925, ma 5/13/173, w2459, p 2, NA Wellington, cited in Anderson and Pickens, pp 278–279

64. Local Legislation Act 1926, s 53

65. 'Minutes of Committee of Inquiry, Levin', 11 July 1934, ma 5/13/173, w2459, p 2, NA Wellington, cited in Anderson and Pickens, p 279

fisheries of the Hokio Stream, the actions of the Drainage Board caused the lake level to be permanently lowered. The lake margin, once muddy and heavily vegetated, became arid and stony. In this way, an important kakahi, eel, and flax habitat was destroyed.

As well as suffering as a result of the altered ecology of the lake caused by the lower water level, Maori found themselves embattled with Pakeha farmers as to who had rights to the dewatered area. As the margins of the lake were not fenced, farmers of the lake's riparian lands proceeded to graze their stock on this dewatered zone. This resulted in further damage being caused to the vegetation of the lake margin, especially flax. The problem was exacerbated by some farmers burning flax bushes and ploughing them under.⁶⁶ At this time it is likely that Muaupoko still derived an income from the sale of flax – an economic opportunity that would have been reduced by the destruction of plants on the lake margin.⁶⁷

Muaupoko grievances about the lowering of the lake precipitated a series of petitions, complaints, and deputations to the reserve board, Government departments, and politicians. In November 1929, Te Puku Matakatea and others wrote to Apirana Ngata complaining that lessees of certain lake-side lands were burning flax, draining the lake margins, and claiming rights to the one chain riparian strip. It was stated that Muaupoko had decided to fence off part of the one chain strip. They had commissioned a surveyor to prepare the fence line; acquired the necessary materials to build half the fence; and through their solicitors, served notice on the lessees of the land that they would be liable for half the cost of the fence. In response one of the lessees ploughed over the survey line that had been laid down, and declared that he would cut down any fence that was erected. It was recounted how the lessee's solicitors had advised that because the one chain strip was considered to be vested in the reserve board, his clients would not comply with the request to cooperate in building the fence.⁶⁸ The following month, Matakatea again wrote to Ngata asking that the Hokio Drainage Board assist him in compelling the lessees to erect a fence. In the letter it was noted that the owner of the land was himself a member of the Drainage Board.⁶⁹ Nothing appears to have resulted from Matakatea's request.

A deputation of Muaupoko travelled to Wellington in 1930 to complain about the actions of the Drainage Board which had caused the lowering of the lake. Subsequently there was a meeting at Horowhenua to examine the situation and hear the views of various parties on the problems. Pickens records that at this time there also appears to have been an investigation into the numbers of eels in the lake.⁷⁰

In 1931, the Domain Board sought an opinion from the Department of Lands and Survey as to whether the domain was the property of the Crown or of Muaupoko.⁷¹

66. 'Minutes of Committee of Inquiry, Levin', 11 July 1934, ma 5/13/173, w2459, p 2, NA Wellington, cited in Anderson and Pickens, p 279

67. Adkin, pp 142–143; Park, pp 177–178

68. Puku Matakatea and others to Ngata, 30 October 1929, ma 5/13/173, w2459, NA Wellington

69. Puku Matakatea and others to Ngata, 14 November 1929, ma 5/13/173, acc w2459, NA Wellington

70. Anderson and Pickens, p 279

71. Ibid, p 277

The inquiry was referred to the Crown Law Office, who replied the following year. The Crown Solicitor opined that although ‘not stated in express words’, all rights other than those reserved to Maori in section 2(a) of the Horowhenua Lake Act 1905 had been resumed by the Crown. The lake, the Crown solicitor continued, had been declared a reserve, not a domain, and therefore had not been vested in the board. The lowering of the lake, it was contended, had not affected the legal boundaries defined in the 1916 Act: if adjoining landowners were grazing the dewatered area, they were trespassing – presumably upon Crown land in light of the view that the Crown had assumed ownership of the lake. The Crown Law Office considered that although the Board was not technically a domain board, it enjoyed all the powers of one. It therefore could require landowners to fence their lands and impound any stock found on the reserve.⁷²

3.9 1934 Committee of Inquiry

The advice from the Crown Law Office vis-a-vis the lake reserve appears to have been ignored by the Board. Instead in 1933, after meeting with the Levin Borough Council, the Board resolved to ask the Department of Lands and Survey to set up an inquiry into the Board’s rights in relation to the lake and the one chain strip.⁷³ A year later a committee of inquiry was appointed to undertake an investigation. The committee consisted of J Harvey, a judge of the Native Land Court, and H W C McIntosh, the Commissioner of Crown Lands. Their terms of reference required them to hear the views of Maori, the Domain Board, the Levin Borough Council, and any other local bodies and individuals in relation to the lake reserve. The committee of inquiry was to consider how the rights of Maori could be affected by the further development of the reserve as a public resort, along with any other matters which might emerge in relation to the legal or equitable rights of Maori. The committee was to report to the Minister of Lands.⁷⁴

The committee of inquiry met with various local bodies in Levin on 11 July 1934. As well as the Domain Board and the Levin Borough Council, the Chamber of Commerce and the Wellington Acclimatisation Society were represented at the meeting. Morison represented the Muaupoko owners. Two members of the tribe and two Pakeha individuals also made oral submissions.

With the exception of the Acclimatisation Society, all of the Pakeha present at the meeting favoured the further development of the lake reserve. In light of this, they all believed that it was imperative that the legal situation vis-a-vis the ownership of the lake and the chain strip be clarified. Although favouring the further

72. The board was, however, frequently referred to as a domain board in official correspondence pertaining to the lake. Crown Solicitor to Under-Secretary, Department of Lands and Survey, 31 May 1932, to 1 20/148, NA Wellington

73. Under-Secretary, Department of Lands and Survey, to Minister of Lands, 15 November 1933, ma 5/13/173, w2459, NA Wellington, cited in Anderson and Pickens, p 277

74. ‘Horowhenua Lake Domain: Committee of Enquiry – Terms of Reference’, nd, ma 5/13/173, w2459, NA Wellington

development of the lake reserve, the Domain Board believed it could not act so long as its powers and the rights of Maori remained undefined. The Acclimatisation Society, on the other hand, was most concerned about the effect stock were having on the lake margin and the wildlife that inhabited this zone. The society favoured the restoration of the lake margin and intimated that they could be able to help meet the cost of the necessary fencing. Although the general tenor of their submission was towards making the lake a wildlife reserve, they did not oppose Maori fishing in the lake. However, they did object to ducks being taken.

Morison then presented the position of Muaupoko to the committee. He stated that they considered the lake to be their property, held in trust since 1898. It was held that the 1905 Act had given Pakeha the right of navigation over the lake; nothing more. Morison recounted that the Board had been advised in 1911 that it did not own the lake or have any control over the one chain strip. According to Morison, the inclusion of the one chain strip in the reserve under the 1916 legislation was done without Muaupoko being consulted. This, it was held, was in breach of the agreement reached between Seddon, Carroll, and Muaupoko in 1905. That the Crown had rights over the surface of the lake and to the 13 acres of the reserve was not disputed by Muaupoko. The committee was told that Muaupoko wanted to have control of the one chain strip returned to them, that it be fenced, and that it be available exclusively for their use.⁷⁵

Judge Harvey's report to the Minister held that the evidence the committee had received clearly demonstrated, that up until the passage of the 1916 and 1926 legislation, the lake and the one chain strip were Maori property. It was observed that if 'these amendments have taken away the Natives' title . . . they have done it [in] a subtle manner mystifying alike the Domain Board and the Natives.'⁷⁶ The report set out the positions of the Domain Board and Muaupoko as they had been represented to the committee.

Harvey opined that a compromise rather than a strict legal definition of rights may represent the best solution to the impasse that had developed in relation to the lake and the riparian strip. He recommended that subject to the fishing rights of Muaupoko, the Board have control of the surface of the lake, and that it be afforded title to 83½ chains of the dewatered area and the one chain strip along the Levin side of the lake. Under Harvey's proposal, the lake bed, and the rest of the one chain strip and dewatered area would be owned by the trustees of Horowhenua no 11.⁷⁷

75. 'Minutes of Committee of Inquiry, Levin', 11 July 1934, ma 5/13/173, w2459, NA Wellington, cited in Anderson and Pickens, pp 278–279

76. 'Judge Harvey's Report to the Honourable The Minister of Lands', 10 October 1943, ma 5/13/173, w2459, p 3, NA Wellington, cited in Anderson and Pickens, p 279

77. 'Judge Harvey's Report to the Honourable The Minister of Lands', 10 October 1943, ma 5/13/173, w2459, p 3, NA Wellington, cited in Anderson and Pickens, pp 279–280

3.10 Attempts at a Resolution

The Native Minister, G W Forbes, favoured Harvey's recommendations as a basis for a settlement of the difficulties that had arisen in relation to Horowhenua. In March 1935, the proposals were put to Muaupoko. However, whereas Harvey's proposal required Muaupoko to cede 83½ chains, they were only prepared to give up about half of that area. After this impasse emerged, both the Department of Lands and Survey and the Native Department considered that the matter should be left to lie.⁷⁸

In May 1936, a deputation of Muaupoko met with Prime Minister Savage in Wellington. The delegation requested that all legislation affecting the lake be repealed, and that the ownership of the lake and riparian strip be returned to Muaupoko. This delegation resulted in another meeting between Government officials and Muaupoko in Levin seven months later to discuss Harvey's proposals. Muaupoko, however, wanted to discuss the legislation pertaining to the lake and had expected the relevant ministers to be in attendance. The meeting was abandoned when it became apparent that the impasse that had caused the cessation of the March 1935 meeting remained unresolved.⁷⁹ Subsequently, Harvey advised the Native Department that progress towards a settlement as proposed in his report was unlikely to be achieved through further meetings with Muaupoko. Alternatively he proposed that the one chain strip be revested in the trustees of Horowhenua no 11, and then the part wanted for the proposed domain be taken under the Public Works Act.⁸⁰

By the 1940s the Domain Board had effectively ceased to function. A letter from the Native Department to the Department of Lands and Survey stated that the reason for this was that no Maori were willing to accept nomination.⁸¹ In 1943, another meeting was convened between representatives of the lake's owners and the then Native Minister, H G R Mason. At this meeting the perennial grievances concerning the one chain strip and the dewatered area were traversed.⁸² Nothing appears to have resulted from the meeting. The opinion of the Chief Judge of the Native Land Court was then sought. He considered that to a large degree, the Domain Board's failure to fence off the one chain strip and take action in preventing stock from grazing the domain were to blame for the impasse that had developed. He stated that although the issue of the lake's ownership had become confused, the lake remained the property of Muaupoko pursuant to the Native Land Court orders for Horowhenua no 11.⁸³ Pickens, in the course of his research into

78. Anderson and Pickens, p 280

79. 'Minutes of Meeting of Deputation of Muaupoko Tribe and Prime Minister, 29 May 1936', p 6, ma 5/13/173, w2459, NA Wellington, cited in Anderson and Pickens, p 280

80. Harvey to Under-Secretary, Native Department, 15 December 1936, ma 5/13/173, w2459, NA Wellington, cited in Anderson and Pickens, pp 280–281

81. Under-Secretary, Lands and Survey to Under-Secretary, Native Department, 13 June 1940, ma 5/13/173, w2459, NA Wellington, cited in Anderson and Pickens, p 281

82. Anderson and Pickens, p 281

83. Shepherd to Under-Secretary, Native Department, 21 October 1943, ma 5/13/173, w2459, NA Wellington, cited in Anderson and Pickens, p 281

this matter, found no response to Shepherd's opinion. He speculates that this could have been because of the Second World War, or that the impasse that had developed over Harvey's proposal precluded any progress being made towards a resolution of the conflict.⁸⁴

Another series of meetings and deputations began in the 1950s. In 1950, the Minister of Maori Affairs, Ernest Corbett, met a delegation of Muaupoko in connection with the lake. The group, led by the member of Parliament for Otaki, had sought an audience with him:

in an endeavour to obtain some solution to this vexed problem of control, and to clear up, if possible, the position as to the ownership of the lake and the Hokio Stream.⁸⁵

In 1952, a report on the Lake Horowhenua dispute was produced by E McKenzie, the Commissioner of Crown Lands, and Messrs Mills and McEwan of the Department of Maori Affairs. In spite of Crown Law Office opinions to the contrary, the report considered that the 1905 Act had not vested the lake in the Crown. The authors identified the Domain Board as the main source of difficulty: particularly the way in which it had repeatedly ignored the views of Maori and even requested that they be removed from the Board. They were of the opinion that the only solution was to try and purchase the additional land wanted for the reserve.⁸⁶

3.11 Reserves and Other Lands Disposal Act 1956

In 1956, the Reserves and Other Lands Disposal Act was passed, section 18 of which pertained to Lake Horowhenua. Although it is not clear the extent to which this legislation resulted from the 1952 report of McKenzie et al, both were predicated upon the notion that the lake and the one chain strip were Maori property.⁸⁷

In introducing the part of the Bill affecting Lake Horowhenua, the Minister of Maori Affairs, Ernest Corbett, repeatedly stressed that the legislation met 'fully the wishes of the Maori owners.' In speaking to the same clause, Eruera Tirakatene, the Member for Southern Maori, briefly traversed the legislative history of the lake and contiguous lands. He noted that as a consequence of various Acts of Parliament, it appeared the Maori owners had lost some of the rights guaranteed to them in the original 1898 deed. He observed that 13 acres for the domain had also been ceded by Muaupoko, and that there existed no record of any payment being made for these lands. In addition the Maori owners felt 'that motor boat racing on the lake is detrimental to the waterfowl and other bird life there, and that the lake should be retained as a bird sanctuary.' The bill contained provision for the constitution of a

84. Anderson and Pickens, p 281

85. NZPD, 1956, vol 310, p 2712

86. E McKenzie, J A Mills, and J M McEwan, 'Horowhenua Lake Domain Brief History and Recommendation', 1952, ma 5/13/173, w2459, NA Wellington, cited in Anderson and Pickens, p 281

87. Anderson and Pickens, p 281

Domain Board. It was proposed that the board would include four members of Muaupoko and that it would be chaired in an ex-official capacity by the Commissioner of Crown Lands for the Wellington District. In respect to the proposed board, Tirakatene was critical of the fact that it was to be chaired by a Commissioner of Crown Lands. ‘Why’, it was asked, ‘could not a Maori be the chairman of the board? There are many Maoris capable of holding that office.’⁸⁸ In response to a question from Tirakatene as to the status of Muaupoko’s rights to the lake, Corbett stated ‘that the Bill safeguards the rights of the Maoris to the ownership of the lake bed, to the bed of the Hokio Stream, the chain strip, and the dewatered area around the Lake, as well as those lands for which title had been granted by the Court in days gone by.’⁸⁹

The Act declared ‘the bed of the lake, the islands therein, the dewatered area, and the strip of land one chain in width around the original margin of the lake . . . to be and to have always been owned by the Maori owners’. The Act confirmed that the lake, the dewatered area, and the one chain strip were vested in the trustees appointed by the Maori Land Court in 1951 on behalf of the owners. Similarly the bed of the Hokio Stream, excepting any part that had been legally alienated by its Maori owners, was deemed to be Maori property.⁹⁰ Subsection (4) of the Act secured public access to the 13 acre reserve, the chain strip, the dewatered area, and the surface waters of the lake. Subsection (5) declared the surface of the Lake to be a domain and guaranteed public access to it. It also secured to Maori unrestricted use of the lake, and guaranteed their fishing rights in both the lake and the Hokio Stream. However, as with previous guarantees, the exercise of these rights was not to interfere with the reasonable rights of the public – the extent and nature of which were to be defined by the Domain Board. The Act abolished the Hokio Drainage Board and transferred its powers and jurisdiction to the Manawatu Catchment Board. However, no work was to be undertaken by the Catchment Board without the prior consent of the Domain Board.⁹¹ Subsection (8) specified how the Domain Board was to be constituted: four members of Muaupoko; one member recommended by the Horowhenua County Council; two members recommended by the Levin Borough Council; and in an ex officio capacity, the Commissioner of Crown Lands, who was to chair the board. Subsection 12 repealed all earlier legislative provisions affecting the lake.

Pursuant to the Reserves and Other Lands Disposal Act 1956, a certificate of title for the bed of the lake was issued by the District Land Registrar on 12 October 1959.⁹²

88. NZPD, 1956, vol 310, p 2714

89. Ibid

90. Reserves and Other Lands Disposal Act 1956, s 18(2)–(3)

91. Ibid, s 18(9)–(10)

92. S E Kenderdine to Director General of Conservation, 13 July 1989, Wai 52/0, Waitangi Tribunal, p 5

3.12 A Contemporary View of the Legal Ownership of Horowhenua

In 1989, the Director-General of Conservation requested an opinion from the Crown Law Office on several legal issues pertaining to Lake Horowhenua. The reason why this opinion was sought is not known.

In considering section 18 of the Reserves and Other Lands Disposal Act 1956, S E Kenderdine of the Crown Law Office opined that, under the Act, the lake 'is an entity and ownership of its waters were to be confirmed by vesting the bed of the lake in the Maori owners'. The effect of this, it was thought, 'should provide adequate legal protection for the Maori owners in respect of the lake.'⁹³ However, Kenderdine considered that the declaration contained in section 18(5) that the waters are to be a public domain suggested that the ownership of the lake's waters does not necessarily accrue to the owners of the lake bed. The effect of section 18(5) therefore is to 'place boundaries on what would then have been common law rights to water and Maori customary title'. But as noted by Kenderdine, there has never been an authoritative decision from 'the superior courts' in New Zealand as to exactly what such rights in relation to lakes and rivers are.⁹⁴ The opinion continued, that by declaring 'the surface waters of the lake to be a public domain and assuming them to be vested in the Crown cuts across the full incidents of ownership envisaged by Muaupoko's title to the lake bed'. Therefore 'it is hard to escape the conclusion that the legislation was designed to take away ownership to the lake once it had granted it back again.'⁹⁵

Kenderdine goes on to consider in some detail some other questions posed by the Department of Conservation. In doing this, a rather confused and ambiguous situation vis-a-vis the legal situation is revealed. To make sense of these ambiguities, Kenderdine proposes that the issues raised be reconceptualised in terms of rights rather than absolute ownership. She contends that employing such an analysis of the Reserves and Other Lands Disposal Act 1956 as it affects Horowhenua, 'makes extraordinarily good sense'. First, she opines that the title to the lake bed and contiguous lands affirms Muaupoko's status as tangata whenua and that they hold manawhenua over the lake: 'Their rangatiratanga to the lake is more important than who "owns" the surface waters.' Secondly, the retention of Muaupoko's unrestricted use of the lake is consistent with their manawhenua. Thirdly, it is observed that the 1956 legislation records an agreement between Muaupoko and the Crown that transfers to the public some of the tribe's use rights. Also recorded in the Act is the agreement that Muaupoko will not exercise its rights in such a way as to 'interfere with the reasonable rights of the public.' Fourthly, Kenderdine notes that the 'reasonable exercise by the public of its rights demonstrates the reciprocal duties involved in the grant by the Tribe of use rights to the lake.' Finally she argues that the constitution and existence of the Domain Board is an acknowledgement by both Muaupoko and the Crown that to

93. Ibid, p 3

94. Ibid, pp 5-6

95. Ibid, pp 7-8

accommodate the use rights of the public, the lake needs to be appropriately managed.

3.13 Conclusion

The traditional importance of inland waterways to Horowhenua Maori was immense. Geoff Park, in his treatise on New Zealand's lowland forest ecosystems, has opined that 'the Horowhenua's vast swamps of harakeke and eels were the mainstay of mana, and the central attractions to the Waikato people who overran them.'⁹⁶ Maori fished for flounder, kakahi, whitebait, and eels in Lake Horowhenua and its associated swamps and streams – especially the Hokio. Not only was fish an important part of the local Maori diet, it was also dried and traded. Evidence shows that Muaupoko engaged in eel husbandry. The lake and its margins also furnished Maori with supplies of game birds and weaving material.⁹⁷

But apart from the resources its ecology supported, Horowhenua had many other significances to Muaupoko. Artificial islands were constructed in the lake upon which fortified pa were built. These were an integral part of Muaupoko's response to the invasions of northern iwi during the early nineteenth century. The lake was also a repository for taonga. Large numbers of artefacts have been uncovered – many in surprisingly good condition. Exactly why they were placed there is not entirely clear, but it could have been to prevent them from falling into the hands of the invaders from the north. In light of the uses made of Horowhenua by Muaupoko, and that many of their number died in the defence of their pa situated in it, it would be hard to overstate the importance of the lake to them. The evidence certainly supports the contention made in relation to other North island lakes that to Maori, waterways were in many ways more treasured than land.⁹⁸

Although the importance of Horowhenua to Maori was perhaps no more remarkable than with many other lakes in New Zealand, that the Crown afforded legal recognition of the Maori ownership of the lake in the late nineteenth century is something of an aberration. In 1898 the lake was formally vested in Muaupoko. Although cases of the Crown claiming lakes to be within the ambit of its prerogative rights were rare in the nineteenth century, it was actively engaged in trying to limit the extent to which Maori rights to lakes were recognised. In the case of the Wairarapa lakes, for example, the Crown persistently argued that Maori simply held fishing rights and nothing else. Exactly why the Maori ownership of Horowhenua was recognised by the Crown remains unclear to the present author as well as to others that have written on the history of the lake. Importantly, Maori do not appear to have mounted a campaign to retain title to the lake.

96. Park, p 178

97. Adkin, pp 18–23; Cowan, pp 1–2

98. See for example Alexander Mackay, 'Report on Claims of Natives to Wairarapa Lakes and Adjacent Lands', AJHR 1891, g-4, pp 5–6

The legislation pertaining to Lake Horowhenua that followed the vesting of the lake in Muaupoko served to obfuscate the issue of who held title to the lake. The 1905 Horowhenua Lake Act was based on an agreement reached between Seddon, Carroll and Muaupoko. While prima facie, the Muaupoko ownership of the lake was not altered by the agreement or the Act, they did afford guarantees to Pakeha that they would be able to use the lake for fishing and boating. Importantly this shows a willingness on the part of Maori to grant rights to Pakeha in respect of their lakes so long as their overall ownership was acknowledged and protected. However, disputes did arise as to the extent and nature of fishing rights in the lake. The issue appears to have been whether the guarantee of Maori fishing rights meant that they could fish for trout without a licence and prevent pakeha from fishing on the lake.⁹⁹ This precipitated an opinion being sought from the Crown Law Office – the first of several that disputed whether the title to the lake resided with Muaupoko. Essentially it was argued that because the Act of 1905 did not expressly confirm the Muaupoko ownership of the lake, it had therefore passed to the Crown.¹⁰⁰ Surely though the very opposite was true – that title remained unless expressly extinguished? This was certainly the view taken at different times by a committee of inquiry, the Chief Judge of the Maori Land Court, and the Commissioner of Crown Lands.

Although Lake Horowhenua has remained in Maori ownership until the present day, the history of the lake in the twentieth century serves to illustrate how such ownership rights can in fact mean very little in connection with the control and management of a lake. It appears that once the flax industry went into decline, farmers began to assert pressure for the lake level to be lowered. This was to achieve the object of bringing further land into production, and to mitigate the effects upon adjacent lands when the lake flooded. Under the Land Drainage Act 1908, the lands surrounding the lake were constituted as the Hokio Drainage District. The Act provided for districts to be proclaimed when the majority of ratepayers in an area petitioned the Government. This provision clearly prejudicially affected Maori given how much of their land was held in trust, and how few individual Muaupoko would therefore have been ratepayers. Although Muaupoko sought and were granted guarantees that their fishing rights – especially in the Hokio Stream – would not be affected by the operations of the drainage board, it is clear that many of their eel weirs were destroyed and the lake's water level permanently lowered.¹⁰¹ When it is considered that much of the drainage board's membership was made up of local farmers, it is hardly surprising that the rights of Muaupoko were disregarded.¹⁰²

The constitution of the board set up to manage the recreation reserve similarly shows how in practical terms, being the legal owners of the lake did not correspond

99. 'Horowhenua Lake', *Chronicle*, 17 January 1911

100. 'Horowhenua Lake: the Question of Fishing Right', nd, ma 5/13/173, w2459, NA Wellington

101. 'Minutes of Committee of Inquiry, Levin', 11 July 1934, ma 5/13/173, w2459, p 2, cited in Anderson and Pickens, p 279

102. See for example Puku Matakatea and others to Ngata, 14 November 1929, ma 5/13/173, w2459, NA Wellington

to a high degree of control over the lake. Under the 1905 Act a minimum of one-third of the members of the board charged with managing the lake had to be Maori. When the Act was amended in 1916, this quotient was changed to a maximum of one-third, and the total membership of the board set at nine. But even though the board's constitution meant that Maori would always be a minority on the board, evidence exists that the Pakeha members requested that the Maori positions on the board be done away with altogether.¹⁰³ The board was also identified in two reports as being primarily responsible for the failure to resolve the ongoing conflict over the extent of Muaupoko's rights in relation to the lake that had existed since shortly after the enactment of the 1905 legislation. In particular, attention was drawn to the way in which the views of the Maori board members had been repeatedly ignored.¹⁰⁴

Although the Reserves and Other Lands Disposal Act 1956 explicitly acknowledged that the lake belonged to Muaupoko, an analysis of the Act serves to further illustrate how the incidents of ownership are in fact very limited. Clearly under the Act, the ownership of the lake's waters did not accrue to Muaupoko as the owners of the bed. Also they have no right to prevent others accessing the lake or fishing in it. As the Crown Law Office stated in 1989 in respect of Horowhenua, 'it is hard to escape the conclusion that the legislation was designed to take away ownership to the lake once it had granted it back again.'¹⁰⁵

Although this view could be considered to be somewhat brutal, the fact that Horowhenua has always been in Maori ownership – even if the full incidents of ownership have not accrued to the owners – is somewhat remarkable in the context of the history of lakes in New Zealand. And despite the recent history of the lake having been fraught with conflict concerning its management, the situation vis-a-vis the ownership of Horowhenua is a possible model for what could have happened to other lakes, or importantly, still could.¹⁰⁶ Although it could be argued that Muaupoko's ownership of the lake is reduced to a purely symbolic phenomenon, their status as tangata whenua, and the fact that they exercise mana whenua over the lake is formally recognised. And further, their fishing rights, traditionally an important incident of ownership, are preserved.

103. E McKenzie, J A Mills, and J M McEwan, 'Horowhenua Lake Domain Brief History and Recommendation', 1952, ma 5/13/173, w2459, NA Wellington, cited in Anderson and Pickens, p 281

104. Shepherd to Under-Secretary, Native Department, 21 October 1943, ma 5/13/173, w2459, NA Wellington, cited in Anderson and Pickens, p 281; E McKenzie, J A Mills, and J M McEwan, 'Horowhenua Lake Domain Brief History and Recommendation', 1952, ma 5/13/173, w2459, NA Wellington, cited in Anderson and Pickens, p 281

105. S E Kenderdine to Director General of Conservation, 13 July 1989, Wai 52/0, Waitangi Tribunal, pp 7–8

106. See for example James Norgate, 'Failure to consult over lake causes friction', *Dominion*, 8 August 1996, p 10