

CHAPTER 6

LAKE TAUPO

6.1 Introduction

Taupo-nui-a-Tia, commonly known as Lake Taupo, is New Zealand's largest lake. It comprises a total area of some 62,320 hectares, and in most places it is between 100 and 140 metres deep. Situated on the volcanic plateau of the central North Island, Lake Taupo is the crater of an ancient volcano. Today, several thermal springs on the lake's shores bear testament to the lake's volcanic origin. Taupo's western shores are dominated by sheer cliffs punctuated by narrow inlets, whereas sandy beaches are more prevalent on its eastern shores. Although 17 sizeable rivers feed Lake Taupo, the Waikato is the lake's only outlet.¹ The lake's beauty is often remarked upon. As one writer has stated:

Although not claiming the majestic mountain scenery which surrounds the southern lakes, Lake Taupo has a strange beauty of its own – frowning bluffs and carved promontories, huge beetling cliffs and sandy beaches, sheltered bays and, in places, shores clad in dense virgin bush.²

For centuries Lake Taupo has been the focus of Maori settlement on the central North Island's volcanic plateau. Archaeologists consider that Maori occupation of the district dates from the ad 1200. It is thought that around this time, population pressure in coastal areas forced groups to settle in the interior of the North Island. Ngati Hotu, Ngati Ruakopiri, Ngati Kahupungapunga, and Marangaranga were peoples resident in the vicinity of the lake prior to the arrival of Ngati Tuwharetoa. Tuwharetoa tradition holds that Tia and Ngatoroirangi, both of the Arawa canoe, were the first of their ancestors to visit the area. Tia gave the lake the name by which it is known today. Being of the mind that the cliffs along the lakeshore resembled his rain cloak or 'taupo', he called it Taupo-nui-a-Tia – the Great Cloak of Tia.³

In the generations subsequent to Ngati Tuwharetoa's arrival in the Taupo district around ad 1500, they gradually displaced the area's prior occupants. The eponymous ancestor Tuwharetoa was a sixteenth-century chief of Te Arawa who

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1. Suzanne Doig 'Customary Maori Freshwater Fishing Rights: an exploration of Maori evidence and Pakeha interpretations' PhD thesis, Canterbury University, 1996, pp 274–275
 2. John Te H Grace, *Tuwharetoa: The History of the Maori People of the Taupo District*, Auckland/Wellington, A H & A W Reed, 1959, p 516
 3. Doig, pp 279–282

Figure 6: Lake Taupo

lived near Kawerau. Although he did not live at Taupo, his descendants shifted there upon suffering military defeats. Tuwharetoa is the ancestor upon whom all claims brought before the Native Land Court in the area were based.⁴

Historically the fisheries of Taupo have been of great importance to local Maori. However, upon arriving in the district, Maori found the lake entirely bereft of fish – the result of a huge volcanic eruption that occurred around AD 186. Tradition holds that Maori introduced the indigenous fish that are found in the lake today. Ngati Tuwharetoa credit Ngatoroirangi with this act. Like lakes Waikaremoana and those of the Rotorua district, no catadromous (sea-migratory) species are found in Lake Taupo. This is because the Huka Falls on the Waikato River are impassable for fish returning from the sea (although another theory is that eels may be unable to survive in the lake because of its water's thermal properties). It appears that Maori made several unsuccessful attempts to introduce eels to the lake. Species that are found in the lake include kokopu, inanga, koura, and kakahi. Despite the fact that the variety of species found in Taupo are relatively few, they have at various times existed in great numbers and constituted an important element in the Ngati Tuwharetoa economy.⁵

Prior to the 1870s, the Crown acquired virtually no land in the Taupo district – the majority of which had not passed through the Native Land Court. Even when the Crown did manage to secure title to some lands, Ngati Tuwharetoa retained the majority of those abutting the lake and hence remained in control of the lake. Although the title to the lake was never determined by the Land Court, the Government tacitly acknowledged that it was Maori property.

After trout were introduced to Taupo in the 1880s, the practical control Tuwharetoa continued to exercise over the lake – particularly in terms of regulating access – became a cause of concern to the Government. Maori were deriving substantial revenue from anglers by charging them to cross their lands to gain access to the lake and rivers, and for leasing camping sites. The Government's objection to this practice seems to be very much related to the colonial imperative that if at all possible, the creation of private property rights in wild game and fish was to be avoided. Consequently, the Government set about trying to secure control of the lake and its tributaries from Maori. In 1926, an agreement was reached between Ngati Tuwharetoa and the Crown whereby title to the lake and associated rivers passed to the Crown. This was in exchange for an annuity and a guarantee of the right of Maori to take indigenous fish from the lake. The agreement was enshrined in legislation later that year.

The story of the 1926 settlement largely forms the topic of this chapter. Firstly, though, the history of lands in the Taupo district in the contact period is briefly traversed. The chapter then proceeds to describe Maori customary fishing practices and to discuss the nature of rights in the lake. After briefly recounting the establishment of the Taupo trout fishery, events leading up to the 1926 agreement

4. Ibid, pp 279–283

5. Ibid, p 276; Grace, pp 510–515

are described and analysed in detail. Finally aspects of the post-settlement history are rehearsed.

6.2 The Taupo District in the Contact Era: A Summary

As with most lakes in New Zealand, it is necessary to consider the history of the ownership and control of Lake Taupo within the context of the lands surrounding the lake. A distinctive feature of the Taupo district in the nineteenth century was Ngati Tuwharetoa's resistance to Pakeha acquiring land and settling in the area. This resistance continued for twenty years after the advent of the Native Land Court. But even without Pakeha settlers in the area, the influence of colonialism was felt by Ngati Tuwharetoa. Raids on the Taupo area by musket-armed war parties from the north precipitated Tuwharetoa seeking a market for their flax in order to raise funds with which they could acquire arms. Evidence also exists that prior to 1840, pigs and large quantities of potatoes were being cultivated.⁶

Small discrete areas of land to the north of the lake were brought before the Native Land Court in the late 1860s. In 1872 an application was filed with the Land Court to investigate the ownership of a fishing ground situated in the lake along with Motutaiko island. The application was dismissed because the areas claimed had not been surveyed – even though this was not required by law in 1872.⁷ As inroads were made into the Rohe Potae in the early 1880s, Ngati Tuwharetoa petitioned the Government seeking protection from land speculators, and a guarantee that Tuwharetoa would continue to exercise control over their lands. This initiative resulted in the Native Land Alienation Restriction Act 1884. This Act reinstated the Crown's right of pre-emption in the Rohe Potae.

Once the protections that Ngati Tuwharetoa sought were in place, an application was made to the Land Court to determine title to the Tauponuiatia block – an appellation of some 2½ million acres of land surrounding Lake Taupo. Te Heuheu Tukino Horonuku, who brought the claim on behalf of Tuwharetoa, submitted a list of 141 hapu who were held to have rights to the lands in question. The block was divided into 151 subdivisions that were each heard separately. Judge Scannell delivered his decision in 1887. Although a great deal of evidence was received in connection with fisheries, little is revealed about fishing rights in the final decision.⁸ Although some lands to the west of the lake were awarded to Ngati Raukawa, all those abutting the lake were found by the Native Land Court to belong to hapu of Ngati Tuwharetoa. It would seem that by virtue of owning these lands, the tribe's right to the lake was never seriously disputed by the Crown.

6. Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brookers Ltd, 1993, p 47; Barbara Cooper, *The Remotest Interior: A History of Taupo*, Tauranga, Moana Press, 1989, p 71

7. Doig, pp 289–290, 310

8. Ibid, pp 289–292

6.3 The Lake Taupo Fisheries

In the past the waters of Lake Taupo provided Maori with what has been described as an ‘inexhaustible supply of food’.⁹ In his history of Ngati Tuwharetoa, John Grace describes in some detail the traditional fisheries of Lake Taupo.

The most important fish in the Ngati Tuwharetoa economy was the kokopu. It is the largest fish found in the lake, growing up to 20cm in length. Grace describes it as being ‘most palatable’ and when cooked in a hangi, ‘there was no fish more delicious’. Kokopu were also dried for consumption during winter. Mostly they were caught by means of a pouraka – a kind of large basket net. Koura were placed in the net and then it was lowered to the bottom of the lake by means of a long flax rope. Pouraka were usually set in the evening and brought back up in the morning. This method was employed between November and March. Through the winter months, kokopu were caught by the use of tau. A tau is a large flax rope to which bundles of fern are attached. One end was attached to a stake on the shore and the other anchored in the lake. After a while the tau would be pulled to the surface and fish that had become lodged in the bundles of fern removed. Small numbers of kokopu were also caught with flax lines to which worms were tied. Elsewhere this appears to have been a common method by which eels were caught.¹⁰

Inanga were also an important species in the Taupo fishery. Those caught in Taupo are the young of the kokopu. These are also called pangare. During the summer months, pangare would bask in the shallows near the lake shore and would wash up in large numbers on the beach during northerly storms. Maori would then proceed to gather the fish for food. This practice gave rise to Ngati Tuwharetoa being known by coastal iwi as ‘kai-pangare’ – a pejorative term implying that they lived on dead fish scavenged from beaches. From September to January, inanga were also caught by the use of hinaki. These nets were secured in a stream with fences on either side to channel the fish into them. Large drag nets known as kupenga were also used. Kupenga were made out of finely woven flax and were up to 100 metres long. They were either used from two canoes or from the shore. Grace stated that inanga were usually eaten as a relish to accompany fern root and kumara. Like kokopu, inanga were also dried for consumption during winter.¹¹

Crustaceans were also present in Lake Taupo. Koura, or freshwater crayfish, were caught either with nets or with bundles of fern such as were used to catch kokopu. The koura of Lake Taupo reach lengths of up to 12 centimetres. Roasted on a bed of hot embers, they are by all accounts delicious. In comparison to the kokopu, inanga, and koura, kakahi – a kind of freshwater mussel – were much less plentiful in Taupo. Consequently they were not as sought after by Tuwharetoa. When kakahi were gathered it was either by hand, or by the use of a dredge known as a rou-kakahi.¹²

9. Grace, p 509

10. Ibid, pp 510–511

11. Ibid, pp 512–513

12. Ibid, pp 513–514

6.4 The Nature of Fishing Rights in Lake Taupo

Included in Suzanne Doig's doctoral thesis on Maori customary freshwater fishing rights, is a detailed analysis of the Taupo fishery. This is based on evidence brought before the Native Land Court in the 1880s in connection with lands contiguous with the lake. In these court cases, the exercise of fishing rights was an important basis upon which titles to riparian lands were established. However, because issues pertaining to fishing rights were relatively uncontested between the various Tuwharetoa claimants, often little evidence was adduced before the court in connection with such matters. It appears that generally, detailed evidence was only recounted when rights to a particular resource or piece of land were contested between different groups.

The land court evidence considered by Doig shows that fishing rights in Taupo, like most Maori customary rights, were predicated upon ancestral take and the continued exercise of such rights. In the case of fisheries, ancestral rights were usually traced to the person who first developed the resource. Being a member of a hapu tracing a direct line of descent from such an ancestor appears to be the primary basis for fishing rights. However, rights to a fishery could also be established through marriage, one's own endeavours, and by the failure of those with paramount rights to take punitive action against poachers. Doig notes that there were no examples of fishing rights in Lake Taupo being established through conquest.¹³

In terms of the relationship between the rights of individuals, whanau, and hapu, Doig contends that it is very difficult to make clear distinctions between these groups and concomitant categories of right. The tendency of the Native Land Court to find in favour of rights at the hapu level means that possibly witnesses appearing before the court placed greater emphasis on that level of right. Certainly the records of the Native Land Court show that the commonest expression of fishing rights in Taupo were hapu rights based on ancestral title. Claims before the court in Taupo were invariably brought by hapu, and resource ownership generally talked about at this level. However, prominent individuals were often associated with particular sites. When claims to fisheries were made by individuals, it is likely that they tacitly included the individual's household or whanau. Generally such individual claims appear to be either an attempt to establish individual right to the resource within the broader rights of the hapu, or an endeavour to strengthen the hapu claim by giving evidence of personal exploitation of the resource. Doig averts to some instances where a personal 'title' was claimed, but notes that there is very little detail of such claims in the Land Court minute books.¹⁴

Unlike other lake fisheries in New Zealand, the Taupo fisheries were generally concentrated in the lake's inshore waters. Hence the issue of open water boundaries did not arise. Given that most fisheries were close to the shore, they were generally

13. Doig, pp 292–298

14. Ibid, pp 300–305

associated with particular sites on the adjacent land such as villages and beaches. In 1987, Asher, a Ngati Tuwharetoa kaumatua, described how:

. . . Maori settlements around Lake Taupo were connected with portions of the lake. These were accessible to, and exploitable by, the residents of the relevant settlements. Outside individuals . . . would not have transgressed onto these portions without permission.¹⁵

This, Doig contends, is consistent with evidence received by the Native Land Court 100 years earlier. Evidence exists of people travelling from settlements situated some distance from the lake to go fishing. Such groups appear to have had rights to the lands adjacent to these fishing grounds rather than there having been a divorce of occupation and use rights. Most probably fishing activity by such groups was a part of a seasonal round of resource exploitation. In this sense fishing rights were a part of a parcel of resource rights held in connection with a particular block of land.¹⁶

However, the historical record pertaining to the settlement reached in respect of Lake Taupo suggests that Tuwharetoa considered rights in the lake to be communally held, as opposed to rights in rivers which were vested exclusively in the owners of riparian lands. This situation became apparent in connection with compensation for individuals' rights in the tributaries to the lake that the Crown vested in itself. This compensation was separate from the annuity paid for the lake bed, and was to be determined after the settlement was made. Hence the claim that the lake was communally held can be seen as a rationale for why Tuwharetoa accepted a pan-hapu settlement in respect of the lake, and as strengthening their claim for compensation in respect of rivers.¹⁷ The trust board's solicitors also stated that the lake was treated as a 'tribal property' because the Native Land Court had not investigated its title. The owners of lands abutting the lake's tributaries had been ascertained, on the other hand, and the beds of such rivers belonged to the riparian owners under British doctrine of *ad medium filum aquae*.¹⁸

In her thesis, Doig attempts to determine the particular nature of fishing rights in Lake Taupo; particularly in terms of whether they are proprietary or usufructuary. She notes though that trying to make such a distinction from the evidence recorded in land court minute books is made problematic by the imprecise deployment of key terms, and the possibility that translations were inaccurate. References to the ownership of fisheries by witnesses appearing before the Land Court are frequent. But rather than implying western-style notions of ownership (such as the right to alienate and exclusive individual rights), such references appear to be an expression

15. Asher, personal communication, cited in Ann Williams, 'Land and Lake: Taupo Maori Economy to 1860', MA thesis, University of Auckland, 1988, p 77, cited in Doig, p 310

16. Doig, pp 309–316, 318

17. See for example Grace to Coates, 4 May 1926, ma 31/23B, NA Wellington; 'Memorial of the Native Owners of the Several Rivers Flowing into Lake Taupo the Beds of which had been Proclaimed to be Crown Lands', 12 August 1927, aamk 869/706B, enclosed in T W Lewis to Minister of Native Affairs, 29 August 1927, aamk 869/706B, NA Wellington

18. Earl, Kent, Massey, and Northcroft to Coates, 19 October 1927, aamk 869/706B, NA Wellington

of an ultimate right over a resource in terms of a Maori tenure. In numerous cases, usufructuary rights were implied if not explicitly stated. Doig contends that fishing rights at the hapu level were conceived of in this way. Importantly this usufructuary conception of hapu rights appears not to have been regarded as an inferior title subject to a superior ownership right. Claims to usufructuary fishing rights by individuals were, however, subject to a superior hapu right. Doig cautions against attempts to reduce Maori customary rights to accord with technical western conceptions of ownership and property. Alternatively she advances a conceptualisation in terms of community rights associated with particular kin groups whereby 'residence in a particular settlement and affiliation to the appropriate kin groups conferred a right to use the various resources of that community'.¹⁹

From her analysis of evidence before the Native Land Court, Doig draws some tentative conclusions about traditional Maori management and control of Taupo fisheries. As with land and people, she contends that mana was the basis of chiefly authority over natural resources. As a consequence of such mana, chiefs and kaumatua had an acknowledged role in the management of natural resources such as fisheries. Witnesses appearing before the land court in Taupo recounted who were the principal men in relation to particular resource areas that included fisheries. An expression of this authority over a fishery was the claim made before the court that people exploiting a resource without the right to do so would be expelled by force. Although the claim to be able to do this was frequently made in connection with Taupo fisheries, there were no examples cited of force actually being employed in this respect.

A tangible aspect of Maori resource management is the institution of rahui: a kind of prohibition. Rahui were imposed variously to ensure the sustainability of a resource, after waters had been polluted (usually as a consequence of a death), or to reserve a resource for one's own use. In this latter respect particularly, rahui can be seen as an expression of ownership. In connection with the fisheries of Lake Taupo, Doig describes rahui being imposed after people died in the vicinity of the lake. These occasions were subsequent to Te Heuheu Mananui being killed in a landslide at Te Rapa, and when the missionaries Manihera and Kereopa were murdered at Tokaanu.²⁰

Clearly strong rights existed in the Taupo fishery. Although lesser emphasis appears to have been placed on boundaries between fishing grounds than in the Rotorua lakes, fishing grounds were associated with particular settlements and other sites. Further, the existence of the right to exclude others from fishing grounds suggests that the common law criteria of ownership was met.

In the course of the present author's research into Lake Taupo, one reference to Maori claiming the ownership of waters in the immediate vicinity of the lake was discovered. In a report of a meeting held amongst Tuwharetoa in 1926 to discuss the issue of rights in the Taupo catchment, Pateroe Pohe claimed that the Waikato

19. Doig, pp 317–321, 328–329

20. Ibid, pp 321–326

River from the lake to Huka Falls belonged to him and his hapu, and that no arrangement had been made with him to take water from the river for the Wairakei power scheme. He informed the meeting that his hapu wanted ‘the authority to enable us to make arrangements with Wairakei Ltd so that we be able to arrive at what is a fair consideration for this water’.²¹

6.5 The Introduction of Trout to Lake Taupo

The earliest attempts to acclimatise fish to Lake Taupo for the purposes of sport were made in the 1880s. Around 1880, the golden carp was introduced by the head of the Crown garrison based at Taupo. Although it acclimatised, numbers always remained small. Shortly afterwards, Gilbert Mair released what became known as Taupo carp. But it was not until the introduction of trout that a sport fishery of any significance became established. Whereas Grace states that Brown trout were not introduced until the 1890s, Barbara Cooper in her book on Lake Taupo claims that occasional sightings of brown trout were being reported as early as 1888. However, regardless of when they were introduced, it is clear that they did not become prolific until after the Hawke’s Bay Acclimatisation Society, with financial assistance from the Government, released large numbers in 1892. By the turn of the century the Tongariro River was being described as one of the best brown trout fisheries in the world, and local hotels were promoting trout fishing in Lake Taupo and its tributaries.²²

Around 1900, the Government was petitioned to release rainbow trout into the waters of Lake Taupo. The petition was widely circulated amongst Taupo residents and was signed by both Maori and Pakeha. It appears that one of the reasons people favoured the introduction of rainbow trout was that the brown trout were proving too difficult to catch. Between 1905 and 1907, acclimatisation societies released thousands of rainbow trout. To help the trout become established, shags – birds which found trout a welcome addition to their diet – were shot in large numbers. Cooper records that by 1906, the district had become a popular destination for anglers.²³

But by around 1912, the Taupo trout fishery was in decline. Apparently trout had become so numerous and large that they were exceeding their available food supply. The Government responded by introducing smelt to the lake (a small fish indigenous to New Zealand but that did not occur naturally in Lake Taupo) as an additional food supply, and by culling trout. Grace recounts how for several years around this time, smoked trout netted in Lake Taupo could be bought in New Zealand’s major cities. Although the fishery recovered, by the late 1920s it was in decline again. This decline was arrested by more smelt being released into the lake. In 1927, the Duchess of York (now the Queen Mother) caught a trout in the

21. ‘Enquiry as to Private Rights’, 22 April 1926, ma 31/23B, NA Wellington

22. Cooper, pp 109–111; Grace, p 516

23. Ibid, pp 112–113

Tongariro River on a visit to New Zealand. To this day the lake and its associated rivers and streams are considered to be one of, if not the best trout fishery in the world.²⁴

It has been claimed that the introduction of trout to the Taupo catchment caused a serious depletion of stocks of indigenous fish. In 1926, Sir Maui Pomare remarked in Parliament that ‘the pakehas’ trout ate out the Maoris kouras and kokopus’ in Lake Taupo.²⁵ Similarly, John Grace records how the native fish ‘that were once seen in great shoals . . . are now seldom seen’ having been ‘almost exterminated by the trout and shag’.²⁶

In 1867, legislation was passed that *inter alia* vested power in various acclimatisation societies to introduce and manage sport fish and game in New Zealand.²⁷ Initially Lake Taupo fell within the area of control of the Auckland, Wellington, and Hawke’s Bay Acclimatisation Societies. In the early 1900s, though, local anglers pressured the Government to form an acclimatisation society centred on the Taupo fishery. Rather than acquiescing to their demands, the Government responded by placing the control of the fishery in the hands of the Hotel and Tourist Department. As a consequence of apparent mismanagement by that department, responsibility for the Taupo trout fishery was in turn handed over to the Department of Internal Affairs in 1926. In the same year, the Government established a trout hatchery on the banks of the Tongariro River.²⁸

Although initially acclimatisation societies (and later Government departments) were legally responsible for the management of the Taupo trout fishery, in many respects Tuwharetoa were very much in control of large parts of the fishery. By virtue of still owning much of the land contiguous with both the lake and its tributaries, many hapu and individuals of Ngati Tuwharetoa were able to regulate access to parts of the lake. Many such landowners charged anglers for the right to fish from and camp upon their land. In February 1924, the Registrar of the Aotea Native Land Court described to the Under-Secretary of Native Affairs how the Maori owners of riparian lands on the Tongariro River had struck a deal with a local Pakeha. The Pakeha paid the Maori owners for the right to have huts on their land for the accommodation of anglers – an arrangement that by all accounts the Tuwharetoa concerned were most happy with. In the memorandum, the registrar also stated that he was aware that some Maori in the area had issued notices warning trespassers to stay off their land and that others were deriving an income from charging anglers a fee to camp on their lands.²⁹ In 1926, A P Grace stated that Maori were deriving an income from charging anglers to fish the Tongariro, Waitahanui, and Waihaha Rivers.³⁰

24. Ibid, p 114; Grace p 517

25. Pomare, NZPD, 1926, vol 211, p 289

26. Grace, p 509

27. Protection of Animals Act 1867, ss 3, 6

28. Cooper, pp 115–116

29. Registrar, Aotea Native Land Court to Under-Secretary of Native Affairs, 28 February 1924, ma 31/23B, NA Wellington

30. Grace to Coates, 6 August 1926, ma 31/23B, NA Wellington

Doubts existed in some officials' minds as to the legality of such practices by Ngati Tuwharetoa. Under section 89 of the Fisheries Act 1908, it was illegal to sell or lease fishing rights. This was a provision enacted to prevent the situation arising in New Zealand that existed on many waterways in Britain where riparian landowners exclusively owned fishing rights. However, it would seem doubtful whether restricting access and charging camping fees actually constituted an alienation of a fishing right. Judge Acheson reported to the Department of Native Affairs in March 1924 that Ngati Tuwharetoa were aware it was illegal to sell their fishing rights, but that they claimed that what they were doing did not in fact constitute a sale. Acheson reported that Ngati Tuwharetoa asserted that they had no objection to people using the beds of the lake and rivers. He stressed that in the case of the Tongariro River, the owners of the riparian lands were anxious to restrict access to the fishery in order that it did not become over-fished. They were particularly concerned to ensure the fishery remained attractive to anglers that travelled from all over the world to fish there. Acheson also alluded to problems some sections of Ngati Tuwharetoa were having with campers who were illegally camping on their land and who refused to leave when asked.³¹

The way in which Maori were exercising control over parts of the Taupo trout fishery led the Government to fear that foreign investors could buy Maori riparian lands and consequently acquire control of large parts of the fishery. In 1926, Coates stated in Parliament that a number of foreigners had entered into negotiations with Ngati Tuwharetoa with a view to acquiring their lands abutting the lake and its tributaries.³² This fear was the reason given by the Government for wanting to acquire Maori riparian rights (which included their fishing right) and ensure public access to the lake. Although this did not necessitate the Government acquiring title to the lake bed itself, the opportunity was taken to extinguish Tuwharetoa title to the bed of the lake. Provision was also made to extinguish title to the tributaries of Lake Taupo by proclamation. This reflects the evolving Crown policy that it, and not Maori, should be the owners of lake beds in New Zealand.

6.6 The Native Land Amendment and Native Land Claims Adjustment Act 1924

In 1924, special legislation was introduced to Parliament that empowered the Crown to enter into negotiations with the Maori owners of lands abutting Lake Taupo and its tributaries in order to reach an agreement in respect of, inter alia, the bed of Lake Taupo. In speaking to the Bill, Apirana Ngata, the member for Eastern Maori, drew attention to the section that affected Lake Taupo. He noted that:

Members interested in trout-fishing will know that a difficulty has arisen in that district [Taupo] where there is a danger of the fishing-rights being acquired by rich

31. Judge Acheson to Under-Secretary of Native Affairs, 12 March 1924, ma 31/23B, NA Wellington

32. Coates, NZPD, 1926, vol 211, p 285

gentleman from overseas. The clause ensures that the people of this country will not be denied access to some of the best fishing-grounds bordering on Lake Taupo.³³

Having been considered by the Native Affairs Committee, the Bill was passed into law.

Section 29(2) of the Native Land Claims Adjustment Act 1924 held that it ‘shall be lawful for the Native Minister to enter into negotiations with Natives claiming to be owners of the lands bordering on Taupo waters for an agreement in respect of fishing-rights in Taupo waters and in respect of the beds and margins of Taupo waters.’ The Act defined ‘Taupo waters’ as being ‘Lake Taupo and all rivers and streams flowing into the lake, and the Waikato River between Lake Taupo and the Huka Falls.’³⁴ The Act authorised the Native Minister to arrange a meeting with those Maori claiming to be owners of riparian lands. At such a meeting, if the majority agreed on the proposed terms and conditions, the Minister could enter into an agreement with the owners. The Governor General could then give effect to the agreement by issuing an Order in Council.³⁵

Although the Native Land Claims Adjustment Act empowered the Government to enter into an agreement ‘in respect of the beds and margins of Taupo waters’, it did not foreshadow that the Government would seek to acquire title to such lands.

6.7 Conflict Over Fishing Rights

Subsequent to the passing of the 1924 legislation, but before a meeting with the Maori owners of the lands in question was held, conflict emerged between Maori and Pakeha in relation to fishing rights in Lake Taupo. In July 1925, Morehu Downs wrote to the Native Minister complaining about reports in local newspapers that Maori were trapping trout in drains which were then fed to pigs. Downs, himself a Maori, stated his strong objection to these reports, opining ‘that neither a Maori nor a Pakeha would indulge in such a practice as we are only too thankful to obtain trout for food and in consequence [would be] loathe to give it to pigs.’ He informed the Minister that although the police and fisheries rangers had inspected various Maori-owned houses and lands in the district, no evidence to support the allegations had been found. A letter from the Minister of Internal Affairs to the Prime Minister the following month also stated that the allegations appeared to have been unsubstantiated.³⁶

Later in 1925, Hill of the Government Tourist Bureau in Rotorua informed the General Manager of the Department that a fisheries ranger had reported ‘a wholesale defiance by the natives of the regulations requiring that licenses must be held by people who are fishing [for trout].’ When approached, the Maori concerned

33. Ngata, NZPD, 1924, vol 205, p 1047

34. Native Land Amendment and Native Land Claims Adjustment Act 1924, s 29(1)

35. Native Land Amendment and Native Land Claims Adjustment Act 1924, ss29(4–7)

36. Morehu Henry Down to Minister of Native Affairs, 29 July 1925, ma 31/23B, NA Archives, Wellington; Minister of Internal Affairs to Prime Minister, 7 August 1925, ma 31/23B, NA Wellington

said that they were ‘doing this on the strength of an alleged permit given to them by the Native Minister issued from his office at Wellington’. The alleged letter, Hill contended, was in fact nothing of the sort, being simply notice that the Minister intended to convene a meeting pursuant to the Native Land Claims Adjustment Act 1924 to discuss the issue of fishing rights in Lake Taupo. Hill’s letter continued, describing how one of the alleged offenders, Tepuroa Maniapoto, had accosted a ranger in Taupo and ‘was very boastful about the Maoris having the right to fish without a license’. Hill urged that such ‘promiscuous fishing [as was] being indulged in’ should be clamped down on. He was of the opinion that Maniapoto should be made an example of by being prosecuted. In his letter, Hill also alerted attention to the fact that anglers were being charged a fee to fish from Maori-owned land abutting the Waitahanui River. Apparently numerous tourists had complained of this in the previous year.³⁷

The matter of Maori fishing for trout illegally was subsequently put before William Nosworthy, the Minister in charge of Tourist and Health Resorts, by the General Manager of Tourist and Health Resorts, B M Wilson. Wilson stated that for years the department ‘have turned a blind eye on natives fishing for food, and indeed have granted them a number of licenses at a nominal fee.’ But now, he continued, ‘they are making matters too warm’, and urged that they be prosecuted, though he cautioned that adopting such a course of action would ‘arouse a storm among the Natives.’³⁸ Just two days later, Coates, the Prime Minister and Minister of Native Affairs, wrote to Nosworthy enclosing the letter on which authority Maniapoto et al were claiming that they did not require licences. Indeed, as Hill had asserted, the letter made no mention of Maniapoto’s claimed arrangement. Coates, however, urged Nosworthy not to press charges against the offenders because he thought Maori of the Taupo district were in the mood to settle with the Government, and he did not wish to jeopardise this state of affairs.³⁹

6.8 A Settlement is Negotiated

6.8.1 First meeting: Waihi, 21 April 1926

Coates issued a notice in December 1924 advising that a meeting was being called of owners of lands surrounding Lake Taupo. The purpose of the meeting was to negotiate with the Crown an agreement pertaining to fishing rights and the ownership of the beds and margins of Taupo waters. However, 18 months passed before the meeting was actually held. The cause of the delays were various and included an outbreak of infantile paralysis, the availability of various politicians,

37. W Hill, Government Tourist Bureau, Rotorua to the General Manager, Department of Tourist and Health Resorts, 7 December 1925, aamk 869/706A, NA Wellington

38. B M Wilson, General Manager, Department of Tourist and Health Resorts to Minister in Charge of Tourist and Health Resorts, 9 December 1925, aamk 869/706A, NA Wellington

39. Minister of Native Affairs to Minister in charge of Tourist and Health Resorts, 11 December 1926, aamk 869/706A, NA Wellington

and disagreement amongst Ngati Tuwharetoa as to the best place to convene the meeting.⁴⁰

In the period between the first notice and the actual meeting, disquiet became evident amongst parts of Ngati Tuwharetoa as to the proposed settlement. In March 1926, a petition signed by members of northern Taupo hapu was sent to the Minister of Native Affairs. It stated that signatories disagreed with the proposal that would see Lake Taupo and its tributaries ceded to the Crown. It was claimed that this proposal was the wish of chiefs from the south of the lake, and that these chiefs had not conferred with chiefs at the northern end.⁴¹ Earlier that same month, Sir Francis Dillon Bell, then a member of the Legislative Council, wrote to the Prime Minister in connection with the proposed meeting. Bell urged that a meeting, as provided for by the 1924 Act, be held forthwith, stressing ‘the extreme urgency and importance of the matter’. He considered that:

If such a meeting be held and an agreement arrived at, the whole question of the bed of Lake Taupo and of the streams flowing into it would be settled, proper fees could be determined for the special fishing in the Lake and streams, the Natives would be benefited, and a great advantage would accrue to Europeans.

Bell also expressed the view that an agreement in respect of Lake Taupo that avoided litigation ‘would practically dispose of the necessity for argument in the long pending appeal in the case of Lake Waikaremoana.’⁴² In 1918, the Native Land Court had ruled that Lake Waikaremoana was Maori customary land. Although the Crown immediately lodged an appeal, it was not heard by the Appellate Court until 1944.

The meeting was held in Waihi on 21 April 1926. It was attended by Coates, Sir Maui Pomare, a large number of Ngati Tuwharetoa, and various Government officials. The only record of the meeting uncovered by the present author was an article in the *Evening Post* on 23 April 1926. It stated that at the meeting Hoani Te Heuheu spoke in support of the proposed settlement. Ngahu Huirama was reported as having claimed that a cession of all Maori rights over the lake and rivers of the area would require an annuity of £15,000 being paid to Ngati Tuwharetoa. According to Huirama, this would be similar to the deal reached with Te Arawa in respect of their lakes. The article stated that Coates had replied:

that the Crown was not concerned with the ownership of the lake. All they wanted was to secure to the Natives some financial benefit from the fishing attractions of the lake. At present the Natives got nothing and government wanted to ensure they got something. However, he rejected an annual payment of £15,000 but offered in return 50% of the fishing fees. In return Natives would cede all their fishing rights in and over the Taupo waters. Mr Coates pointed out that the payment made annually to the Arawa people was not a payment for the beds of the Rotorua lakes, but was made in

40. Brian Bargh, *The Volcanic Plateau*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), November 1995, p 112

41. John Chase to Minister of Native Affairs, 27 March 1926, ma 31/23B, NA Wellington

42. Bell to Prime Minister ‘Memorandum for Ministers’, 9 March 1926, ma 31/23B, NA Wellington

consideration of the services rendered to the Crown by the Arawa people in the Maori war days. Further the Government did not want to have anything to do with the bed of Lake Taupo which was quite a different matter from the question of the fishing rights in Taupo waters.⁴³

According to the *Evening Post*, Coates then met with the leaders of Ngati Tuwharetoa. In this meeting it was agreed that:

the Natives hand over to the Crown their fishing rights in and over Lake Taupo, in consideration of a perpetual annual payment of £3000, provided that should 50 percent of the license fees collected be more than £3,000 then such larger sum should be paid.

It was agreed that the details of the agreement would be worked out at a later date, especially the question of rights in the streams and rivers flowing into Lake Taupo.⁴⁴

Although it was reported that the detail of the agreement was to be worked out at a later stage, a memorandum from Coates to the Governor General, dated 26 April 1926, detailed what had been agreed at the Waihi meeting five days earlier. Essentially the contents of the agreement were eventually included in the final agreement and the 1926 legislation. The memorandum concluded by asking the Governor General to sign the attached Order in Council that, in accordance with the Native Land Claims Adjustment Act 1924, would give the agreement statutory effect.⁴⁵

The claim made in the *Evening Post* that it was agreed that ‘the Natives hand over to the Crown their fishing rights’ is a trifle confusing. Coates’s memorandum to the Governor General stated that the ‘beds of all Taupo waters’ were to be vested in the King. No mention was made of fishing rights other than in connection with trout, but when the agreement was enshrined in legislation, Tuwharetoa’s customary fishing rights were reserved to them. Possibly the author of the *Evening Post* article meant that Maori were ceding the right to charge anglers for camping and the right to fish from Maori-owned land. Although the article raises the possibility that Tuwharetoa did not agree to cede the beds of the lake and its tributaries, this seems unlikely when Coates’s memorandum is considered.

But Coates’s memorandum makes his claim reported by the *Evening Post* that the Crown had no interests in the beds of the Taupo waters seem rather duplicitous. The 1924 legislation pursuant to which the meeting was held makes specific reference to seeking an agreement in respect of the bed and margins of Taupo waters. In the light of this and the eventual agreement, the Prime Minister’s claim that the Crown had no interests in the beds of Taupo waters was incredible. And further, the claim that the annuity paid to Te Arawa was for services rendered to the Crown during the wars, is at best a half truth. Although Te Arawa’s loyalty may

43. *Evening Post*, 23 April 1926

44. Ibid

45. Minister of Native Affairs to Governor General, 26 April 1926, ma 31/23B, NA Wellington

have been a factor, the extinguishment of Te Arawa's customary rights to 14 of their lakes surely was a significant aspect of the deal secured by the Crown. Similarly, there can be little doubt that the Government's eyes were set on acquiring title to the bed of Lake Taupo. That this was denied at the only meeting that appears to have been held with anything close to a comprehensive representation of Ngati Tuwharetoa is alarming.⁴⁶

6.8.2 The question of rivers

Before the preliminary agreement reached at Waihi was formalised, confusion emerged as to whether or not fishing rights in the tributaries of Lake Taupo would be included in the settlement. An undated story in the *New Zealand Herald* referred to a 'telegram from Wellington' that stated 'fishing rights including those in regard to the rivers as specified, [were] to fall into the hands of the Crown'. The article reported that Taupo Maori who had been present at the 21 April meeting were emphatic that it had not been agreed that fishing rights in the streams and rivers were to be ceded to the Crown.⁴⁷ On 26 April, the *New Zealand Times* ran a story on the negotiations vis-a-vis Taupo waters. The article pointed out that 'Taupo waters', as defined by the Native Land Claims Adjustment Act 1924, included all tributaries to the lake and the Waikato River as far as Huka Falls.⁴⁸

In connection with the same matter, Hoani Te Heuheu sent a telegram to the Prime Minister on 29 April 1926. Te Heuheu asked Coates to:

Please correct report of lake meeting appearing in *Hawke's Bay Herald* Monday morning wherein it states freehold lake and one chain reserve to all rivers conceded to Crown for £3000 as such. Reports incorrect and detrimental to our interests.⁴⁹

The following day, Raumoa Balneavis, Coates's private secretary, acknowledged the receipt of Te Heuheu's telegram. However, the question as to whether rivers and streams were to be included in the settlement was not addressed. Balneavis simply stated that a date was to be set for a meeting in Wellington between representatives of Ngati Tuwharetoa and the Crown to discuss details of the preliminary agreement reached at Waihi.⁵⁰

In late April, Judge Browne of the Aotea Native Land Court advised the Department of Native Affairs that the court had received applications from 6 owners of Maori land adjacent to the Tongariro River who wished to 'transfer' their fishing rights. According to Browne's letter, these rights were worth between £10 and £30 per annum.⁵¹ Although it is not clear exactly what these applications were about, it would seem that the owners of these lands wished to sell to private

46. *Evening Post*, 23 April 1926

47. 'Taupo fishing rights: Inclusion of the rivers not intended by Natives: Meaning of Agreement', *New Zealand Herald*, nd, aamk 869/706A, NA Wellington

48. *New Zealand Times*, 26 April 1926, cited in Bargh, pp 113–114

49. Hoani Te Heuheu to Prime Minister, 29 April 1926, ma 31/23B, NA Wellington

50. Balneavis to Hoani Te Heuheu, 30 April 1926, ma 31/23B, NA Wellington

51. Judge Browne to GP Shepherd, 26 April 1926, aamk 869/706A, NA Wellington

individuals the rights to fish from and camp on their riparian lands. In any case, the Government was opposed to any such alienations being allowed to proceed. On the advice of Balneavis and Shepherd (the Chief Clerk of the Department of Native Affairs), an Order in Council was issued in May 1926 prohibiting the sale of Maori land in the vicinity of the Tongariro River and Tokaanu to anybody other than the Crown.⁵²

6.8.3 Second meeting: Wellington, July 1926

The meeting in Wellington alluded to by Balneavis was eventually held in July 1926. At this meeting, Ngati Tuwharetoa were represented by Puataata Grace, Weehi Tuiri, Pau Mariu, Nguha Huirana, Pitoroi Mohi, Waimarama Te Hata, Paora Rokino, Hoani Te Heuheu, Joseph Moon, Hika Rahui, and Kahu Te Kuru. The Government met the costs of travel and accommodation incurred by the Ngati Tuwharetoa representatives.⁵³ On 21 July 1926, the Ngati Tuwharetoa representatives met amongst themselves and agreed upon a set of resolutions. With one exception, these resolutions were essentially what Coates had reported to the Governor General as what had been agreed to at Waihi. However, the one exception was quite significant: ‘That the beds of all Taupo Waters shall *not* be vested in the King as a Public Reserve’ (emphasis in original).⁵⁴

Ngati Tuwharetoa’s resolutions were then tabled at a meeting with Coates the following day. The outcome of that meeting was the final agreement, signed on 22 July 1926 by Hoani Te Heuheu, on behalf of Tuwharetoa, and Coates, on behalf of the Crown. The agreement defined ‘Taupo waters’ as being the lake, all tributaries, and the Waikato River from the lake mouth to Huka Falls. In exchange for title to the beds of these waters being vested in the Crown as a public reserve, and a right of way to licence holders being granted over all Maori-owned riparian lands, Ngati Tuwharetoa were to receive an annuity of £3000 plus half of any revenue over £3000 derived from trout fishing licences, camping fees, and fines. The tribe would also receive 50 free licences. A trust board was to be established to administer all monies that were to be paid to Ngati Tuwharetoa. As well as the right of access around the lake, holders of special licences were to have access rights to a one chain strip along tributaries to the lake as defined by the Governor General. The agreement provided for some areas not to be subject to the public rights of access, and for compensation to be paid to owners of Maori freehold land bordering the lake and its tributaries. This compensation was for the loss of income previously generated from charging anglers to camp and fish on their land, and was to be assessed by a specially constituted tribunal. It was agreed that legislation would be passed to give effect to the agreement.⁵⁵

52. Balneavis to Shepherd, 14 May 1926, aamk 869/706A; Shepherd to Coates, 17 May 1926, aamk 869/706A NA Wellington; 20 May 1926, *New Zealand Gazette*, 1926, no 31, p 1320

53. Balneavis to the Proprietor, Wellington Hotel, 16 July 1926, ma 31/23B

54. ‘Resolutions passed at a Meeting of Ngati Tuwharetoa at Wellington, 21 July 1926’, ma 31/23A, NA Wellington

55. ‘Taupo Waters and Fishing Rights’, 26 July 1926, ma 31/23B, NA Wellington

What caused Ngati Tuwharetoa to agree to the beds of all Taupo waters being vested in the Crown after having resolved just days earlier not to agree to this remains unclear to the present author. As well as what transpired in this meeting with Coates, little is known about the process by which the Tuwharetoa representatives who negotiated the agreement were decided upon. It would appear that the Government was happy for Ngati Tuwharetoa to work this out internally. However, it seems that the various hapu of Ngati Tuwharetoa appointed representatives to attend the Wellington meetings. A telegram in connection with the lake question from a section of Ngati Tuwharetoa based in Rotorua averts to them having appointed one of the representatives.⁵⁶ Given that no records of the meeting have been uncovered, it remains unclear whether the terms of the agreement were clearly understood by all present and negotiated freely. Neither is it apparent whether the representatives who were party to the Wellington negotiations had a mandate from all those at the earlier Waihi meeting to enter into a final agreement without further consultation with the constituent Tuwharetoa hapu.

6.8.4 Problems with the agreement

Shortly after the agreement had been signed, Grace wrote to Coates informing him that the terms of the agreement had been ‘broadcasted’ to the tribe. He stated that ‘the majority of the natives interested are fairly satisfied, provided a satisfactory settlement is arrived at between the Crown and the river owners’. Grace went on to discuss the situation in relation to the Tongariro River. He stated that Maori who owned riparian lands along the river were making a good income from anglers, and that these owners were concerned that the compensation to be determined would be inadequate. He also informed Coates that the riparian owners were farming their lands and had undertaken flood protection works. According to Grace, they were concerned that under the settlement, they would lose the right to undertake such works on the riverbank. In light of these concerns, Grace proposed that the Tongariro be excluded from the ambit of the settlement. He suggested that the Tongariro be made a special reserve for overseas visitors so that fishing of a world class standard could be guaranteed. If this was not acceptable, Grace sought an assurance that compensation for these landowners would be equal to the income they were presently deriving.⁵⁷ Coates responded that the question of river rights would be dealt with by the tribunal to be appointed pursuant to the July 1926 agreement, and that the agreement reached could not be varied.⁵⁸

Further to the concerns expressed by Grace in connection with the Tongariro River, dissension amongst other members of Tuwharetoa became apparent shortly after the agreement was signed. On 29 July 1926, W R Ngahana, an employee of

56. Wikitoria Dansey to Minister of Native Affairs (translation), 26 April 1926, ma 31/23B, NA Wellington

57. Grace to Coates, 6 August 1926, ma 31/23B, NA Wellington

58. Coates to Grace, 12 August 1926, ma 31/23B, NA Wellington; Coates to Grace, 25 August 1926, ma 31/23B, NA Wellington

the Native Trust Office and member of Ngati Tuwharetoa, wrote to Coates's private secretary. Ngahana stated that he was:

convinced that [the] majority of my people would much prefer that the 'mana' to the beds of the Lake and Rivers be not taken away from them. Is it now possible to have this clause [of the agreement] amended . . . ?

He also asked whether every member of Ngati Tuwharetoa could receive 'free fishing rights' (presumably meaning a licence to fish for trout), or if not free, at least at a nominal rate.⁵⁹

As well as concern about the private rights of individuals in rivers and streams, there appears to have been disquiet amongst some members of Ngati Tuwharetoa as to how the agreement in respect of 'Taupo waters' affected their rights to thermal springs situated on the banks of the lake and its tributaries. A R Graham wrote to Coates in August 1926 drawing the minister's attention to the fact that springs were situated on lands that fell within the chain strip around the lake and on the banks of the Waikato River.⁶⁰ Similarly in September, Mrs L M Grace wrote to Coates informing him that, along with two others, she was the owner of valuable springs on lands bordering Lake Taupo that fell within the one chain designation. In reply to her question as to what to do to protect the springs, Balneavis stated that ample provision was contained in the agreement for the exemption of such springs. He advised Mrs Grace to apply to the Minister of Internal Affairs for the springs to be excluded from the one chain right of way around the lake.⁶¹

6.9 The Native Land Amendment and Native Land Claims Adjustment Act 1926

As noted above, the 1924 legislation provided for an agreement to be entered into between the Government and Ngati Tuwharetoa in respect of Taupo waters, and for that agreement to be given effect by an Order in Council.⁶² But rather than an Order in Council being issued, the agreement was enshrined in legislation in 1926. In a 1928 decision of the Supreme Court concerning the meaning of the terms of the Lake Taupo settlement, it was stated that the provisions for compensation contained in the 1924 agreement exceeded what the 1924 legislation provided for. Therefore statutory authority was necessary to validate the agreement.⁶³ Presumably the Government, being seized of the fact that the terms of the agreement reached in 1926 had exceeded what was provided for in the 1924 legislation, decided to give effect to the agreement through legislation. Accordingly a clause was included in

59. W R Ngahana to Balneavis, 29 July 1926, ma 31/23B, NA Wellington

60. A R Graham to Coates, 20 August 1926, ma 31/23A, NA Wellington

61. L M Grace to Coates, 3 September 1926, ma 31/23A, NA Wellington; Balneavis to L M Grace, 7 September 1926, ma 31/23A, NA Wellington

62. Native Land Amendment and Native Land Claims Adjustment Act 1924, s29(8)

63. *Hoani Te Heuheu v His Majesty the King*, 14 December 1928, unreported, ma 31/23B, p 5, NA Wellington

the Native Land Amendment and Native Land Claims Adjustment Bill 1926 to that effect.

The Native Land Claims Adjustment Bill 1926 declared the beds of Taupo waters to be vested in the Crown, and made provision for the public to be able to use lands abutting the lake and its tributaries. As payment for forfeiting these rights, the bill made provision for Tuwharetoa to receive an annuity of £3000 (to be administered by a trust board), along with 50 free trout fishing licences. A schedule of fees for trout fishing licences was also included in the bill.⁶⁴

In introducing the final reading of the bill, Coates stressed that the reason the Government had sought an agreement with Ngati Tuwharetoa in respect of Lake Taupo was to avoid the danger of the banks of the lake and tributaries being leased to foreigners. He then proceeded to discuss the competing claims of Maori and the Crown to the ownership of lakes in New Zealand. Coates, somewhat curiously, noted that:

These kinds of disputes have only to be prolonged a comparatively short time before Parliament may be faced with expensive Commissions and findings that will involve the country in very heavy expenditure. As time passes we get farther and farther away from the actual facts. The Treaty of Waitangi.

He continued, observing that although Maori base their claims to lakes on the Treaty, ‘the Crown has never admitted it’. The ‘matter had become a grievance as between the Maori and the pakeha, and, of course, every honourable member knows that it is dangerous to allow a dispute of that sort to drag on, particularly as the Native mind is apt to magnify the trouble.’ Having outlined the contents of the Bill, Coates praised the generosity of Tuwharetoa in the matter, and noted that they ‘are anxious to have some satisfactory method of being able to bury the past and deal with the future.’⁶⁵

Albert Samuel, the member for Ohinemuri, drew particular attention to the proposed clause that would entitle Ngati Tuwharetoa to half of all fines collected for breaches of fishing regulations – a clause he considered to embody ‘a principle of a most pernicious character’. He remarked that Maori ‘were positively the worst offenders as far as poaching is concerned . . . taking fish in an illegal and unsportsmanlike manner.’ Upon being pressed on this, Samuel described how Maori caught trout with spears, pitchforks, and hooks baited with fish roe. He also complained about the proposed licensing regime, stating that it was unfair to demand that fishermen, by way of their licence fees, be required to pay compensation to Tuwharetoa. In regard to Coates’s contention that the beds of lakes belonged to the Crown, Samuel incredulously declared that:

Surely the Government must know if this is so – there must be a definite legal opinion as to whether the beds of lakes belong to the Crown or to the Natives. If they belong to the Crown, the Crown should assert its rights and take the beds of the lakes,

64. NZPD, 1926, vol 211, p 286

65. Coates, NZPD, 1926, vol 211, pp 285–286

and if they belong to the Natives, they should purchase them from the Natives and get it over once and for all.

Samuel continued his diatribe, warning that the institution of licensing fees in the manner proposed effectively created fishing preserves:

the Taupo fishing belongs to the people of New Zealand, and if we are going to charge them exorbitant fees we are making the Taupo fishing-ground a preserve for the overseas tourist.⁶⁶

Samuel's paroxysm raised the ire of the member for Western Maori, Sir Maui Pomare. Pomare stated that he could not remain silent 'and allow some of the remarks that have fallen from honourable members to pass unchallenged.' He repudiated the notion that the fishing rights in Taupo belonged to all New Zealanders. He claimed that section 71 of the Constitution Act 1852 gave Maori the sole right to their fishing.⁶⁷ Responding to the argument that it was Pakeha money that put trout in Lake Taupo, Pomare pointed out that Maori had incurred a cost by their koura and kokopu having been eaten by the trout. In relation to allegations about illegal fishing methods being employed by Maori, Pomare (perhaps somewhat pettily) asked who had taught Maori such 'illegal' techniques. Further, members were alerted to the fact that fish caught in such a way were never wasted. He then proceeded to rebut Samuel's contention that the proposed licensing regime in effect was creating fishing preserves. Pomare claimed that as the situation stood presently, Maori, by virtue of their riparian rights, could prevent anglers from fishing in many parts of the lake and its tributaries. He observed that in 'the Old Country' they 'sell their fishing rights over a stretch of a mile for £1000 and more.' It was argued that this 'bill will give the honourable gentleman what he wants, and that is to give the people of this country the right to fish in these rivers.'⁶⁸

After Pomare, Ngata spoke about the bill. In relation to the allegations that Maori frequently engaged in illegal fishing practices, he stated that:

the Maori mind cannot understand the psychology of the pakeha in regard to sport, particularly fishing. He cannot understand why a man should travel thousands of miles, at great risk to his health and a good deal of discomfort, and then for hours and days wade up to his waist in cold streams, and, with a very slender stick and a line the thickness of a thread, and an absurdly small hook, try to catch a big fish – and enjoy it. . . . The Maori has been accustomed from time immemorial to fish for food, but probably he is getting more civilised now, and may yet arrive and gain full honours in civilization by being able to handle a rod and tackle.⁶⁹

66. Samuel, NZPD, 1926, vol 211, pp 287–288

67. This claim is somewhat confusing. Section 71 of the Constitution Act held that the laws of Maori may be maintained in any districts set apart by proclamation. The CFRT Land Legislation Database states that although requests were made by Maori for such a proclamation in the King Country, no such proclamation was ever made.

68. Pomare, NZPD, 1926, vol 211, p 289

69. Ngata, NZPD, 1926, vol 211, p 290

When the Bill was before the Legislative Council, Heaton Rhodes, the councillor for Canterbury, pointed out that:

the Natives were not anxious to part with these rights [to Lake Taupo]. They were perfectly content to let things remain as they are at present. They have the right to alienate the Land adjacent to the lake, and they might sell to wealthy sportsmen from England, or America, or elsewhere tracts of Land which would shut out the residents of this country and other visitors from access to the lake and to the rivers.⁷⁰

In connection with the proposed annuity, Alexander Malcolm stated that he considered:

the Maoris are being very generously treated; but seeing one of the glories of New Zealand is that we have got on so well with our Maori people, perhaps even this generous payment can be accepted.⁷¹

The Native Land Claims Adjustment Act was passed on 11 September 1926. Section 14(1) vested the beds of Lake Taupo and the Waikato River from the lake mouth to Huka falls in the Crown. Concomitantly they were declared to be ‘freed discharged from the Native customary title (if any)’. The vesting of the lake bed in the Crown was contingent upon Maori being guaranteed access to the lake and their fishing rights in respect of indigenous species being reserved to them. However, indigenous fish caught by Maori could not be sold, and there was nothing in the statute to suggest that Maori had exclusive rights to indigenous fish in Lake Taupo. Section 14(3) gave the public an access right to a one chain strip around the lake. The section made provision for the Governor General to be able to exempt portions of the strip from public use. Under section 14(4) the Governor General could declare the beds of the lake’s tributaries to be Crown land. The Governor General was empowered to vest in the holders of special licences access rights over a one chain strip abutting tributaries declared to be Crown land. As with the lake’s one chain strip, the Governor General could ‘exempt any defined portion’ of the one chain strip ‘from use by the holders of special licences’. This section also vested in the Crown the sole right to let parts of such lands for the purpose of camping, and declared that it was illegal for any person owning such lands to alienate them in any way without the consent of the Governor General. However, provision was made for compensation to be paid to land owners who were ‘injuriously affected’ by the exercise of any powers under the section. Pursuant to section 14(8) and (9), the Governor General could issue regulations for the management of the fisheries and waters of the Taupo catchment. Section 14(10) held that the rights of Pakeha landowners were unaffected by the provisions of the Act.

The Native Land Claims Adjustment Act 1926 made provision for the establishment of the Tuwharetoa Maori Trust Board to administer the funds paid by the Government in respect of Tuwharetoa’s rights to the bed of Lake Taupo. Section

70. Rhodes, NZPD, 1926, vol 211, p 378

71. Malcolm, NZPD, 1926, vol 211, p 379

15 specified that the board was to receive a £3000 annuity, plus half of all revenue over the value of £3000 generated from camping fees, licence fees, and fines in relation to breaches of fishing regulations. Section 16 held that the board was to be a corporate body with perpetual succession and a common seal. Its membership was to be determined by the Governor General in Council. The only substantive differences between the Act and the 1926 agreement was that the Act reserved to Maori their customary fishing rights, and rather than the beds of all tributaries being vested in the Crown along with the lake bed, this was to be done on a discretionary basis by Proclamation.

On 8 October 1926, pursuant to section 14 of the Act, a proclamation was published in the *Gazette* declaring the beds of all the major rivers and streams flowing into Lake Taupo to be Crown lands. The rivers affected were the Waihora, Waihaha, Whanganui, Whareroa, Kuratau, Tongariro, Poutu, Waimarino, Tauranga-Taupo, Waipahi, Waiotaka, Hinemaia (Hatepe), and the Waitahanui. Whereas all of some rivers were vested in the Crown, only parts of others were affected. The proclamation also reserved a right of way over a one chain strip along the banks of such waterways, and restricted the use of certain parts of the one chain strip.⁷²

Regulations pertaining to the constitution of the Tuwharetoa Trust Board were published in the *Gazette* on 28 October 1926.⁷³ As per the 1926 Act, these regulations confirmed that the members of the Trust Board were to be appointed by the Governor General. The first board was appointed by Order in Council on 15 November 1926. The inaugural members included many of those who had represented Ngati Tuwharetoa in the negotiations with the Crown in 1926. The board's first meeting was held on 24 November 1926. At this meeting Hoani Te Heuheu was elected chairman, and A P Grace was elected as secretary.⁷⁴

6.10 The Settlement is Contested

It appears that the negotiators of the 1926 agreement ceded the ownership of the beds of all the major tributaries, along with all concomitant rights, to the Crown. However, this issue was to be hotly contested by various factions and individuals over the ensuing years.

Certainly Maori occupying lands through which the Waitahanui River ran objected to giving up their 'mana' over their river. In November 1926, the Postmaster at Taupo informed the Government that visitors to Taupo were complaining that Maori were refusing to allow them to fish on the Waitahanui River unless they paid a fee. Also a notice had been issued stating that some of the land in question was a 'Native reserve'.⁷⁵ Around the same time, Paneta Otene Meihana wrote to the Under-Secretary of Internal Affairs objecting to the proclamations that

72. 8 October 1926, *New Zealand Gazette*, 1926, no 69, pp 2895–2896

73. 18 November 1926, *New Zealand Gazette*, 1926, no 77, p 3247

74. Grace, p 518

declared the beds of certain rivers to be Crown Land, and that had instituted fishing regulations in respect of Taupo waters. Meihana pointed out that the riparian rights of Pakeha owning lands adjacent to Taupo waters were not subject to the Government's provisions, and asked why Maori freehold land (as the Waitahanui lands were) could not be exempted.⁷⁶ That same week the *Napier Telegraph* ran a story on the conflict over fishing rights in the Waitahanui. It stated that the owners of the river's riparian lands claimed that they were not aware that the river had been opened up to the holders of special licences, and that all notices concerning the fishery had only been published in English.⁷⁷

These problems with fishing rights in the Waitahanui River precipitated a meeting on 23 November 1926 between Balneavis, Maui Pomare, and the Waitahanui Maori concerned. The *Dominion* reported that at this meeting, many of the Maori present disputed that the settlement reached in respect of Taupo waters included the lake's tributaries. Nothing appears to have been settled at the meeting.⁷⁸ Two days later Balneavis met again with the Maori concerned. Balneavis reported to the Under-Secretary of Internal Affairs that at this meeting Maori with interests in the river had told him they wanted the Waitahanui excluded from the operation of the 1926 Act. Further, they had asked Balneavis that if their title to the riparian lands remained unaffected by the agreement reached between Ngati Tuwharetoa and the Crown, as they were assured it did, why could they not exclude trespassers? The Waitahanui owners explained that anglers had provided them with their only source of revenue over the past nine years, and that this opportunity was now being denied them. Further, they claimed that they were not party to negotiating the agreement, and that the Tuwharetoa representatives at the Wellington meeting had not been appointed by them. Balneavis's report stated that he had informed them that he was satisfied the Tuwharetoa representatives had been properly appointed, and that if they molested anglers they would be liable for prosecution. He was adamant that the agreement could not be altered and that their only option was to petition Parliament asking for the law to be changed. In his report of the meeting, Balneavis stated that he was:

convinced that the persons causing the trouble are under the influence of some agitator and these Natives being the followers of the Ratana movement are easily influenced into taking the course they have adopted.⁷⁹

75. Taupo Postmaster to Under-Secretary Native Affairs, 2 November 1926, aamk 869/706A, NA Wellington; Under-Secretary Internal Affairs to Under-Secretary Native Affairs, 5 November 1926, aamk 869/706A, NA Wellington; Taupo Postmaster to Under-Secretary Internal Affairs, nd, aamk 869/706A, NA Wellington

76. Paneta Otene Meihana to Under-Secretary Internal Affairs, 4 November 1926, aamk 869/706A, NA Wellington

77. 'Pay or get off: Troubles Between Anglers and Taupo Natives: Matter goes to Ministerial Office', *Napier Telegraph*, 6 November 1926, ma 31/23A, NA Wellington

78. 'Taupo Fishing: Waitahanui Rights Discussed', *Dominion*, 25 November 1926, aamk 869/706A, NA Wellington

79. Balneavis to Under-Secretary Internal Affairs, 2 December 1926, aamk 869/706B, NA Wellington

It is something of an anomaly that Balneavis appears to have made no mention of the provision in the 1926 legislation for compensation to be paid to the owners of lands abutting such rivers.

With regard to the question of whether the Waitahanui owners were represented at the negotiations, it appears that at least one of their number, Paora Rokino, was present at the meetings in Wellington.⁸⁰

Subsequent to Balneavis's meetings with the Waitahanui owners, a delegation from the newly formed Tuwharetoa Trust Board met with the aggrieved owners. The Trust Board reported to the Department of Native Affairs that at the meeting the Waitahanui owners had agreed not to molest anglers on the river. However, they refused to withdraw their objection to the settlement, claiming that Balneavis had intimated that were they to petition the Government, they would in all likelihood be successful. This claim was later virulently denied by Balneavis.⁸¹ But despite the Waitahanui owners' promises, Grace reported to Balneavis on 13 December 1926 that they were again demanding fees from anglers to fish in the Waitahanui.⁸²

6.10.1 The Tuwharetoa Trust Board contests the agreement

The terms and extent of the agreement between Ngati Tuwharetoa and the Crown continued to be tested throughout 1927 – primarily by the newly formed Trust Board. In January of that year, Grace, the board's secretary, alerted the Government's attention to the fact that people were taking gravel and sand from the beds of Taupo waters. Grace queried whether such persons should be paying a royalty, half of which by right should accrue to the trust board. The Under-Secretary of Internal Affairs replied to Grace that there was no provision in the legislation under which a royalty could be charged.⁸³ However, a few days later, the Under-Secretary of Native Affairs expressed a different position in a letter to the Department of Internal Affairs. The Under-Secretary observed that the Crown had no authority to control or to claim ownership of aggregate except upon Crown land. It was pointed out, that although a right of way existed along the lake margin, this land remained vested in the landowners. But aggregate in the lakes and streams was most certainly Crown property, and the Crown could regulate in respect of it. He was also of the opinion that if any royalties were derived from such aggregates, it would be divisible with the Tuwharetoa Trust Board.⁸⁴

In August 1927, the trust board again wrote to the Under-Secretary of Native Affairs in connection with the terms of the agreement. The letter asked whether the

80. Balneavis to Grace, 6 December 1926, aamk 869/706B NA, Wellington

81. 'Report of a subcommittee of the Tuwharetoa Trust Board of a meeting held with the Waitahanui people, 1 December 1926', 2 December 1926, aamk 869/706B, NA Wellington; Balneavis to PA Grace, 6 December 1926, AAMK 869/706B, NA Wellington

82. Grace to Balneavis, 13 December 1926, ma 31/23B, NA Wellington

83. Grace to Under-Secretary Internal Affairs, 24 January 1927, aamk 869/706B, NA Wellington; Under-Secretary Internal Affairs to Grace, 31 January 1927, aamk 869/706B, NA Wellington

84. Under-Secretary Native Affairs to Under-Secretary Internal Affairs, 2 February 1927, aamk 869/706B, NA Wellington

Government would provide fishing licences at a nominal rate to members of Ngati Tuwharetoa who did not receive one of the 50 free licences under the agreement. A fee of 10/- was suggested. The board's earlier position, that the Crown should be receiving a royalty on any aggregate taken from the lake or its tributaries and that half of this should go to Ngati Tuwharetoa, was also restated. With regard to the proposal that licences be made available to Ngati Tuwharetoa at a nominal rate, the Under-Secretary of Internal Affairs wrote to his counterpart in the Department of Native Affairs. The Under-Secretary of Internal Affairs considered that this would be detrimental to Ngati Tuwharetoa's interest given that they received half of the revenue generated from licences over £3000.⁸⁵ Nothing further appears to have come of the Trust Board's proposal.

The prolific Grace wrote to Coates again in August 1927 proposing that the terms of the 1926 legislation be varied. His concern was that the settlement contained no provision for the trust board to receive any share of revenue derived by the Crown from camping fees or from royalties received in respect of aggregate extracted from the beds of Taupo waters. The Under-Secretary of Internal Affairs subsequently wrote to the Department of Native Affairs concerning Grace's proposal. He considered that 'there would appear to be sufficient power in the existing legislation to deal with the matter', and was doubtful 'as to the desirability of making any changes'. He concluded that it was 'unnecessary at the present stage to deal any further with the matter.'⁸⁶ Section 15(2) of the 1926 legislation stated that camping fees were to be included in the revenue payable to the Tuwharetoa Trust Board. However, the Act make no provision for them to receive a share of royalties in respect of aggregate. And clearly the Department of Internal Affairs did not favour any changes being made to that state of affairs.

Another aspect of the 1926 legislation that was of concern to the Trust Board were the provisions that existed for certain areas to be exempted from the public right of way around the banks of the lake and rivers that had been declared to be Crown lands.⁸⁷ The Rotorua Conservator of Fish and Game had recommended to the Government which lands should be made subject to the one chain strip right of way. Upon receipt of this recommendation, the Under-Secretary of Native Affairs had written to the Conservator noting that it was assumed that none of the riparian lands recommended included any Maori dwellings or urupa.⁸⁸ No reply from the Conservator was on the file. However, it would seem that some of the recommended lands did in fact include urupa.

85. Grace to Under-Secretary Native Affairs, 3 August 1927, aamk 869/706B, NA Wellington; Under-Secretary Internal Affairs to Under-Secretary Native Affairs, 15 August 1926, aamk 869/706B, NA Wellington

86. Grace to Coates, 23 August 1926, aamk 869/706B, NA Wellington; Under-Secretary Internal Affairs to Under-Secretary Native Affairs, 12 September 1927, aamk 869/706B, NA Wellington

87. Native Land Amendment and Native Land Claims Adjustment Act 1926, ss3, 4(a); 8 October 1926, *New Zealand Gazette*, 1926, no 69, pp 2895–2899

88. Under-Secretary Native Affairs to Conservator of Fish and Game, Rotorua, 9 September 1926, ma 31/23A, NA Wellington

In August 1926, Grace wrote to the Under-Secretary of Native Affairs requesting that certain lands adjoining the lake and its tributaries be exempted from the right of way provisions under the 1926 Act. The lands for which exemptions were requested included burial caves and other urupa, pa frontages, and cultivations. Early the following month, another list of places the trust board wished not to be subject to the rights of access was submitted to the Department of Native Affairs.⁸⁹ Whether these exemptions were ever granted remains unclear to the present author.

6.10.2 The trust board's memorial

As well as seeking to protect the rights of Maori owning land abutting Taupo waters, the trust board continued to lobby the Government in relation to such persons' rights to rivers and streams that had been declared Crown land. By 1927, nothing seems to have happened in relation to compensation being paid to the owners of lands abutting rivers that had been vested in the Crown. On 29 August 1927, solicitors for the Tuwharetoa Trust Board filed with the Government a 'Memorial of the Native Owners of the several rivers flowing into Lake Taupo the beds of which have been proclaimed to be Crown Lands'.⁹⁰

The memorial drew attention to the fact that the 1926 Act only contained provisions for compensating river owners for the loss of revenue they had previously derived from charging tourists to camp on their lands. Because the annuity paid to the trust board was for the general purposes of Ngati Tuwharetoa, these funds could not be used to compensate river owners for their rights in relation to private lands abutting tributaries of Lake Taupo. It was claimed that the negotiations for 'Taupo waters' pursuant to the 1924 legislation deprived individual river owners of the right to sell their rights – rights that were of some great value as a consequence of the world class fishing in the district's rivers. It was submitted that 'this was such an invasion of private rights as to be repugnant to all legal and equitable principles'. Further, it was held that 'the river owners are entitled at law and in equity to separate compensation for their private rights of which they have been deprived.' The memorial claimed that at the time of the negotiations in 1926, Tuwharetoa had no legal advice, and that they were not aware of the full extent of their rights. However, they were now seized of the doctrine of *ad medium filum aquae* and the ramifications of this in terms of the ownership of rivers. The Minister was informed that three separate committees had been formed to represent the river owners around the western, southern, and eastern parts of the lake, and that the Waitahanui owners were pursuing a separate claim. The memorial asked that the committees be recognised, and that the 1926 legislation be amended to allow for full compensation to be paid as if under the Public Works Act.⁹¹

89. Grace to Under-Secretary Native Affairs, 24 August 1927, aamk 869/706B, NA Wellington; Grace to Under-Secretary Native Affairs, 6 September 1927, aamk 869/706B, NA Wellington

90. 'Memorial of the Native owners of the several rivers flowing into Lake Taupo the beds of which had been proclaimed to be Crown Lands', 12 August 1927, enclosed in T W Lewis to Minister of Native Affairs, 29 August 1927, aamk 869/706B, NA Wellington

In briefing the Minister of Native Affairs on the matters raised in the memorial, the Under-Secretary of Native Affairs observed that much of the value of the rivers in question was as a consequence of the owners' fishing rights in them. But it was pointed out that under section 89 of the Fisheries Act 1908, it was illegal to sell or lease such rights. Further, the compensation procedure provided for under the 1926 Act would in fact compensate riparian owners for the loss of both the right to fish from their land without a licence, and the use of the one chain strip. In response to the challenges contained within the memorial concerning the impropriety of the way 'private rights' were being dealt with, it was noted that 'Parliament has authorised the procedure and private rights must give way to the public interest.' The Under-Secretary expressed the view that it would be somewhat improper for the Government to recognise the committees set up to represent the various owners given that the committees appear not to have been democratically elected.⁹² This objection is ironic when it is considered how the Government passed legislation so that the Crown appointed the members of the trust board, rather than Ngati Tuwharetoa electing them.

On 19 October 1927, the trust board's solicitors wrote to Coates concerning the Taupo waters settlement. The letter traversed the process by which the 1926 agreement had been reached. Aspersions were cast upon the claim that Tuwharetoa were adequately represented at the various meetings with the Crown at which the agreement in respect of the lake was reached. Also, the solicitors stated that Ngati Tuwharetoa thought that the negotiations were only for the fishing rights in the rivers, not their beds as it had turned out. The letter claimed that the principles enshrined in the 1924 legislation upon which the negotiations proceeded, were wrong. The Act provided for the acquisition by a single procedure of both tribal and private properties. It was held that while it was reasonable to treat the lake as a tribal property (as title had never been determined) 'it was quite improper that such a procedure should be adopted with regard to private property.' It was further contended that the tributaries of Lake Taupo were at least as valuable as the lake itself. The letter drew attention to the inequity that existed in that Pakeha-owned lands were not subject to the same provisions. In light of these concerns, it was proposed that the Native Land Claims Adjustment Act 1926 be amended to enable full compensation to be claimed and paid in respect of rivers. With a view to such, a proposed amendment to the 1926 Act was forwarded to Coates.⁹³

In relation to this letter, the Under-Secretary of Native Affairs, Judge Jones, advised the Minister of Native Affairs that he considered the drafters of the 1924 legislation had knowingly and advisedly included river beds within the ambit of 'Taupo waters'. Jones was clearly of the view that no 'riparian rights other than those of private fishing has been prejudicially affected' for which 'the Natives

91. 'Memorial of the Native Owners of the Several Rivers flowing into Lake Taupo', 12 August 1927, aamk 869/706B, NA Wellington

92. Under-Secretary Native Affairs to Minister of Native Affairs, 15 September 1927, aamk 869/706B, NA Wellington

93. Earl, Kent, Massey, and Northcroft to Coates, 19 October 1927, aamk 869/706B, NA Wellington

would be entitled for compensation.⁹⁴ Coates's reply to the trust board's solicitors reiterated what Jones had advised him. It concluded that the Government 'can not see its way to introduce legislation in the direction indicated.'⁹⁵

Coates's reply precipitated another letter from the trust board's solicitors. They contended that the original intention of the compensation clause in the 1926 legislation was to compensate the owners of certain rivers for the income that they were deriving from people wanting to fish in those waterways. However, the clause did not in fact provide for such compensation. Instead, compensation was payable only for the taking of the right of way along the river banks, and not for the fishing rights in the river. A further proposed amendment to the Native Land Claims Adjustment Act 1926 was enclosed.⁹⁶ Coates's response to this was short and to the point. He stated that the proposed amendment was 'quite unacceptable to the Government . . . being too far reaching in its effect.' He restated that the Government had no intention of promoting new legislation in connection with the matter.⁹⁷

6.11 The Assessment of River Owners' Compensation

The Native Land Claims Adjustment Act 1926 provided that if any tributaries to Lake Taupo were declared to be Crown land, or any other riparian lands made subject to a right of way, any owners deleteriously affected could claim compensation. Claims had to be filed within three months of any such declaration. Within this period subsequent to the October 1926 proclamation, 48 such claims were filed.⁹⁸

In October 1928, Hoani Te Heuheu filed proceedings in the Supreme Court seeking an interpretation of certain provisions of section 14 of the Native Land Claims Adjustment Act 1926. In particular, clarification was sought as to the extent of compensation that was payable by the Crown under section 14(4) in respect of tributaries of Lake Taupo that had been vested in the Crown. In considering the July 1926 agreement which the 1926 legislation purported to give effect to, Justices Blair, McGregor, and Ostler stated that there was:

no difficulty in ascertaining the meaning and effect of the agreement. The Natives agreed to give up not only all their rights of ownership in the beds of Lake Taupo and of all the rivers and streams mentioned, but practically their rights of ownership over a strip of land, one chain in width around the margin of the Lake and along both the sides of each of such rivers and streams.

94. Under-Secretary Native Affairs to Minister of Native Affairs, 27 October 1927, aamk 869/706B, NA Wellington

95. Coates to Earl, Kent, Massey, and Northcroft, 10 November 1927, aamk 869/706B, NA Wellington

96. Earl, Kent, Massey, and Northcroft to Coates, 16 November 1927, aamk 869/706B, NA Wellington

97. Coates to Earl, Kent, Massey, and Northcroft, 18 November 1927, aamk 869/706B, NA Wellington

98. Solicitor General to Secretary of Internal Affairs, 30 August 1948, aamk 869/706C, NA Wellington

The decision noted that pursuant to the Native Land Claims Adjustment Act 1924, under the authority of which the agreement was made, the Minister had no power to award any compensation other than a proportion of licence fees. Clause 13 of the agreement had made provision for the owners of lands adjoining rivers who had derived an income from letting their land for camping and fishing to receive compensation. This, the decision noted, went beyond the ambit of what was permitted under the 1924 Act, and was therefore without statutory authority. This had given rise to the need to enshrine the agreement in legislation, leading to section 14 of the Native Land Claims Adjustment Act 1926.

However, in terms of giving effect to the agreement and allowing the owners of such lands to claim compensation, Blair et al considered the 1926 Act to be deficient. It was surmised that under that Act, the annuity and the 50 free fishing licences was full compensation for the deprivation of rights resulting from proclamations taking the beds of rivers and streams, and for the reservation of a right of way over the margins of such waters. Therefore no further ‘compensation can be claimed by any Native for the deprivation of that right.’ This, it was observed, was unjust to those Maori who had been granted a further right of compensation in the 1926 agreement. The decision stated that it was not clear whether this failure to give full effect to the agreement was deliberate or inadvertent. Remedying this problem was seen as being in the Government’s ‘own hands’, therefore the Court considered that it should decline to exercise the discretionary jurisdiction vested in it. Consequently no declaration as to the meaning of section 14 of the Native Land Claims Adjustment Act 1926 was made.⁹⁹

By the mid-1940s, it appears that no progress had been made towards settling the river owners’ claims for compensation. In 1946, despite Coates’s earlier insistence that the legislation governing the river owners’ right to compensation would not be amended, amending legislation was passed.¹⁰⁰ Section 4(c) of the 1926 Act had declared those eligible for compensation to be any person with rights of camping or fishing in lands made subject to a right of way, who were ‘injuriously affected’ or who had ‘suffered damage’ by the declaration. Under the 1946 legislation the criteria for compensation was changed to any person who had ‘suffered any loss’ in respect of having been deprived of the right to let their land for fishing or camping purposes. A further six months were granted from the time of the passing of the 1946 Act for claims to be lodged, and the successors to affected lands were afforded the same rights to compensation as their predecessors.¹⁰¹

In April 1948, S A Wiren, who at that time was acting as the trust board’s solicitor, wrote to the Prime Minister in connection with the issue of compensation. The letter stated that Tuwharetoa were anxious that the whole matter be dealt with in a single hearing and without extensive legal argument. To this end, Wiren proposed that the legislation governing the process be amended again. It was suggested that the compensation hearings should be governed by the Native Land

99. *Hoani Te Heuheu v His Majesty the King*, 14 December 1928, unreported, ma 31/23B, NA Wellington

100. Maori Purposes Act 1946, s8

101. Maori Purposes Act 1946, s 8(1)–(5)

Act 1931. This would have meant that the rules of evidence were not applicable. Wren's concern appears to have been that in the assessment of compensation, it would be necessary to admit secondary and hearsay evidence given that many of the original owners who had lodged claims in 1926 had subsequently died. The Prime Minister instructed Shepherd to draft a further amendment to the 1926 legislation.¹⁰² However, the Solicitor General considered that this was unnecessary. He pointed out that the 1926 legislation stated that compensation hearings were to be held pursuant to the Public Works Act 1908. This provision gave the commissioners appointed to determine compensation the power to receive evidence as they saw fit.¹⁰³

The compensation claims were finally heard between the 1st and the 12th of November 1948. Sir Harold Johnson was appointed to hear and determine the claims, assisted by Judge Beechy of the Maori Land Court. Johnson received evidence from both claimants and the Crown. Although a total of £71,900 was claimed, only £45,600 was awarded. The annual report of the Department of Internal Affairs for 1949 stated that the 'award represents the solution of a long standing problem in connection with the Taupo Trout-fishing district.'¹⁰⁴ No records of the hearings were uncovered by the present author. The claimants were awarded costs of £2400 – approximately half of what their solicitors had claimed on their behalf.¹⁰⁵

Why there was such a long delay between the agreement of Ngati Tuwharetoa and the Crown in respect of the Taupo waters, and the finalising of compensation for river owners, is not clear. A report of the eventual outcome of the compensation hearing in the *Evening Post* stated that it 'seemed that both the claimants and the Crown had to share the responsibility for the delay that had taken place in settling the claims.'¹⁰⁶ Obviously the matter would have been a low priority for the Government during the 1930s depression and World War II.

6.12 Later Events: Deforestation and Fishing Rights

The 1950s and 1960s saw various proposals and developments in relation to Lake Taupo. In regard to these, two things stand out. The Government appears to have adopted the position that in connection with any proposed development that affected the lake, Ngati Tuwharetoa had to be consulted. But although the rights of Tuwharetoa in connection with the lake were acknowledged, increasingly the Government asserted that any such interest could not be put above the national interest. This national interest appears to have been conceived of primarily in terms

102. Wren to Prime Minister, 13 April 1948, Addendum to letter by Prime Minister, aamk 869/706c, NA Wellington

103. Solicitor General to Under-Secretary Internal Affairs, 30 August 1948, aamk 869/706c NA, Wellington

104. 'Annual Report of the Department of Internal Affairs for the Year ended 31 March 1949', AJHR, 1949, h-22, p 26; 'Compensation for Maori Lands Used by Fishermen', *Evening Post*, 22 December 1948

105. Spratt to Solicitor General, 2 March 1949, aamk 869/706c, NA Wellington

106. 'Compensation for Maori lands used by Fishermen', *Evening Post*, 22 December 1948

of the trout fishery and water resources – particularly the hydroelectric potential of the lake and its tributaries.¹⁰⁷

A particular concern of some Government departments seems to have been the effect that the deforestation of lands abutting tributaries of Lake Taupo was having on water quality and the trout fishery. In 1960, the Department of Internal Affairs alerted the attention of the Secretary of Maori Affairs to the problems being caused by the deforestation of Maori-owned land abutting rivers in the Taupo catchment. The Secretary of Internal Affairs noted that the Tuwharetoa Trust Board derived a significant revenue from the trout fishery by way of the 1926 agreement with the Crown. Therefore it was in Tuwharetoa's interest that water quality be maintained. Consequently the Secretary advocated that land in Maori control not be deforested where it adjoined rivers flowing into Lake Taupo.¹⁰⁸

As well as deforestation, the nature and extent of the right vested in Maori to take indigenous fish from Lake Taupo emerged as an issue in the post-settlement era. An important aspect of settlement between the Crown and Ngati Tuwharetoa was that the rights of Maori to indigenous fish in the lake were guaranteed. From the early 1960s this provision became the focus of increasing attention. The 1926 legislation included provisions for regulations to be issued governing fishing in Lake Taupo. Although these regulations were primarily concerned with the trout fishery, they did also sometimes modify the rights of Ngati Tuwharetoa to indigenous fish which had been guaranteed by the 1926 legislation. Paragraph (d) of section 14(9) of the 1926 Act stated that the Governor General may 'make special regulations as to any matter or thing relating to or that is in any manner deemed necessary for the due administration of this section'. Presumably this was the basis upon which the right of Maori to take indigenous fish from Lake Taupo was modified by regulation. The first set of fishing regulations had been proclaimed shortly after the passage of the 1926 Act. However, these contained no reference to indigenous fish or the rights of Maori in respect of such.¹⁰⁹ In 1951 a new set of fishing regulations for Lake Taupo were issued. These regulations vested the right to take whitebait, koura or 'other fish indigenous to New Zealand' exclusively in Maori.¹¹⁰

In November 1961, the Secretary of Internal Affairs wrote to his counterpart in the Department of Maori Affairs concerning the exclusive right of Maori to take indigenous fish from Lake Taupo. The letter stated that the Conservator of Wildlife in Rotorua had asked if this right could be amended. The Conservator had stated that it was hard to give reasons to Europeans why they could not take indigenous fish when Maori were free to do so. With regard to smelt, the Secretary of Internal Affairs observed that modern fishing methods meant that huge amounts of that

107. See for example Secretary of Internal Affairs to Under-Secretary of Maori Affairs, 18 July 1955, aamk 869/706c, NA Wellington; Grace to Under-Secretary of Maori Affairs, 31 October 1951, aamk 869/706c, NA Wellington; Secretary of Internal Affairs to Minister of Internal Affairs, 3 March 1955, aamk 869/706c, NA Wellington

108. Secretary of Internal Affairs to Secretary of Maori Affairs, 2 September 1960, aamk 869/706c, NA Wellington

109. 7 October 1926, *New Zealand Gazette*, no 69, pp 2896–2899

110. 27 September 1951, *New Zealand Gazette*, no 79, p 1447

species could be caught, and that this could have potentially catastrophic effects upon the trout fishery. Also it was suspected that smelt were being sold. This was illegal under the 1926 legislation. The overfishing of smelt, it was pointed out, should be of serious concern to Maori given that they derive considerable income from the trout fishery by way of licence fees. Thus it was proposed that the ‘concession to Maori’ be limited, although ideally ‘it would be removed all together’ to prevent Maori taking excessive numbers of smelt and koura. Interestingly, a marginal note beside the comment that it was hard to justify why Maori were permitted to take indigenous fish, stated ‘Treaty of Waitangi’. Presumably this was written by the Secretary of Maori Affairs.¹¹¹

The following year, in relation to the possibility of changing the 1926 Act as it affected fishing rights, the Minister of Internal Affairs wrote to the Minister of Maori Affairs. He observed that:

For many years now it has been the practice in the Rotorua and Taupo areas for Maoris to take large quantities of smelt and koura. Initially when this concession was granted the Maori was undoubtedly economically in a lower position than the European, but today when the standard of living of both are much the same there is little justification on the basis of food supply for the Maoris to retain this privilege.¹¹²

On this basis, the Minister of Internal Affairs recommended that the provisions entitling Ngati Tuwharetoa to 50 free licences each year and to take indigenous fish should be revoked. These rights, he considered, should instead be capitalised and Maori paid a lump sum. It was suggested that the value of the rights was £300,000. In arriving at this figure, the value of the annuity paid to the Tuwharetoa Trust Board since its inception was detailed. According to the Minister’s figures, 1938 was the first year that revenue from the sale of licences had exceeded £3000. In accordance with the settlement, half of this excess had been paid to the trust board in addition to the annuity of £3000. Since then, the value of the payment to the trust board had increased each year. In 1960 the board had received £9068. The estimate for the 1962 financial year was £12,000. If capitalised, it was suggested that this money, along with a similar lump sum for Te Arawa’s rights in the Rotorua lakes, should go to the Maori Education Foundation. The stated rationale for this was that all Maori should benefit from the compensation rather than just ‘two small sections’.¹¹³ Although the opinion of the Tuwharetoa Trust Board on the Minister of Internal Affairs’ proposal appears to have been sought, a response is not on the file.¹¹⁴

The proposal to revoke the exclusive right of Maori to take indigenous fish from Lake Taupo was not carried out. However, the right continued to be a source of controversy. In the early 1970s, pursuant to regulation 48 of the Taupo Trout

111. Secretary of Internal Affairs to Secretary of Maori Affairs, 7 November 1961, aamk 869/706c, NA Wellington

112. Minister of Internal Affairs to Minister of Maori Affairs, 14 May 1962, aamk 869/706c, NA Wellington

113. Ibid

114. District Officer, Department of Maori Affairs, Whanganui to Secretary of Maori Affairs, 7 June 1962, aamk 869/706c, NA Wellington

Fishing Regulations, fisheries officers placed signs around the shores of Lake Taupo stating that taking smelt was prohibited. Subsequently in 1975, Ngawaka Wall was arrested and charged with illegally taking smelt. The case was heard in the Taupo District Court by Judge Trapski on 3 June 1975. Counsel for Wall pointed out that although the taking of smelt was prohibited by the regulations, these regulations were made subject to section 14(2) of the 1926 legislation. This clause reserved to Maori the right to take fish from Lake Taupo that were indigenous to New Zealand. Wall's counsel therefore argued that Maori had a right to take any fish indigenous to New Zealand from Lake Taupo. And although the intention of the 1926 Act may have been to vest in Maori an exclusive right only in relation to fish indigenous to the lake, the Act was worded so as to confer rights to any fish indigenous to New Zealand that was found in the lake. Judge Trapski accepted this argument and had no hesitation in dismissing the charges against Wall.¹¹⁵

The next year, the decision was appealed by the Department of Internal Affairs. The appeal was heard on 6 May 1976 in the Supreme Court by Justice Mahon. The basis of the department's case was that the term 'indigenous' has equal application to a region or a country. Therefore the right conferred on Maori to take 'indigenous fish' from Lake Taupo applied only to fish indigenous to the lake. Justice Mahon, however, rejected this argument and upheld the earlier decision. He observed that the rights of Maori to take indigenous fish 'are secured by an Act of Parliament, and if such rights are to be varied or extinguished, that is a matter for determination by Parliament alone.'¹¹⁶

And Parliament did just that. The Maori Purposes Act 1981 amended section 14 of the Native Land Claims Adjustment Act 1926. Whereas previously 'Natives' (later changed to 'Maori') were guaranteed the right to take indigenous fish, under the amendment the right was vested solely in 'Tuwharetoa Maori'. Also the right was limited to fish 'indigenous to the lake'.¹¹⁷ Fishing regulations for Lake Taupo issued in 1983 held that any person was free to take whitebait, lamprey, or eel from Lake Taupo, but only Tuwharetoa could take koura or other indigenous fish.¹¹⁸

The legality of the Lake Taupo regulations was again tested in 1984. In that year a group of Maori were charged with catching trout with spears. In defence their lawyers challenged the validity of the 1983 regulations. It was claimed that whereas the law required such regulations be made pursuant to both the Native Land Claims Adjustment Act 1926 and the Fisheries Act 1908, the 1983 regulations were made pursuant only to the 1926 legislation. This defence was upheld by Judge Monaghan who ruled that the 1983 regulations were 'ultra vires'.¹¹⁹ In light of this decision, a new set of regulations were issued, this time pursuant to both statutes.¹²⁰

115. *Department of Internal Affairs v Ngawaka Wall*, unreported, 3 June 1975, Wai 18/0, Waitangi Tribunal;

Leslie William Angus v Ngawaka Wall, unreported, 6 May 1966, Wai 18/0, Waitangi Tribunal

116. *Leslie William Angus v Ngawaka Wall*, unreported, 6 May 1966, Wai 18/0, Waitangi Tribunal

117. Maori Purposes Act 1981, s 10

118. 'Research on claim to Waitangi Tribunal re Taupo Fishing Rights', 29 January 1985, pp5-6, Wai 18/0, Waitangi Tribunal, pp 5-6

119. *Department of Internal Affairs v Mervyn Tahu and others*, 13 November 1984, unreported, Wai 18/0, Waitangi Tribunal

In late 1984, H T Karaitiana lodged a claim with the Waitangi Tribunal concerning fishing rights in Lake Taupo (Wai 18). The claimant sought ‘the intervention’ of the Waitangi Tribunal on ‘proposed law changes in regards to the taking of . . . inanga by the Tuwharetoa Maoris from Lake Taupo.’¹²¹ The Tribunal undertook some preliminary research on the issue.¹²² The claimant was furnished with the report of these findings in the hope that it may help him advise the Tribunal more specifically as to his concerns. The Tribunal considered that three important issues arose from this preliminary research. First, whether the Tuwharetoa people should have an exclusive right to lamprey, whitebait, and eel. Secondly, whether Tuwharetoa rights should pertain solely to fish indigenous to Lake Taupo, or whether they should be to all fish indigenous to New Zealand now found in the lake. And thirdly, whether Tuwharetoa ‘should have other particular rights where non-indigenous fish have depleted the indigenous resource.’ However, because Mr Karaitiana did not respond to the Tribunal’s request for further detail as to what exactly was being claimed, the Chairperson of the Tribunal advised the claimant that the claim was considered to have lapsed. The matter, it was noted, would only be referred to a full tribunal should a fresh claim be filed.¹²³

6.13 The Revesting of the Lake in Ngati Tuwharetoa

Sixty-six years after title to Lake Taupo was vested in the Crown, it was returned to Ngati Tuwharetoa. A deed transferring the ownership of the lake bed was signed on 28 August 1992 by Sir Hepi Te Heuheu and the other members of the Tuwharetoa Maori Trust Board, and the Minister of Conservation, Denis Marshall. The agreement was ratified by the various constituent hapu of Tuwharetoa on 4 February 1993. The deed stated that Ngati Tuwharetoa had not intended the beds of Taupo waters to be vested in the Crown as a part of the 1926 agreement, and that the trust board had sought the return of such title to the iwi. It was noted that whereas the July 1926 agreement had stated that ‘the beds of all Taupo waters shall be vested in the King as a public reserve’, the 1926 Act made no such provision. In accordance with the spirit and intention of the Treaty of Waitangi and the 1926 Act, the beds of Taupo waters would be vested in Ngati Tuwharetoa ‘to preserve and enhance its tribal mana and rangatiratanga’. The deed also stated that in keeping with the spirit of the Treaty, the public’s access rights to the Taupo waters would remain unaffected, and that the beds of such waters would be managed in partnership between Ngati Tuwharetoa and the Crown.¹²⁴

120. ‘Research on Claim to Waitangi Tribunal re Taupo Fishing Rights’, 29 January 1985, p 6, Wai 18/0, Waitangi Tribunal

121. Waitangi Tribunal, *Report of the Waitangi Tribunal in the Lake Taupo Fishing Rights Claim*, Wellington, Waitangi Tribunal: Department of Justice, 1986

122. ‘Research on Claim to Waitangi Tribunal re Taupo Fishing Rights’, 29 January 1985, Wai 18/0, Waitangi Tribunal

123. Waitangi Tribunal, *Lake Taupo Fishing Rights Claim*, Waitangi Tribunal, pp 2–3

The *Christchurch Press* reported that in re-vesting the lake in Tuwharetoa, ‘the Crown opted to “undo a 66-year-old wrong”’. The article stated that the agreement reached between Ngati Tuwharetoa and the Crown in 1926 made no mention of title to the lake being transferred to the Crown, and that this provision was ‘conveniently “slipped in”’ when the agreement was given effect to by the Native Land Claims Adjustment Act 1926. The secretary of the Tuwharetoa Maori Trust Board, Stephen Asher was quoted as saying that the ‘Government simply helped itself to our title’. Since that time, the article stated, the tribe had tried in vain to persuade ‘the Government to give back land it had taken for itself in 1926’. In terms of the compensation paid to Ngati Tuwharetoa in respect of the lake, the article claimed that this was just for access rights to the lake, and that the tribe had never ‘received a brass nickel for the Government illegally taking the Tuwharetoa’s original title’.¹²⁵

The article also gave details of monies the Tuwharetoa Maori Trust Board had received in respect of the 1926 lake settlement. Since the 1950s, the board has received in excess of \$5 million – \$3.9 million of that from around 1980. Asher was quoted as saying that Tuwharetoa ‘are perceived as being a very strong, united tribe, and [that] one of the reasons is because of the income we get from the Crown’. Although the transfer of title back to the iwi appears to have generated concern amongst certain persons and groups interested in the lake’s trout fisheries, the trust board was at pains to stress that public access to the lake would remain unchanged. Asher stated that public access under the terms of the 1926 Act would never be altered since the trust board derived such a significant income from that arrangement: ‘That would be killing the goose that laid the golden egg for us.’¹²⁶

The contention set out in the article that the agreement reached between Ngati Tuwharetoa and the Crown in 1926 made no mention of the lake being transferred to the Crown, is patently wrong. As described above, the agreement signed in Wellington on 26 July 1926 by Hoani Te Heuheu on behalf of Ngati Tuwharetoa stated: ‘The beds of all Taupo waters shall be vested in the King as a Public reserve.’ Although the reserve was never made, this clause clearly shows that the beds of the lake and its tributaries were to pass to the Crown.

6.14 Conclusion

Unlike many other lakes in New Zealand, the Crown’s desire to acquire ownership of Lake Taupo had nothing to do with bringing swamp land into agricultural production, or mitigating the affects of flooding on adjacent lands. Instead, as in the case of the Rotorua lakes, the impetus came from a desire on the part of the Crown

124. Deed between the Crown and Ngati Tuwharetoa regarding Lake Taupo waters, 28 August 1992, TP 4700, Te Puni Kokiri Head Office, Wellington

125. ‘Maori ownership of Lake Taupo incenses anglers: Be our guests, tribe replies’, *Christchurch Press*, 26 November 1992, p 19

126. Ibid

to control tourism and avoid the establishment of private rights in game. These objectives converged with the Crown's evolving position in the early twentieth century that it, not Maori, should be the owner of lakes in New Zealand. But as well as what motivated the Crown, the contest for the control of Lake Taupo differs in many other respects from other lakes in New Zealand: Ngati Tuwharetoa's ownership of Taupo was never overtly denied by the Crown; no major litigation occurred in respect of the lake; in payment for their title to it they received considerable ongoing benefits; and recently, they had their title to it restored.

There can be no doubting the importance of Taupo to Tuwharetoa. As a consequence of the relative infertility of the lands abutting Lake Taupo, the lake's fisheries were a very important part of the Tuwharetoa pre-contact economy. Through the activities of the Native Land Court in the late nineteenth century, a significant amount of evidence has been adduced in connection with Tuwharetoa's customary fishing rights. As with rights to land, these appear to be predicated primarily upon ancestral take and the continued exercise of such rights. Generally rights existed and were exercised at a hapu level, with groups having fishing rights in waters adjacent to their lands. Although generally fishing rights appear to have been conceptualised as usufructuary rights, there is no evidence that this was considered to be an inferior title subject to a superior ownership right. Significantly witnesses before the Native Land Court averted to the right to exclude others from their fisheries, suggesting that they were 'several' fisheries.¹²⁷

Throughout the nineteenth century, the Taupo region remained a zone of Maori autonomy. Ngati Tuwharetoa retained the majority of their lands until the 1890s, and as much of this abutted the lake, they continued to be in practical control of it. This was particularly significant in the context of the sport fishery that by the early twentieth century was well established. Trout were introduced in the 1890s, and shortly afterwards sections of Ngati Tuwharetoa were deriving a considerable income from providing anglers with camp sites, and by charging them to fish from their land. Perhaps these benefits that were accruing to Ngati Tuwharetoa explain why there is virtually no protest on record in connection with the Crown introducing trout to the lake. In the case of other lakes in New Zealand, the introduction of trout, along with the regime instituted to manage them, was seen as an assumption of ownership by the Crown and a source of grievance. Further, there is evidence that the trout caused a decline in the stocks of Taupo's indigenous fisheries that were so cherished by Maori.¹²⁸

The commercial activities of Ngati Tuwharetoa in relation to the trout fishery came to be viewed by the Crown as increasingly abhorrent. Maori were seen as exercising and establishing private rights in the fishery – rights that it was feared could easily fall into the hands of foreigners.¹²⁹ Apparent in the Crown's fear was the colonial imperative that the situation that existed in Britain in respect of hunting and fishing rights should not be allowed to develop in New Zealand. But more

127. Doig, pp 292–329

128. Grace, p 509

129. See for example Ngata, NZPD, 1924, vol 205, p 1047

generally, by the 1920s, the Crown was becoming ever more resolute in its view that Maori claims to the ownership of lakes should be defeated, and that lakes should be vested in the Crown. Hence the Crown set about trying to acquire the lake from Ngati Tuwharetoa.

In 1924, legislation was passed that enabled the Crown to enter into negotiations with Tuwharetoa in respect of Lake Taupo.¹³⁰ The approach adopted by the Crown would appear to have resulted from its experience with Te Arawa and the Rotorua lakes described in the previous chapter. Significantly, the Crown at this time was of the mind that political settlements as to the ownership of lakes should be sought rather than involving the Native Land Court. The Crown appears to have been of the opinion that denying the existence of Tuwharetoa's rights in the lake would have resulted in them applying to the Native Land Court to have their title determined. And as history has shown, the court would have in all likelihood ruled that Maori were the absolute owners of the lake bed. So alternatively the Crown tacitly acknowledged that the 'Natives claiming to be owners of the lands bordering on Taupo waters' had rights in the lake.¹³¹ However, the Crown was at pains not to admit that Ngati Tuwharetoa were the absolute owners of the bed in accordance with Maori customary law.

Although Ngati Tuwharetoa appear to have been determined that 'the beds of all Taupo Waters shall *not* be vested in the King' (emphasis in original), the eventual agreement saw the bed of Lake Taupo being ceded to the Crown.¹³² The legislation that gave effect to the agreement stated that the title to the lake was 'freed and discharged from the Native customary title (if any)'.¹³³ The approach the Crown adopted in acquiring title to Lake Taupo reflects the confusion that reigned amongst governments at the time as to the extent of the Crown's rights in relation to lakes. Significantly, to the present author's knowledge, there was never a definitive statement by the Crown as to who held the ultimate rights to the lake. By the mid-1920s the Native Land Court had ruled that the Wairarapa lakes and Waikaremoana were Maori property, and was likely to have found the same in respect of Rotorua had its inquiry been completed. But despite this, the Crown Law Office, under the leadership of John Salmond, assiduously denied that Maori customary ownership extended to lakes.

Much uncertainty surrounds the 1926 negotiations between Ngati Tuwharetoa and the Crown in connection with Lake Taupo. Why the Tuwharetoa representatives, having just passed a resolution not to agree to the lake being vested in the Crown, actually agreed to this, remains unclear. But although it has recently been claimed that Ngati Tuwharetoa were wrongfully deprived of their title to the

130. The Native Land Amendment and Native Land Claims Adjustment Act 1924, s 29

131. *Ibid*, s 29(2)

132. 'Resolutions passed at a Meeting of Ngati Tuwharetoa at Wellington, 21 July 1926', ma 31/23A, NA Wellington

133. The Native Land Amendment and Native Land Claims Adjustment Act 1926, s 14(1)

lake,¹³⁴ the absence of any protest at the time the agreement was reached, suggests otherwise.

An important aspect of the settlement reached between Tuwharetoa and the Crown is that the tribe has enjoyed ongoing benefits. Although both Te Arawa and Ngati Tuwharetoa were deriving significant income from tourists in the nineteenth century in connection with their lakes, unlike Te Arawa, Tuwharetoa have continued to derive benefits from the industry in the post-settlement era. Tuwharetoa, as well as receiving an annuity, negotiated a provision whereby they received half of all revenue generated by the trout fishery over the amount of £3000. As the fishery has grown, this has become a multi-million dollar source of revenue.¹³⁵ Te Arawa on the other hand, settled for an annuity that was not indexed to inflation and with no revenue sharing provision.

Further, Tuwharetoa have had their title to Lake Taupo restored to them. The 1992 decision of the Crown to re-vest the lake in its original owners stands as both a precedent and a model for the resolution of Maori claims to lakes elsewhere in New Zealand. As with other lakes that remained in Maori ownership (such as Horowhenua and Waikaremoana), the case of Taupo stands as testament to the fact that the restoration of Maori ownership of lakes does not necessarily preclude the public enjoying rights of access, navigation, and fishing. In this regard, title to Lake Taupo is more usefully conceptualised in terms of a recognition of Ngati Tuwharetoa's manawhenua and rangatiratanga, than as exclusive ownership.

134. 'Maori ownership of Lake Taupo incenses anglers: Be our guests, tribe replies', *Christchurch Press*, 26 November 1992, p 19

135. Ibid