

## LIST OF CONTENTS

Introduction .....	vii
<b>Chapter 1: Waterways and the Law</b> .....	1
Introduction 1; Lakes at common law 2; Lakes and English law in New Zealand 6; General legislation pertaining to waterways in New Zealand 8; Fisheries legislation 18; Conclusion 26	
<b>Chapter 2: Wairarapa Lakes</b> .....	29
Introduction 29; Maori fishing practices in the Wairarapa lakes 32; The nature of Maori fishing rights in Wairarapa Moana 34; The Crown and the Wairarapa lakes 36; The catchment in the twentieth century 57; Conclusion: eel versus sheep 58	
<b>Chapter 3: Lake Horowhenua</b> .....	63
Introduction 63; Maupoko and Lake Horowhenua 64; Background to the lands surrounding Lake Horowhenua 67; Moves to make Horowhenua a public reserve 68; The Horowhenua Lake Act 1905 72; Conflict over fishing in the lake 74; The Reserves and Other Lands Disposal and Public Bodies Empowering Acts 1916 and 1917 76; The lowering of Lake Horowhenua 77; 1934 committee of inquiry 80; Attempts at a resolution 81; The Reserves and Other Lands Disposal Act 1956 83; A contemporary view of the legal ownership of Horowhenua 84; Conclusion 85	
<b>Chapter 4: The Rotorua Lakes</b> .....	89
Introduction 89; The Rotorua fisheries and other resources 91; The nature and extent of Maori rights in the Rotorua lakes 93; Early Pakeha visitors to the district 97; The Thermal Springs District Act 1881 98; The status of lands abutting the Rotorua lakes around 1918 101; Challenges to Te Arawa's rights and authority in respect of the lakes 103; Te Arawa apply to the Native Land Court 107; 1918 Native Land Court inquiry 112; Negotiations for settlement 117; The Native Land Amendment and Native Land Claims Adjustment Act 1924 122; The Arawa District Trust Board 123; Discussion of the settlement 124; Conclusion 126	
<b>Chapter 5: Lake Waikaremoana</b> .....	129
Introduction 129; Traditional histories 133; Waikaremoana lands and the Crown 136; The Native Land Court's investigations into the ownership of Lake Waikaremoana, 1915–18 139; The investigations of the Appellate Court 145; Compensation 156; The Lake Waikaremoana Act 1971 160; Conclusion 162	

## Contents

<b>Chapter 6: Lake Taupo</b> .....	165
Introduction 165; The Taupo district in the contact era: a summary 168; The Lake Taupo fisheries 169; The nature of fishing rights in Lake Taupo 170; The introduction of trout to Lake Taupo 173; The Native Land Amendment and Native Land Claims Adjustment Act 1924 175; Conflict over fishing rights 176; A settlement is negotiated 177; The Native Land Amendment and Native Land Claims Adjustment Act 1926 183; The settlement is contested 187; The assessment of river owners' compensation 192; Later events: deforestation and fishing rights 195; The re-vesting of the lake in Ngati Tuwharetoa 198; Conclusion 200	
<b>Chapter 7: Lake Omapere</b> .....	203
Introduction 203; Maori accounts of Lake Omapere's origins 206; The importance of the Lake Omapere fishery to Maori 207; The nature of Maori rights in Lake Omapere 210; Early moves to drain Lake Omapere, 1900–10 211; 1910–22: Maori and Pakeha agitation 214; Early Native Land Court action 223; The 1929 inquiry of the Native Land Court 225; The Crown's appeal and other Native Land Court proceedings 239; The 1970s 243; Conclusion 246	
<b>Chapter 8: Conclusion</b> .....	249
Introduction 249; Maori, customary law, and lakes in New Zealand 249; Colonial imperatives and common law 252; Early Crown action in relation to lakes 253; The Native Land Court cases and the position of the Crown 257; The twentieth-century lake settlements 262; The limits of ownership 264	
Bibliography .....	267

## LIST OF ILLUSTRATIONS

<i>Fig 1: Locations of lakes</i> .....	x
<i>Fig 2: Wairarapa lakes</i> .....	30
<i>Fig 3: Lake Horowhenua</i> .....	62
<i>Fig 4: Rotorua lakes</i> .....	90
<i>Fig 5: Lake Waikaremoana</i> .....	130
<i>Fig 6: Lake Taupo</i> .....	166
<i>Fig 7: Lake Omapere</i> .....	204

## LIST OF ABBREVIATIONS

AJHR	<i>Appendices to the Journals of the House of Representatives</i>
AJLC	<i>Appendices to the Journals of the Legislative Council</i>
app	appendix
ch	chapter
CFRT	Crown Forestry Rental Trust
DNZB	<i>Dictionary of New Zealand Biography</i>
doc	document
ed	edition, editor
encl	enclosure
fn	footnote
GBPP	<i>Great Britain Parliamentary Papers</i>
GLR	<i>Gazette Law Reports (New Zealand)</i>
JPS	<i>Journal of the Polynesian Society</i>
LINZ	Land Information New Zealand
MA	Maori Affairs series
MA-MT	Maori Affairs Maori Trustee series
NA	National Archives
no	number
NZPD	<i>New Zealand Parliamentary Debates</i>
NZLJ	<i>New Zealand Law Journal</i>
NZULR	<i>New Zealand University Law Review</i>
p, pp	page, pages
para	paragraph
pt	part
RDB	Raupatu Document Bank
rod	record of documents
rop	record of proceedings
s, ss	section, sections (of an Act)
SASR	<i>South Australian State Reports</i>
sec	section (of this report, or of an article, book, etc)
sess	session
vol	volume
Wai	Waitangi Tribunal claim

## THE AUTHOR

My name is Ben White. I was born and raised in Christchurch. After graduating from Canterbury University in 1992 with a degree in New Zealand history, I completed a Masters degree in resource management at Lincoln University and Canterbury University. As part of this program I took honours papers in New Zealand history and Maori studies. I also completed a dissertation that examined conflicts surrounding the possibility of using conservation estate lands in the settlement of Treaty claims.

Since being employed by the Waitangi Tribunal in April 1995, I have researched and written reports on the McKee oilfield, the West Coast settlement reserves, and with Suzanne Woodley, the acquisition of the Puketapu blocks for the New Plymouth Airport. Since 1996, I have been the claims facilitator for the Wellington region.

## ACKNOWLEDGEMENTS

Many people have provided invaluable assistance to me in the course of researching and writing this report. In particular, I would like to express my sincere gratitude to Dr Grant Phillipson, chief historian at the Waitangi Tribunal. In the course of this project, Dr Phillipson has provided rigorous criticism, astute editorial advice, but above all else, unfailing support. In the final stages of completing this report, Matt Russell and Tom White helped tidy up my text and references. I am also indebted to Bronwyn Gibbs (Waitangi Tribunal librarian), Noel Harris (for the maps), and Dion Tuuta (who assisted with the research for chapter 1). And Kirsty – thank you for all your help, support, and for being so understanding. Kia ora koutou.

## INTRODUCTION

This report is part of a series of national theme reports written for the Waitangi Tribunal's Rangahaua Whanui project. As is stated in the Tribunal's practice note of 23 September 1993, the Rangahaua Whanui project was undertaken to provide a historical review of relevant Crown policy in order that claims can be properly contextualised (see appendix 1).

This Rangahaua Whanui report (National Theme q) was originally to provide an overview of Crown policy in relation to harbours, the foreshore, and inland waterways. At the outset the project was divided into two parts: Richard Boast was commissioned to prepare a report on the foreshore; and the present author commissioned to undertake a project on inland waterways. As work progressed on the inland waterways project, however, it became apparent that the lakes aspect of it was in itself a major undertaking that required extensive research. It was therefore decided by the Rangahaua Whanui advisory group to limit the parameters of the report so as that it only dealt with lakes. Another factor bearing on this decision was that the Waitangi Tribunal will be issuing substantive reports on both the Te Ikawhenua Rivers claim and the Whanganui River claim in the near future.

Central to this report is the argument that the Crown considered that it should be the owner of all lakes in New Zealand. It would appear, though, that this objective never found expression in a clear policy. Rather it remained a nebulous (even subconscious) imperative that drove Crown officials. Certainly there was never any systematic attempt to secure title to lakes either by purchase or decree. Instead the Crown tacitly assumed it held rights in lakes, only overtly asserting these rights in the face of a claim by Maori to the ownership of a particular lake. Given this context, it was decided that the best way to arrive at a sense of the policies and practices of the Crown in respect of lakes was to structure this report around a series of case studies concerned with some of the major contests as to the ownership and control of lakes in New Zealand.

A feature of the way in which the Crown dealt with lakes in New Zealand has been the arbitrary distinction made between waterways and land. Despite the situation at English common law whereby the ownership of the beds of rivers and lakes accrues to the owner of riparian land, the Crown's approach has generally been to try and separate out the ownership of each. It is likely though that iwi considered land and water to be parts of a whole, with the rights in each being too a large extent coterminous. In many ways the approach adopted in this report perpetuates the western tradition of making these somewhat arbitrary distinctions between land and water. In the case study chapters, the history of particular lakes is approached with minimal reference to the history of the landscape in which they existed. It may be of some concern that the histories of lakes contained in this report are generally viewed in isolation from the catchments in which they exist. Although

## Introduction

the interconnections between lakes, their tributaries, and surrounding lands are axiomatic, various exigencies have meant that a more holistic approach could not be adopted.

A major concern, given that lakes are not considered in relation to their catchments in this report, is that swamps receive little attention. In New Zealand's historiography there is a paucity of studies relating to waterways. But whereas there has been some work done on rivers and lakes, swamps have received virtually no scholarly attention. This has much to do with the way in which Pakeha have regarded swamps. With few exceptions, swamps have historically been seen as an impediment to the realisation of a bucolic paradise in New Zealand. And while the scenic qualities of lakes and rivers captured the imagination of some Pakeha settlers, grounded in traditions of the romantic sublime, swamps have never been held in such esteem. This contrasts markedly with the attitudes of Maori for whom swamps were often an important source of fish, birds, and plants. In the colonisation of New Zealand, rights to swamps generally passed with the title to the land in which they were situated. However, the historiography concerned with the alienation of Maori land in New Zealand has had little regard for the importance of swamps to Maori, and the impact of the loss of access to these resources. Swamps are only touched on in this report (mostly in the context of legislation that enabled their drainage) and they remain a phenomenon that requires a great deal of further research.

Another aspect of waterways in New Zealand that receives only a perfunctory treatment in this report is Maori customary law as it pertains to inland waterways. Although the focus of this report is on Crown action and policy, a crucial consideration in this is the manner in which customary law and principles of tenure were accommodated (or otherwise dealt with) by successive governments. The nature of Maori customary rights in relation to lakes is particularly important given the claim repeatedly made by the Crown that lakes were not subject to Maori customary title. However, a comprehensive consideration of Maori customary law and tenure in relation to lakes was well beyond the skill and expertise of the present author. In the case study chapters of this report, where evidence was received by the Native Land Court in connection with customary rights, this is recounted, along with what secondary source material exists, and some tentative conclusions drawn.

To provide a context in which to locate the case study chapters – especially the legal issues involved – this project begins with a survey of English common law and legislative interventions in New Zealand relative to waterways. In this chapter the key principles of common law that pertain to lakes are traversed, and an examination undertaken of how this law has found expression in New Zealand. The chapter then turns to a consideration of legislative interventions by successive governments in respect of waterways. The ambit of this survey is relatively wide, and includes legislation pertaining to swamp drainage, flood protection, fisheries management, and water rights. The case studies of the major lakes are contained in chapters two to seven. After starting with the Wairarapa lakes (chapter 2), the report proceeds to examine Lake Horowhenua (chapter 3), the Rotorua lakes (chapter 4),

## Introduction

Lake Waikaremoana (chapter 5), Lake Taupo (chapter 6), and Lake Omapere (chapter 7). Generally these chapters are structured along similar lines. From the evidence available, the nature of the uses made by Maori of the lake in question is discussed along with a consideration of the way in which rights were held in the lake. A detailed consideration of the history of the ownership and management of the lake is then undertaken. In particular, emphasis is placed upon what can be adduced from this evidence as to the actions and policies of the Crown in relation to lakes. Where agreements or settlements were reached as to the ownership of the lake, these are analysed. In chapter 8 the themes that emerge in the case study chapters as to Crown policy and action are brought together, along with those pertaining to Maori customary rights.

Where extensive primary research has already been undertaken on particular lakes, secondary sources have been relied upon as a basis for the case study chapters. In particular, chapter 3 on Lake Horowhenua draws heavily on Keith Pickens' work (undertaken as part of the Wellington district Rangahaua Whanui report), and chapter 5 on Lake Waikaremoana is based upon Emma Stevens' report on the ownership of the lake (written for the Crown Forestry Rental Trust). Minimal use was made of primary source material in these two chapters. Chapters 4 and 5, which deal with the Rotorua lakes and Lake Taupo respectively, draw on various secondary sources but also rely on archival resources. Only chapters 2 and 7 (on the Wairarapa lakes and Lake Omapere respectively) are based almost entirely upon primary source material. Virtually all the primary documents consulted in the course of researching this project are contained in correspondence files of various Government departments. An important source for information on fisheries has been Suzanne Doig's doctoral thesis on Maori customary freshwater fishing rights – particularly her work on Lakes Taupo and Wairarapa. As a cogent and rigorous study of freshwater fishing rights, this work should be referred to if further information on this subject is sought. In order to engender an understanding of the wider context for the contest over the ownership of the lakes, each of the case study chapters should be read in conjunction with the relevant Rangahaua Whanui district report.

Figure 1: Locations of lakes