

4. LAKE AND RIVER ECOSYSTEMS

By the Treaty of Waitangi the whole fee simple of the land of New Zealand became vested in the Crown, subject to the Native right. The Native right in respect of these waters was the exclusive use by certain tribes and hapus, but as in the case of the shores of the sea and navigable rivers of New Zealand, the bed of the waters was in no sense vested in the tribes and hapus, which have the rights over the waters. The contrary view confuses the question of Maori right which is a matter of custom determinable by the Native Land Court, with the legal result in England of ownership of fishing rights and marginal occupation.

Attorney-General to Cabinet, 21 March 1922¹

the loss to Maori of their rights to waterways has been very heavy – heavier in some respects than the loss of land. These rights are of the utmost importance to a people whose existence was as much bound up with water as with land, and the loss of customary rights, with little or no negotiation and compensation except in respect of major lakes, does not sit well with Treaty obligations.

Alan Ward, 1997²

4.1 INTRODUCTION

The lakes and rivers of New Zealand were sites of very considerable Crown activity between 1912 and 1983. This activity impacted in various ways on the indigenous flora and fauna of these lakes and rivers. Because Maori identify so closely with their ancestral waterways, and because lakes and rivers have been customarily important as indigenous fisheries, they have been sites of protracted contest and conflict between Maori and the Crown.

In terms of the indigenous flora and fauna claim, lake and river ecosystems need to be seen as comprising more than fisheries. Biologically, lakes and rivers are diverse, complex ecosystems. Fish, although prominent components, are just one life form among many. Furthermore, as ecosystems, or even simply as water bodies, lakes and rivers display a level of structure

1. Attorney-General to Cabinet, 21 March 1922, CL196/10, NA Wellington. The context of the statement is reported in Ben White, *Inland Waterways: Lakes*, Waitangi Tribunal Rangahaua Whanui Series, 1998, p 7. The specific reference of the term 'these waters' was to Waikaremoana.

2. Alan Ward, *National Overview*, Waitangi Tribunal Rangahaua Whanui Series, 1997, vol 1, p 98

and cohesion over and above the fish that swim in them. Some aspects of this have been covered by Waitangi Tribunal Rangahaua Whanui reports concerning the history of the contest between Maori and the Crown for ownership of lakes and rivers. This chapter endeavours to complement that research by examining Crown actions between 1912 and 1983 concerning the indigenous flora and fauna from an ecological approach.

In his 1997 *National Overview* for the Waitangi Tribunal, Alan Ward asserts that the historical importance of New Zealand's inland waterways to Maori cannot be overstated. There can be no question, he says, as to Maori Treaty rights in respect of inland waters whether as 'fisheries' in the English version of the Treaty, or 'taonga' in the Maori version.³ Needing fish, Maori invariably lived close to the coast or inland waters, and commonly had access to both and great knowledge of both. One outcome of the nearly ceaseless litigation between the Crown and Maori concerning the ownership of inland waterways since the late nineteenth century, has been the evidence given by Maori of the rules and customs of the various iwi relating to the ownership and management of rivers and lakes.⁴ These accounts also manifest a profound economic and metaphysical connection between Maori and the rivers and lakes of their rohe.

Ward considers the loss of indigenous resource rights and access to lakes and rivers that have resulted from Crown actions to be among 'the most serious breaches and prejudicial effects that it is most necessary to remove'.⁵ In fact, for some iwi, the losses associated with lake and river ecosystems were as substantial as the loss of land, if not more so. The losses affected Maori everywhere and the issue remains one to be addressed. In the process, Ward submitted, some explicit regard should be had to the specific ecological and other associations that Maori undoubtedly had with inland waters and the flora and fauna they supported.⁶

This chapter endeavours to facilitate that requirement by reporting on the indigenous flora and fauna of lakes and rivers with an ecological perspective. It recognises that the indigenous flora and fauna of a lake or river comprise more than just the aquatic species; just as a lake or a river is more than a body of water. Ordinarily, most New Zealanders would consider a river or a lake to be the actual water-body and would distinguish the movable water from the stationary bank or shore. Ecologically, though, as anyone who inhabits a river or lake ecosystem and has been habitually sustained by it knows, both rivers and lakes can and do extend well beyond the actual, visible water-body. The Waitangi Tribunal has

3. Ward, vol2, p347

4. Ward, vol2, p347

5. Ward, vol1, p34

6. Ward, vol2, p366

recently expressed this principle in its finding that the customary, systemic meaning of 'the river' to Whanganui Maori is no less valid than the classificatory, boundary-delineating approach by which English common law and New Zealand statute law have historically differentiated the bed of a river from its water, and from its other elements.⁷

For example, an ecological sense of a river must include the river-flat forests or other terrestrial plant and animal communities whose existence is a direct result of active river processes, even though they may only carry flowing water during flood phases. Furthermore, in the natural situation, rivers and lakes are interconnected ecologically to swamps and the sea. That is the key to their biological productivity and resource value, and to the customary mana they hold for their tangata whenua. Many cultures have no need to make the distinctions and divisions between different water-bodies that English law makes. Rather, the seasonal ecological processes, such as fish-spawning and eels running-to-sea, by which lake, river and sea are linked, are what matters. As traditional Maori fishers knew, river and lake fisheries are productive in relation to the areas of swamp-land they water.⁸ Many lake and river animals secure their existence by ranging over territory greater than a particular lake or river.⁹ That is certainly the case for many of the species that made these environments the important mahinga kai they were customarily. Kereru, the pigeon, for example, is not specifically a lake or river bird. But kereru had a propensity for the riverbanks and lakeshores. It was where, before competition from willows, some of their favoured food species such as kowhai occurred. In this way kereru contributed to the particular biological richness and productivity of lake and river ecosystems. The massive decline of kereru since European settlement is due to many factors, but among them, undoubtedly, is the ecological collapse of the indigenous biological fabric of lakeshore and riverbank environments. And just as kereru move across the landscape between hill forests and the coastal lowlands, species that are more obviously of river and lake environments, such as koaro, inanga, piharau and tuna, move through lakes and rivers as they migrate to and from the sea.¹⁰

Although an ecological approach is adopted in this chapter, it has to allow for the fact that Crown law and policy respecting lake and river ecosystems derived from legal conceptions of the water-bodies component. A feature of the way in which the Crown has dealt with lakes and rivers in New Zealand has been the arbitrary division made between waterways

7. Waitangi Tribunal, *Whanganui River Report*, 1999, pp336–338

8. Wendy Pond, *The Land with All Woods and Waters*, Waitangi Tribunal Rangahaua Whanui Series, 1997, p129

9. Pond, p1

10. Ibid

and land.¹¹ Sometimes, these arbitrary legal divisions that the New Zealand landscape has inherited from English common law have cut across and fractionated some of the country's most biologically rich and productive indigenous environments. Ecologists call the zones where land and water meet 'ecotones' in reflection of the gradualism with which such profound ecological change occurs. But the imperative in English land laws, from which New Zealand statute law derives, is to treat such environments as land covered to different degrees with water; that land is then subdividable into discrete, legally definable units of 'property'. Commonly forgotten is the fact that the water itself is the life-support system of a great many indigenous plant and animal species.

Traditional societies that depended on the continued productivity of indigenous natural resources had customary concepts of the environment which recognised the linkages between social systems and natural systems, and by which the relative value, health and productivity of those resources were determined.¹² There can be no doubt that Maori were traditionally such a society. Clearly, in analysing Crown actions concerning the indigenous flora and fauna and Maori responses to them, some regard must be given to those customary concepts. This is particularly so in lake and river ecosystems, where the Crown law and the customary conceptions of what comprises a lake or a river differ markedly.

Some quasi-judicial validation of customary conceptions of lakes and rivers is provided by the Waitangi Tribunal's recent findings in its *Whanganui River Report*. The Tribunal found that while the river can be conceived of in terms of its bed, water and fish – as, historically, the Crown has done – there is a prior, customary understanding of the river as a living ecological system. The water flowing within the river is a vital component of this system, and water in its free-flowing form cannot be owned or possessed, but as the Tribunal states, that is not the point. The issue with the Whanganui River claim was not about the ownership of water as such but about the right to access the water while it was in the river.¹³ The Tribunal's finding was important and far-reaching in terms of the indigenous flora and fauna of water-based ecosystems, because it recognised and gave judicial standing to the customary definitions of such ecosystems. It validates the understanding that the Whanganui is much more than just water flowing over a particular strip of land.

Weighing all the evidence, the Tribunal found the Whanganui River to be, as the claimants Te Atihaunui-a-Paparangi had argued since the early

11. White, p vii

12. Fikret Birkes and Carl Folke, 'Linking Social and Ecological Systems for Resilience and Sustainability', in *Linking Social and Ecological Systems*, Fikret Birkes and Carl Folke (eds), Cambridge, Cambridge University Press, 1998, p 8–9

13. Waitangi Tribunal, *The Whanganui River Report*, Wellington, GP Publications, 1999, pp 337–338

twentieth century, a 'single indivisible entity', and 'a living being'.¹⁴ The Tribunal gave its finding wide application regarding the relationship between customary traditions and beliefs and Crown law, and historical breaches of the Treaty of Waitangi.

The Tribunal found that the Whanganui River is 'a living taonga which is not divisible into its constituent parts'. It found that the Crown, in doing such things as taking riverbanks for scenery preservation, destroying eel weirs, and regulating navigation upon the river, had been in breach of the Treaty. It considered that the customary understanding of the river as a living being was a vital component of Whanganui rangatiratanga that the Crown, in its past actions, had failed to acknowledge. This was something that had to be remedied in future dealings with Whanganui iwi concerning the river.¹⁵

Significant in the historical evidence contributing to the Tribunal's finding is the fact that even when Whanganui Maori grievances were localised and related to land, as they were in the case of scenery preservation in 1916,¹⁶ Maori still talked about their rights in terms of the wider tribal interest in the river as an entity. The Tribunal quoted Wharawhara Topine in this regard: 'this question of our river rights extends from the head of the river to its mouth, and all the subtribes who own the abutting lands are interested in its solution'.¹⁷

In its report, the Tribunal stressed that it was as 'a single and indivisible entity' that the Whanganui iwi Atihaunui, from 1938, had formally opposed the assumption of ownership by the Crown, and claimed the river as theirs as an 'ancestral living being'.¹⁸ However, when the matter went before the courts, the issue was interpreted in accordance with Crown law, and the bed of the river was separated from the water. As the Tribunal reported, the Court of Appeal has recently found that, had the law allowed for the claim to have been made to the river as a whole, the consequences for Atihaunui's claim might have been different.¹⁹

The Waitangi Tribunal considered that the problem for resolving Atihaunui's claim within a system of Crown law lay substantially in the differences in Maori and Crown perceptions of the river:

in Maori terms, the river is a single and indivisible entity comprised of water, banks and bed; whereas, at English law, the source of Crown law in New Zealand, it is generally only the bed of the river that is owned and

14. Ibid

15. Ibid, pp375–376

16. The context being the 1916 Scenery Preservation Commission

17. Wharawhara Topine (quoted in *Whanganui River Report*, p296)

18. *Whanganui River Report*, p338

19. *Te Runganui o Te Ika Whenua Inc Society v Attorney-General* [1994] 2 NZLR 20, 26-27 (cited in *Whanganui River Report*, p336)

rivers are divided according to the boundaries of adjoining lands, centre lines (*ad medium filum aquae*), and beds.

Importantly, the Waitangi Tribunal also identified the principle of English law that 'native title is to be rendered conceptually in its own terms, and not in terms of systems that have grown up in England'. Rendering the native title to the Whanganui in its own terms, then, the Waitangi Tribunal decided that what Atihaunui owned was an entire river.²⁰ The Crown's application of the common law doctrine *ad medium filum aquae* to assume ownership over parts of the river was found by the Tribunal to be in breach of the Treaty of Waitangi.

Te Atihaunui's understanding of the Whanganui as a living being is consistent with the way many traditional, indigenous societies see their relationship with the environment. With a few exceptions, notably the Western industrial societies of the last 400 years or so, human societies have generally regarded themselves as a part of nature rather than separate from it. Common to these societies is the holistic perception of any natural resource as a life support 'system'. People are an integral part of this system, and there are and life-sustaining interrelationships between all its components.²¹ The Western domain of knowledge with which this perception has most in common is the ecosystem perspective of modern ecology. But unlike much scientific ecology, which tends to view humans as external to ecosystems, the traditional indigenous perspective explicitly includes humans. More specifically, it includes the social system.

It is significant that the few international analyses that have been undertaken of traditionally integrated human-nature conceptions of the environment identify the Fijian concept of *vanua* as being interesting as a 'pre-scientific ecosystem concept'.²² *Vanua*, a concept that holds land, water and the human environment to be an indivisible entity,²³ is related linguistically to the Maori term 'whenua'²⁴ (as well as terms such as *fenua*, *fonua* and *fanua* from other Polynesian island cultures). A recent anthropological interpretation, within a Waitangi Tribunal context, defined *wenua* as 'the nourishing matrix for a hapu harvesting the resources of its ancestral territory'.²⁵ The linguistic origins of *whenua* would suggest that its customary usage, prior to the interpretation put on it in post-Treaty documentations, such as land transactions and so on, was broadly similar to *vanua*.

20. *The Whanganui River Report*, pp336–337

21. Fikret Birkes and Carl Folke, pp8–9

22. Ibid; see also M Gadgil and F Berkes, 'Traditional Resource Management Systems', *Resource Management and Optimization*, 1991, vol8, pp127–144

23. K Ruddle, E Hviding, R E Johannes, 'Marine Resources Management in the Context of Customary Marine Tenure', *Marine Resource Economics* 7, 1992, pp249–273

24. The use of the term 'whenua' in this report is with recognition that in the Treaty it is spelt 'wenua'.

25. W Pond, 'The Land as Tradable Commodity' *New Zealand Books*, December 1997, pp32–33; a review of Alan Ward, *National Overview Waitangi Tribunal Rangahaua Whanui Series*, 1997

In the customary Maori landscape, the pattern of ecosystems into which the indigenous flora and fauna, together with land and water, naturally aggregated would have been recognised and distinguished no less than the modern ecologist distinguishes them. Just as certain species of the indigenous flora and fauna were known customarily to be more productive than others, so were certain ecosystems such as rivers, lakes and swamps. Some were particularly productive at certain seasonal times. It follows that, for a nature-dependent culture like pre-Treaty Maori, the human association with, and regard for, these ecosystems, was greater than it was for other ecosystems. Any ecosystem with particular species that were significant for food or other purposes, and which was known to have qualities considered to be vital to those species' life-sustaining processes, was likely to have had taonga status in the customary Maori landscape. A swamp or coastal foreshore ecosystem that possessed such qualities, or a river ecosystem, or a forest, could be considered, with the people it sustained, to be a living being and be termed a taonga. Thus far it is only in the case of a few rivers, most notably the Whanganui River, that the Waitangi Tribunal has examined the customary geographic-ecological context of rangatiratanga in relation to the governance of the indigenous flora and fauna that the Crown has historically assumed.

The Waitangi Tribunal finding that the Whanganui river is a single and indivisible entity is thus highly significant and far-reaching in terms of indigenous flora and fauna and the Treaty of Waitangi. The Tribunal stated its finding to be on the basis of 'extensive study of Maori customary law, utilising the skills of several disciplines and conscious of new awareness arising from the study of anthropology, which had barely established as a science at the time of the river litigation'.²⁶ Integral to its finding was the conception of the river as 'a tupuna awa, or a river that either is an ancestor itself or derives from ancestry title'.²⁷

The Tribunal considered that, given the nature of Atihaunui's claim to the Whanganui, it needed to understand why Maori responded to the Crown's actions in the manner they did. Most Waitangi Tribunal research and reporting concerning natural water-bodies has not made such extensive study of their customary character. Instead, it has taken as given the presumptions of common and Crown law concerning rivers and lakes. This is evident in the *National Overview*, for example. The *Overview* queries the applicability of common law, given existence of customary law, and states that the Crown sought to secure the ownership of waterways

26. *Whanganui River Report*, pxiv

27. *Ibid*

through asserting its common law rights. But, citing legal texts, and allowing for the possibility of continued uncertainty, the *Overview* states that:

a distinction must be made between those parts of a river that are navigable, those that are tidal, and those that are neither tidal nor navigable. At common law, there are two sets of rights pertaining to rivers: riparian rights and the presumption of *ad medium filum aquae*; and those rights accruing to the Crown as an extension of its prerogative rights in relation to the sea. It would appear, however, that it is only the *ad medium filum* rule that confers ownership rights. The rights of the Crown to a riverbed extend only to the point that the river is tidal – beyond that it enjoys only the rights of the general public to fish, bathe and travel upon the river.

Above the point where the tide ceases to ebb and flow, ownership of the bed is divided between the adjacent riparian landowners – the rights of each extending to the mid-point of the riverbed. Consequently, at common law the beds of rivers are privately owned but subject to the public's fishing and navigation rights. Unless expressly excluded, the conveyance of riparian rights includes the riverbed . . .

For lakes, the *National Overview* states that:

Where a lake is situated within a single block of land, at common law the ownership of the lake bed resides with the owner of the surrounding land. Where there is more than one riparian owner, the legal situation is less certain. There appear to be two possibilities: ownership is determined by the *ad medium filum* rule – that is each contiguous landowner owns the lake bed to the centre point of the lake; or that the ownership resides with the Crown. The latter position does not appear to be widely held . . . Professor Brookfield contends that 'saving where the Maori customary title in a lake bed is found by the Maori Land Court to exist . . . or has been lawfully extinguished under statute, the bed in such cases generally remains the allodial property of the Crown'.²⁸

28. Ward, vol2, pp349–350, quoting F M Brookfield, 'Wind, Sand and Water Accretion and Ownership of the Lake Bed', *New Zealand Law Journal*, no 11, August 1981, pp365–366

29. 'Wahi hiinga ika' actually means 'fishing grounds' or 'fishing places' more than it means 'fisheries'. The difference is ecological; the former directly includes the environments of the fisheries but the latter only possibly implies them.

Waitangi Tribunal reporting on the history of lakes and rivers has also been affected by the importance of these ecosystems as fisheries. There are obvious reasons for this. It is by the words 'wahi hiinga ika' (translated as 'fisheries' in the English version, that the undoubted importance of lake, river and coastal ecosystems to Maori was given specific recognition in the Maori version of the Treaty.²⁹ Of all 'taonga' or 'properties' pertaining to lake and river ecosystems, it is fish have been the key to the contest

between Maori and the Crown. Historically, the Crown tended to the view that Maori rights concerning rivers and lakes and their ecosystems were confined solely to those of fishing.³⁰ Thus it is in terms of fisheries that Maori have continued to reiterate their customary rights to lakes and rivers whenever those rights have been threatened or contested by Crown actions.

One aspect of lake and river ecosystems in which the Maori relationship with the indigenous flora and fauna has been affected by Crown actions, but which Waitangi Tribunal reporting has only peripherally addressed, is the introduction of exotic fish.³¹ Most of the introductions of trout and other species, and their subsequent rapid elimination of indigenous fish species, occurred before 1912. But for iwi like Te Arawa, Tuwharetoa and Tuhoe who had trout liberated into their lakes, the more substantial losses of lake bed title and resource rights came in the years following 1912. The Crown's role, together with the acclimatisation societies, in these developments was considerable. The subject has been reviewed by the freshwater fisheries scientist, R M McDowall, in his book *New Zealand Freshwater Fishes: A Natural History and Guide*, but not yet in a Waitangi Tribunal context.³² It is considered, to a certain extent, in the *Ngai Tahu Fisheries* report and the Rangahaua Whanui *Inland Waterways: Lakes* report.

Freshwater fisheries research is one aspect of Crown actions concerning lakes and rivers that has recognised them as ecological systems, reaching beyond the legal delineations by which Crown law has determined lake and river ownership. In following the breeding and life cycle stages of fish species through their range of habitats, such research has inevitably become aware of lakes and rivers as systems of complex ecological connection extending well beyond what most people would consider to be a lake or river.

Whether by harnessing of lakes and rivers for hydroelectricity, or making them the conduits and repositories of human waste and industrial effluent, many other Crown actions have impacted on lakes and rivers in the ecological, or lake-as-ecosystem or river-as-ecosystem, sense. Most of these actions, and the management regimes for waterways in which they operated, are barely touched on in this report. Their bearing on the indigenous flora and fauna and on the customary Maori relationship with lakes and rivers needs much more research than was possible for this overview.

30. White, p264

31. Note that the present report includes a chapter on the Crown's relationships with acclimatisation societies.

32. R M McDowall, *New Zealand Freshwater Fishes: A Natural History and Guide*, Wellington, Heinmann Reed and MAF Publishing Group, 1992

Some of these actions, such as flood control and river works, lake level controls and hydroelectricity developments, were directly involved with the immediate water body. Others, such as deforestation, land development subsidies, swamp and wetland drainage, and water catchment control have had more indirect, but none the less significant effect on the indigenous flora and fauna of lake and river ecosystems. In the Rotorua lakes, for example, Environment Bay of Plenty, the Rotorua District Council and Te Arawa are currently cooperating in producing a Lakes Management Strategy. In association with this, work is being done on retiring lake margins around Lakes Rotoehu and Rotoma to reduce the run-off and nutrient inputs from farms and forests that are widely considered to have been causal factors in the deteriorated ecological state of the lakes. Some of the farms were cleared of forest cover in Maori land developments after the Second World War. In many other lake catchment areas in the Rotorua Lakes district, the Crown had considerable agency in land development schemes that have contributed to the lakes' decline as indigenous ecological systems. McDowall's *New Zealand Freshwater Fishes* has broadly reviewed the ecological impact of such actions on the lake and river fisheries, but again, the subject needs reviewing in the contexts of the Waitangi Tribunal and the indigenous flora and fauna claim.

The diverse indigenous flora and fauna of lake and river ecosystems make them much more than fisheries. Confining analysis of Crown actions concerning their indigenous flora and fauna to their fish component only, like confining the definition of lakes and rivers to the spatial demarcations presumed by common law and derived from early nineteenth century England, can provide only a partial perspective on their ecology and the effects of Crown actions upon it. Although the opportunities are limited in an overview of this kind, confined as it is largely to the Crown record and Maori petitions to Parliament, this chapter draws attention where it can to:

- ▶ the non-fish component of the indigenous flora and fauna of lakes and rivers; and
- ▶ the elements of their ecology beyond the spatial confines of the laws by which the Crown has been governing them.

In a now extensive series of reports and findings, the Waitangi Tribunal has already given substantive consideration to the fisheries aspects of New Zealand's lake and river ecosystems. Notable in this regard in addition to the *National Overview* are the *Report of the Waitangi Tribunal on the*

Muriwhenua Fisheries Claim, the *Report of the Waitangi Tribunal on the Lake Taupo Fisheries Claim*, the *The Ngai Tahu Sea Fisheries Report 1992*, *The Ngai Tahu Report 1991*, *The Whanganui River Report* and *Te Ika Whenua Rivers report*. Also relevant are the recent reports in the Rangahaua Whanui Series: *Inland Waterways: Lakes*, and *The Land with all Woods and Waters*, a review of the loss of Maori indigenous harvest from lake, river and related ecosystems consequent on Crown actions since 1840. With the exception of the three fisheries reports, these reports were concerned with much more than just fisheries. The *Inland Waterways: Lakes* report contains an in-depth analysis of the Crown's quest for ownership of New Zealand's lakes and the loss of customary Maori title that was its consequence. It includes a series of case studies: the Wairarapa Lakes; Lake Horowhenua; Rotorua Lakes; Waikaremoana; Lake Taupo; and Omapere. A earlier and shorter review of this same series of lakes is set out in volume II of the 1997 *National Overview*.

This chapter does no more than highlight key facets of those reports and findings, alongside a historical review of legislation from 1912 through to 1983. Because Crown law and policy concerning lake and river ecosystems has derived so materially from fisheries issues and English common law demarcations of what constitutes a river, a lake or land, the legislative review is strongly influenced by these limitations.

Crown actions that effected the loss of Maori ownership and control over inland waterways (and the foreshore) have been identified as serious Treaty breaches which resulted in Maori suffering prejudicial effects.³³ The main task of researching the indigenous flora and fauna of river and lake ecosystems, the Crown actions concerning them, and Maori responses to those actions, remains to be undertaken. It will need to extend beyond the issues of fisheries and the ownership of lake and river beds with which Crown law and policy and Maori responses have so far been preoccupied. It will need to include input from freshwater ecologists and Maori kaitiaki who have retained the responsibilities of customary rights respecting these ecosystems, and historical studies, such as Suzanne Doig's 1996 doctoral thesis on customary freshwater fishing and rights.

This chapter, like the previous chapter on coastal ecosystems, is more of an indicative overview, than the comprehensive overviews that have been undertaken in most of the chapters in this report. Having identified the range of issues relating to Crown actions concerning the indigenous flora and fauna of lakes and rivers, the chapter confines itself, in the main, to a

33. As 'inland waterways' in the 1997 *National Overview*, Ward, p35

chronological overview of the legislative basis by which the Crown sought to secure, maintain and administer control of inland waters between 1912 and 1983. An inventory of Maori petitions to Parliament concerning the indigenous flora and fauna of lakes and rivers is also presented. In parallel, the chapter highlights a range of issues and incidents drawn from accounts in the Crown record, in which Maori disputed Crown control and the Crown responded. Some of these issues and incidents led to the enactment of certain statutes, which are described in the legislative synopsis.

4.2 THE HISTORICAL CONTEXT AT 1912

In the *Muriwhenua Fisheries Report*, the Waitangi Tribunal found that for at least 20 years after the Treaty of Waitangi was signed, Maori continued to fish in rivers and lakes ‘in their customary manner and places, without regulation, restraint or the slightest shadow of impediment save for those restrictions that came themselves from Maori law’.³⁴

From 1861, when England relinquished its control of native affairs, and Pakeha began to outnumber Maori, a dramatic rearrangement of Maori interests in land and its constituent indigenous flora and fauna resources began. Starting with the individualisation of Maori lands effected by the Native Land Act 1862 and through the Native Land Court, and the confiscation policy provided for in the New Zealand Settlements Act 1863, Crown law became an active agent in the progressive collapse of the tribal basis of land and resource power. That in turn began impacting on, and collapsing, the communal bases in which land and water resource rights operated. The first law to impact directly on the indigenous flora and fauna of river and lake ecosystems was the Salmon and Trout Act 1867. It was enacted to protect the fledgling salmon and trout fisheries created by acclimatisation societies. However, the introduced fish competed so successfully with the indigenous species that the Act’s effect on Maori was to legally endorse the annihilation of their native fisheries.

The Crown, during the 1860s, acted on the basis that it owned all the waterways in New Zealand, even though this presumption never found clear expression in law or policy in this period.³⁵ Gradually, the Crown assumed rights of control over inland waterways; rights that it believed it had acquired in signing the Treaty of Waitangi through royal prerogative at

34. Waitangi Tribunal, *Muriwhenua Fisheries Report*, 1988, p220

35. White, pvii

common law, and through statutes.³⁶ A succession of Crown laws effected that assumption, with increasingly deleterious repercussions for any Maori economy reliant in any way on freshwater resources. The Public Works Act 1876, for example, formally empowered the Crown to control waterways. Under the Act, any natural watercourse could be declared 'a public drain'. In 1903, an Act pertaining to the rights and working conditions of coal miners vested the beds of navigable rivers in the Crown.³⁷ This provision remained in force throughout the period between 1912 and 1983. It was re-enacted in the Coal Mines Acts of 1905, 1908, 1925, and 1979. Also in 1903, the Water-Power Act vested in the Crown the sole right to use the water of lake and river ecosystems for electricity generation.³⁸

As William Pember Reeves could still observe of Maori in the 1890s: 'always needing fish, they placed their villages near the sea beaches or the rivers and lakes'.³⁹ For the first half century or more of the European settlement of New Zealand, lakes and rivers continued to be some of the most precious resource environments for Maori. When Maori realised the extent of the Crown's assumed ownership of waterways, and the consequences the public works and private drainage schemes that the Crown was enabling would have for Maori customary use and control, they began objecting to the interference with their rights. In the late 1890s and early twentieth century, Maori with lakes in their rohe began pressing claims to the Native Land Court which would determine title to their lakes. Soon after 1912, river Maori in the Whanganui district began pressing for an equivalent determination of their customary rights to their waterway. Importantly, it was only in these instances of claims by Maori that the Crown overtly asserted the absolute, allodial rights it presumed to have.⁴⁰ One of the more significant of these situations, the Rotorua lakes, is outlined below.

After 1870 through into the 1900s, statute law began seriously impacting on all Maori lake and river fishing. In 1908 a new Fisheries Act was passed that repealed and consolidated all prior legislation. It remained in force relatively unchanged until it was repealed by the Fisheries Act 1983. The only amendments in the 1908 Act that were of any real significance to freshwater fisheries were in relation to commercial eel fishing. Part I of the Fisheries Act 1908 pertained to sea fisheries, whereas part II related to freshwater fisheries. Although part I contained a guarantee that nothing in the Act 'shall affect any existing Maori fishing rights', no such provision was contained in part II. The Parliamentary debates make no reference to

36. Ward, vol2, p347; and White, introduction, ppvii–ix

37. Section 14 of the Coal Mines Act 1903

38. Section 2 of the Water-Power Act 1903

39. William Pember Reeves, *The Long White Cloud: Ao Tea Roa*, London, Horace and Marshall and Son, 1898

40. White, pvii

the non-extension of Maori fishing rights to freshwater fisheries. Under part 2 of the Act, section 89 prohibited selling or letting the right to fish in any waters. Under section 90, the lawful occupier of any land could fish without a licence during the prescribed season. Otherwise the provisions governing freshwater fisheries remained the same as they had under previous Acts.

The Waitangi Tribunal, in its *Muriwhenua Fisheries Report*, summarised the presumptions fixed in those first laws and permeating all subsequent legislation as:

1. that Maori interests should be accommodated by reserving particular fishing grounds for Maori;
2. that Maori fishing has no commercial component and grounds reserved must be for personal needs;
3. that Maori participation in the commercial fishing industry should be on no other terms than those provided for all citizens;
4. that no allowances should be made for Maori fishing methods, gear or rules for resource management;
5. that the recognition of fishing should be an act of state; only Parliament or a department of state should authorise the reservation of fishing grounds; there should be no provision for the courts to recognise rights on proof of customary entitlement;
6. that some acknowledgment should be made of Maori fishing interests by incorporating words of a general nature in fishing laws.

At the turn of the century, Maori unsuccessfully sought to defend prosecutions for breaches of fishing regulations by claiming that they had Treaty rights that exempted them from complying with fisheries laws and regulations. No more successful were their efforts to reserve particular fishing grounds, even with the prior legislative provision for such reserves. Of the Maori political efforts to retain resource rights in their lake and river ecosystems prior to 1912, perhaps the most significant was Te Arawa's attempt to claim ownership of the Rotorua lakes.

The Government's introduction of trout to the Rotorua lakes in the 1880s, in an effort to promote tourism, had a dramatic effect on the indigenous ecosystem on which Te Arawa were traditionally dependent.⁴¹ One of the individuals responsible for the initial introduction of trout, the former Native Land Court judge, Gilbert Mair, described the position of Te Arawa many years later, in 1918, in relation to their customary lake

41. Rotorua lakes material summarised from White, pp100–109

resources as 'worse than it has ever been'. 'Through the introduction of trout', Mair said in evidence to the Native Land Court, '[Te Arawa's] bounteous food supply of Native fish has been destroyed'.⁴² When Te Arawa and the Crown were contesting the ownership of the lakes in 1918, Te Arawa's legal counsel told the Native Land Court that, before trout were introduced, the indigenous flora and fauna of Rotorua and Rotoiti had constituted a diverse and long-standing resource:

for their food-supply the people of the blocks surrounding these two lakes depended very much more upon the lake than upon the dry land. The lake was supplying them from the earliest times, and still supplies, an almost inexhaustible quantity of various kinds.⁴³

This resource, the court was told, included birds as well as freshwater fish and koura – a major freshwater resource still fished for in the lakes today. Management of the lakes' resources was regulated by rahui and the lakes were subdivided into different areas each controlled by a particular hapu. These divisions were marked by boundary posts or tumu. The ethnologists Elsdon Best and S Percy Smith suggested to the Solicitor General, John Salmond, that 'where there were fishing posts, individual fishing rights were likely to exist', and that the posts in the Rotorua lakes denoted rights in the actual lake bed.⁴⁴ Lakeshore raupo beds were also the subject of hapu control and rahui.⁴⁵

The trout fishing regime the Government set up for the Rotorua lakes was intended primarily for tourists. As the secretary of the Rotorua Acclimatisation Society stated in 1918, 'no permission was sought from the Natives' when the Government placed trout fry in Lake Rotorua.⁴⁶ Maori are recorded as having opposed the introductions. Wi Pere, the member of Parliament for Eastern Maori, for example, told Parliament in 1908 that 'the pakeha fish should be destroyed, and they should not be allowed to propagate, because they destroy the inanga, the kokopu and the tuna'.⁴⁷

If a Maori (or anybody else) caught trout without a licence, even as a by-catch while fishing for indigenous species, they were liable for prosecution. Inevitably, there was such a prosecution, in 1908. This precipitated protracted discussion among Te Arawa at the idea of a law punishing a Maori, fishing from his own land in his own lake, for catching a foreign fish, whose introduction without his or his people's consent had caused the demise of his preferred native fish.⁴⁸ Te Arawa's concern was with the

43. E Earl, minutes to Rotorua lakes case, p128 (quoted in White, p92)

44. Cited in White, p110

45. White, pp92–93

46. Hawthorne to Prenderville, 7 October, 1918 (quoted in White, p102)

47. Wi Pere, NZPD, 1908, vol145, p1159

48. Te Arawa Trust Board, *Te Arawa Maori Trust Board, 1924–1974: A Review of its First 50 Years*, Rotorua Printers Ltd, 1974

status of their customary fishing rights, and with the wider question of the ownership of their lakes. By 1908, the Crown was showing increasing contempt for Te Arawa's assertion that their constituent hapu were the lakes' owners.⁴⁸

In 1908 the Arawa people presented a claim to the Native Land Commission (the Stout-Ngata commission). The memorandum with the claim stated that Te Arawa were not aware that they had ever parted with their rights to any of their main lakes:

If the foreign fish have supplanted our native fish in these waters we have not ceased to regard them as belonging to our Native domain, we claim the right – perhaps we should say we throw ourselves on the mercy of our one-time trustee and agent [the Crown], who has not treated with us for the aforesaid lakes, streams and rivers, except over lands we have deliberately sold to the Crown – we appeal for the due and sympathetic recognition of our claims to take fish for food in these lakes and rivers. It is not a privilege we have any desire to abuse by the indiscriminate taking of fish.⁴⁹

The commissioners were sympathetic to the Arawa claim.⁵⁰ Following discussion between Te Arawa and the commissioners, provision was made in the 1908 Native Land Amendment Act to allow Maori fishing rights in the Rotorua lakes. However, clauses in the Native Land Act of the following year provided for Native customary title to be made unassertable against the Crown. This Act made such specific reference to disallowing customary Maori title that Te Arawa's legal counsel later asserted that certain clauses 'were drawn for the specific purpose of defeating the claim of the Arawas to the Rotorua lakes'.⁵¹ The drafting of the 1909 Native Land Act reflected the Solicitor General's resistance to Maori claims, such as those to the Rotorua lakes, being dealt with through the judicial system rather than politically.⁵²

The 1909 Act cast serious doubt on the security of Te Arawa's rights in the Rotorua lakes. Around 1910, Te Arawa applied to the Native Land Court for a formal investigation of the title to the lakes.⁵³ The succession of legal disputes this initiated is summarised in the following section.

48. White, p103⁴⁹

49. Memorandum of 16 January, 1908 from Arawa to Native Land (Stout-Ngata) Commission (quoted in *Te Arawa Maori Trust Board, 1924–1974*, p11)

50. *Te Arawa Maori Trust Board, 1924–1974*, p11

51. P Earl, in 'Minutes of Rotorua Lakes Case', p17 (quoted in White, p106)

52. Alex Frame, *Salmond: Southern Jurist*, Victoria University Press, 1995, pp115; also White, p106

53. Te Arawa's action followed their appeal to the English Attorney-General, on advice from one of the native land commissioners, Apirana Ngata, and Te Arawa's legal counsel, F Earl.

4.3 A SYNOPSIS OF LEGISLATION AND POLICY RELATING TO LAKE AND RIVER ECOSYSTEMS BETWEEN 1912 AND 1983

Legal provisions protecting customary Maori fishing rights were enacted for two specific South Island locations in 1912. The Ellesmere Land Drainage Amendment Act 1912 provided that:

nothing in this Act shall be deemed to prejudice or affect any Native fishing rights which may exist at the time of the passing of this Act connected with the reserve for the use of the aboriginal Natives of the Ngaitahu tribe for fishing and other purposes (as described in s 20 of the Reserves Disposal and Exchange Act, 1895).⁵⁴

The Taieri Land Drainage Amendment Act 1912 provided that: 'Nothing in this Act shall be deemed or be allowed to prejudicially affect any Native fishing-rights over Lake Tatawai which may exist at the time of the passing of this Act'.⁵⁵ There is no record of Parliamentary debate regarding these provisions. It has not been possible to determine how they came to be enacted. Several years later, the Taieri River Improvement Act 1920 provided for statutory compensation to be awarded to Maori who had current fishing rights over Lake Tatawai.⁵⁶

Yet in other parts of the country in 1912, the Crown was endeavouring to invalidate customary Maori fishing rights. Just prior to 1912, Te Arawa had applied to the Native Land Court to have the title to the Rotorua lakes formally investigated, in order to have customary rights to the beds of their lakes affirmed. When the Chief Surveyor refused to issue the necessary plan, the dispute moved to the Supreme Court, and then to the Court of Appeal. Te Arawa's quest for validation of their customary rights came before that court in July 1912 as the famed case *Tamihana Korokai v Solicitor General*.

The Rotorua lakes, specifically the *Tamihana Korokai v Solicitor General* case, are highlighted in this synopsis because of the far-reaching effect the case had on customary Maori fishing rights. The Solicitor General, John Salmond, drew attention to what he termed 'the full seriousness of the situation created by these claims':

It is to be observed . . . that the question related not merely to Lake Rotorua but to all rivers and lakes, foreshores and tidal waters in the Dominion. . . . it is quite out of the question to allow freehold titles to be obtained by the Natives to such waters . . . If these cases are allowed to go

54. Sections 2(2) and 4 of the Ellesmere Land Drainage Amendment Act 1912 (1909)

55. Section 9 of the Taieri Land Drainage Amendment Act 1912

56. Section 20(1) of the Taieri River Improvement Act 1920

before the Court in their present form it may be anticipated that the Court will hold that by native custom the Natives own not merely the land but the waters of this country and freehold titles will be issued accordingly.⁵⁷

Salmond feared such titles ‘would enable the Natives to exclude the whole of the European population from all rights of fishing, navigation and other uses now enjoyed by them’.⁵⁸ He took steps to preclude the prospect by drafting legislation: the Native Land Act 1909.⁵⁹ The Act contained a ‘battery of privative and other causes aimed at making Maori assertions of customary Maori title non-justiciable against the Crown’.⁶⁰ It is considered, by the legal historian Paul McHugh, to be ‘amongst the most serious legislative violations of the Treaty of Waitangi during the last 150 years’.⁶¹ Salmond’s biographer, Alex Frame, ascribed the Solicitor General’s motive in developing the legislation to his humanism: the conviction that humankind should be one society, and that the ‘racial feeling which divides mankind into separate sub-species emotionally antagonistic to each other is essentially evil’. Salmond lamented situations in which ‘every separate community tends to develop a conscience and spirit of its own which is distinct from and antagonistic to those of other communities’.⁶² He saw the possibility of just such a situation at the Rotorua lakes.

As a jurist, Salmond believed that a major principle of law applied to the Rotorua lakes case. This was the distinction between territory, the subject matter of the right of sovereignty, or *imperium*, and property, or *dominium*. As he expressed it in his legal text *Jurisprudence*:

In accordance with the principles of feudal law all England was originally not merely the territory but also the property of the Crown; and even when granted to subjects, those grantees are in legal theory merely tenants in perpetuity of the Crown, the legal ownership of the land remaining vested in the Crown. So, in accordance with this principle, when a new colonial possession is acquired by the Crown and is governed by English law, the title so acquired is not merely territorial but also proprietary. When New Zealand became a British possession, it became not merely the Crown’s territory, but also the Crown’s property, *imperium* and *dominium* being acquired and held concurrently.⁶³

The Native Land Act 1909, said Salmond, defined ‘customary native land as land, which being vested in the Crown is held according to the

57. Salmond, Solicitor General to Attorney-General, 1 August 1914 (quoted in White, p110)

58. *Ibid*

59. Frame, p127

60. *Ibid*, p112–113

61. Paul McHugh, ‘The Legal Basis for Maori Claims Against the Crown’, *VUWLR*, 1988, vol 1, p6

62. A 1922 address of Salmond’s (quoted in Alex Frame, *Salmond: Southern Jurist*, Victoria University Press, 1995, p109)

63. Salmond, ‘The Territory of the State’ in *Jurisprudence*, 7th ed (quoted in Alex Frame, p109)

customs and usages of the Maori people.’⁶⁴ In Salmond’s opinion, in situations such as the Rotorua lakes where such customary title to land was in existence, ‘Native custom, Native title and the Treaty [were] in force in law only because and in so far as they have been given legal validity by the Native land legislation of the Colony.’⁶⁵ In an associated note, Salmond commented: ‘Bed of the Lake is vested in the Crown subject only to such native customary rights (if any) as may be proved to exist . . . It is not for the Crown to prove its title; it is for the Natives to prove that the Crown title is subject to their customary rights’.⁶⁶

The matter of this proof of title and the Crown’s determination to deny Maori customary title in order to secure the Rotorua lakes for tourism, became the central issues in the *Tamihana Korokai v Solicitor General* case. By 1912, the growth of tourism centered around the trout fisheries and scenery of the Rotorua lakes had made the lakes a valuable asset which the Government was particularly determined to protect as a domain of public access. As the legal counsel for Te Arawa later commented when the iwi’s claim of rights to the lakes was before the Native Land Court in 1918, ‘the Tourist Department wanted sole and complete domination over the Lakes’.⁶⁷ It was, he said, ‘very convenient for the Tourist Department to have domination over the lakes, and very inconvenient to have the natives claiming interests which it was thought they would forget all about’.⁶⁸

The legal history of the Rotorua lakes after the 1912 *Tamihana Korokai v Solicitor General* case is well-covered in Ben White’s *Inland Waterways: Lakes* report. It was also discussed in the 1997 *National Overview*. Other than to reiterate its great significance as a site of Crown actions concerning New Zealand waterway ecosystems and customary rights to them, and to make connections with the themes of other chapters in this report (notably scenery preservation), that history is not further developed here beyond a brief synopsis.

The Court of Appeal found unanimously in favour of the plaintiff. The court considered the Treaty of Waitangi in its decision. Chief Justice Stout was ‘of the opinion that the Native Land Act recognises that the Natives have a right to their customary titles’. Importantly, and contrary to the Solicitor General’s opinion, the court confirmed that the jurisdiction of the Native Land Court extended to ‘the lands covered with water’:

The Native Land Act 1865 recognises that the Native right in land is a right of ownership. This is land covered by water. The Crown has no

64. ‘Copy of Notes of Argument Prepared by Sir John Salmond for Presentation of Lake Rotorua Case to Maori Land Court in 1918’ (cited in Alex Frame, p124). Salmond’s reference was to section 2 of the Native Land Act 1909.

65. Ibid

66. Ibid

67. ‘Minutes of Rotorua Lakes Case’ (quoted in White, p108)

68. White, p112

prerogative right or title in England to such a lake as Lake Rotorua. In England, the ownership of the adjoining land would give a title to the bed of the lake. The Treaty of Waitangi is the root of Native title. The Constitution Act gives no right to take away the Native titles except by cession. Any local enactment to the contrary is *ultra vires*. The Treaty of Waitangi is not an innovation. Jurisdiction of the Native Land Court with respect to Native lands extends as much to the lands covered by forest as it does to lands covered with water.⁶⁹

In 1914 the Fisheries Amendment Act was passed, primarily to promote and encourage the booming tourism industry in the Rotorua lakes district. It also reflected the emphasis that was being placed upon the acclimatisation of salmon and trout species into New Zealand waters at the time. The Act introduced a series of controls on trout and salmon fishing which it vested in acclimatisation societies, increasing their authority at a time when their statutory powers (in relation to the protection of animals) had been drastically reduced. The Act provided for prescribed closed seasons for salmon and trout fishing. No members of Parliament, Maori or Pakeha, referred to Maori fisheries rights while the Fisheries Amendment Bill 1914 was before Parliament.

A significant event concerning the Crown's authority with respect to lake ecosystems occurred in 1917. In the wake of the Court of Appeal's judgment against the Crown in *Tamihana Korokai v Solicitor General*, the Solicitor General, John Salmond, anticipated that the Native Land Court would hear Te Arawa's application for ownership of the Rotorua lake beds. The Solicitor General was of the opinion that a ruling by the Native Land Court in favour of Te Arawa having customary Native title to the lakes could have wider ramifications. In a June 1917 letter to the Under-Secretary of Lands, Salmond stated how, in the *Tamihana Korokai v Solicitor General* case:

an attempt was made to determine the legal position of the navigable inland waters of this country in relation to Native owners. Unfortunately, however, it was not found possible to obtain any definite decision from that Court on the matter. It was held merely that the question was one for the Native Land Court on applications for freehold orders. It was held that on such applications the Native Land Court had to determine in each case whether land covered with water was native customary land in respect of which a freehold order could be obtained or whether on the

69. *Tamihana Korokai v Solicitor General*, NZGLR, vol 15, 1912–1913

other hand the Natives possessed merely customary fishing rights, in respect of which no order could be made, as opposed to rights of Native ownership which were capable of being transformed into freehold.⁷⁰

Referring to both the Rotorua lakes and Waikaremoana, Salmond stated that 'the only course' was to have the applications in respect of those lakes heard by the Native Land Court. However, he said:

The Crown . . . should be represented at the hearing and should dispute the rights of the Natives to obtain freehold orders for the inland navigable waters of the Dominion. The question is of such importance that it would seem desirable that the case should not be heard before a single Judge but before a specially constituted court consisting of the Chief Judge of the Native land Court and as many of the Puisne Judges as possible. The case should be heard in Wellington.⁷¹

In giving his opinion Salmond argued that it was most important that the Crown did not take too absolute a position on the precept that 'Native customary title is limited to dry land and does not include waters'. He made a distinction in this regard between navigable and unnavigable inland waters:

Small unnavigable streams, lagoons, and other waters are undoubtedly merely appurtenant to the adjoining land and subject to customary title and capable of inclusion in freehold orders. It does not follow, however, that because some waters are subject to native title that all waters are so subject. Indeed it has already been decided by the Supreme Court that this is not so and that the tidal waters of New Zealand are not and have never been native Customary land.⁷²

Salmond was of the view that the non-tidal but navigable waters of the Dominion were equally exempted from Maori title:

The same reasons which have induced the Supreme Court to except tidal waters from Native title [are] capable of extension with equal force to inland navigable waters, Native customary title depends for its legal existence on the Treaty of Waitangi as recognised and validated by a grant of legal title by the successive Acts dealing with native land . . . This Treaty and legislation amounts in effect to a statutory grant from the Crown to the Natives and the question is, what are the limits and bounds of this statutory grant . . . The Supreme Court has held that it was not

70. Solicitor General, John Salmond, to Under-Secretary of Lands, 11 June 1917, concerning Lakes Rotorua and Waikaremoana, CL174/1, NA Wellington (full text quoted in R P Boast, *The Foreshore*, Waitangi Tribunal Rangahaua Whanui Series (first release), November 1996, pp887–889 (Appendix 4)

71. Ibid

72. Ibid. Salmond's reference was to the 1914 *Waipapakura v Hempton* case.

intended to include tidal waters, for example, the harbours, foreshores and tidal waters of New Zealand. Neither the Treaty nor the statute contains any express exception of such waters.⁷³

Salmond therefore considered that:

on a reasonable interpretation of the Treaty of Waitangi and subsequent legislation a similar principle is to be applied to inland navigable waters. It is unreasonable to suppose that this Treaty or legislation was intended to vest Lake Taupo or Rotorua or Lake Whakatipu in the Natives as the exclusive owners thereof to the destruction of the interests of the Crown and the public in the navigation of such waters. No such claim could have been in the mind either of the Natives or of the Crown or of Parliament.⁷⁴

It was not until 1918 that the Native Land Court heard Te Arawa's application for ownership of the Rotorua lake beds. The Crown had, by then, made evident its concern that the Court would, in this instance, decide against it. The Solicitor General's attempt to have a special court consider the general question of lake ownership was unsuccessful.

Local Maori presented considerable evidence to the Court concerning both intimate knowledge of the lake beds (notably Rotorua and Rotoiti) and customary use of indigenous lake flora and fauna resources. This was complemented by detailed evidence from a local former local Native Land Court judge, Gilbert Mair, on the lakes' division into resource areas by hapu; on the impact of trout introductions on the lake's ecology; and on customary practices of resource management such as rahui. Some of this evidence reiterated advice that the Crown, through the Solicitor General, had already obtained from Percy Smith, Elsdon Best and Te Rangi Hiroa. These men were the considered authorities on the ethnology of Maori.⁷⁵

For various reasons, the Native Land Court never completed its inquiry. Instead, in April 1920, the Solicitor General suggested to the Under-Secretary of Lands 'that the continuance of this litigation be put to an end . . . by making some form of voluntary settlement with the Natives and vesting these Lakes by Statute in the Crown'.⁷⁶ By July 1920, the Crown had managed to persuade Te Arawa to enter into direct negotiations. If the Native Land Court completed its inquiry and found in favour of Te Arawa having customary ownership of the lake beds, the Crown asserted, it would be left with the alternative of taking the lake beds by proclamation. That, the

73. Ibid

74. Ibid

75. This was in 1910: cited in Frame, pp122–123

76. Solicitor General to Under-Secretary of Lands, 29 April 1920 (cited in White, p116)

Crown said, would be an action from which Te Arawa might receive little or no compensation.

The negotiations were contentious and protracted, and divisive of the Te Arawa subtribes. One subtribe, Ngati Pikiāo, who claimed rights in Rotoiti, sought at one stage to deal with the Crown directly. Eventually, in March 1922, Te Arawa and the Crown reached an agreement. The Crown admitted Te Arawa's rights to fishing grounds and burial reserves, while Te Arawa admitted that the fee simple of all of the lakes was vested in the Crown. The agreement provided for an annuity that led to the establishment of the Arawa Trust Board. It was embodied in law in October 1922 with the passing of the Native Lands Amendment and Native Land Claims Adjustment Act 1922. Section 27 of the Act effectively removed ownership of title to the beds and waters of the Rotorua Lakes from Maori to the Crown:

For the purpose of giving effect to an agreement made between representatives of the Government and representatives of the Arawa Tribe with respect to the ownership of the lakes hereinafter in this section referred to is hereby enacted as follows:

(1) The beds of the lakes mentioned in the Second Schedule to this Act, together with the right to use the waters of the said lakes, are hereby declared to be the property of the Crown, freed and discharged from Native title, if any:

Provided that there shall be reserved to the Natives all islands situate in any of the said lakes, and not heretofore specifically alienated by the Natives, together with the right of ingress, egress, and regress over the waters of such lake to any island:

Provided further that the Governor-General may reserve any portion of the bed of any such lake or any Crown lands on the border thereof for the use of the Natives, and may vest the management and control thereof in trustees.

The second schedule of the Act listed the lakes affected by the settlement. These were Rotorua, Rotoiti, Rotoehu, Rotoma, Okataina, Okareka, Rerewhākaitu, Tarawera, Rotomahana, Tikitapu, Ngāhewa, Tutaeinanga, Opouri and Ngakaro. Shortly after the 1922 Act was passed, section 14 of the Native Land Amendment and Native Land Claims Adjustment Act 1923 established a predominantly Maori board of control for another Rotorua lake, Rotokakahi (or Green Lake):

The Governor-General may from time to time, by notice in the *Gazette*, vest the control of the Rotokakahi Lake (or Green Lake) and the islands therein in a Board of Control constituted by him for the purpose, consisting of not less than six persons, of whom five shall be members of the Tuhourangi and Ngatitumatawera Subtribes of the Arawa Tribe.

Section 27(2) of the 1922 Native Lands Amendment and Native Land Claims Adjustment Act reserved to Te Arawa their fishing rights in respect of indigenous fish, but precluded the selling of such fish. This was consistent with the Crown's view that Maori rights concerning lakes were confined solely to the customary manner and purpose of fishing, and was carefully worded so as not to be an admission of Maori ownership of lakes. Legislation passed in 1877 had made provision guaranteeing such customary rights in respect of lakes generally.

The 1922 Act was followed two years later by the Native Land Amendment and Native Land Claims Adjustment Act 1924. These Acts empowered 'negotiations to be entered into with the Natives in respect of fishing rights in Taupo waters' and authorised the Native Land Court to make easements over Native land for the purposes of water supply.⁷⁷ The term 'Taupo waters' included 'the bed of the lake known as Lake Taupo, and the bed of the Waikato River extending from Lake Taupo to and inclusive of the Huka Falls'. As with the Rotorua lakes, the negotiations concerned the ownership of the margins of Taupo waters as well as the beds, together with fishing rights within these water-bodies.⁷⁸

A decade earlier, in 1913, members of Tuwharetoa had petitioned Parliament about the problems they, like Te Arawa, had had with introduced trout destroying their native fish.⁷⁹ The Crown's negotiations with Tuwharetoa were broadly similar to those with Te Arawa, but more favourable in Tuwharetoa's case. The terms of the Taupo Waters Settlement were subsequently enacted by the Native Land Amendment and Native Land Claims Adjustment Act 1926. The Act 'freed and discharged' Taupo waters from 'the Native customary title (if any) or any other Native freehold title together with the right to use the respective waters', and declared them to be the property of the Crown. It 'reserved to the Natives all islands' in Taupo. The wording of these clauses was virtually identical to the prior legislation enacted for the Rotorua lakes. Also similar was a provision enabling 'Natives the right to fish for and catch for their own use any indigenous fish'. The 1926 Act also provided for the Governor-General to

77. Sections 29 and 30 respectively
78. White, pp165–202, provides a comprehensive account of the Crown actions concerning Taupo, notably the 1926 settlement.

79. This petition from Kuru Rutene and 49 others is number 1 in the inventory of petitions in section 4 of this chapter.

‘reserve any portion of the bed of the lake or any Crown lands on the border thereof for the use of Natives’ and reserved to the public ‘a right of way over a strip of land not exceeding one chain in width around the margin of the said lake’.⁸⁰ As with the Rotorua Lakes, the future management and control of parts of the lake ecosystem which the Act reserved for Maori were vested in a board of Maori trustees, established with an annuity: the Tuwharetoa Trust Board. Some Maori on the shores of Taupo petitioned Parliament seeking exclusion of their kainga’s lakeshore and beds from the Taupo Waters Settlement. In 1897 this area had been declared a Native Reserve.⁸¹

The Maori Land Amendment and Maori Land Claims Adjustment Act 1926 was amended in 1981 by section 10 of the Maori Purposes Act 1981. This Act confined ‘the right to fish for and catch for their own use any fish in the said lake that are indigenous’ [to Taupo waters] to ‘members of the Tuwharetoa tribe’.

The Parliamentary debate on the 1926 Native Land Amendment and Native Land Claims Adjustment Act recognised the Treaty of Waitangi issue inherent within it. The member for Ohinemuri, Mr Samuel, considered that with the passing of the Act, ‘satisfactory terms have been made with the Natives of the Taupo district for their fishing-rights in the lakes and rivers discharging therein . . . Under the Treaty of Waitangi they were entitled to the fish in the lakes and the birds in the forests’.⁸²

It was clear to Samuel that species introduced to Lake Taupo, by and for European colonists such as himself, had considerably damaged the indigenous Maori resource: ‘as we have taken the native food out of the lakes by the introduction of imported fish, which are very ravenous and which feed on the indigenous fish, it is only right that we should compensate them for this loss and also for any infringement of property rights’. But, now that the Government had compensated Maori for something they owned, said Samuel, it also had a duty to compensate those, such as the Auckland Acclimatisation Society, who acclimatised the rainbow trout and stocked the lakes in the Rotorua district, for the public use of the fishery.⁸³

By the mid-1920s, the introduction of exotic fish was altering many freshwater fisheries and causing a dramatic loss of native fish species. This was particularly evident in the Rotorua lakes. The success of trout introductions in these lakes, and the tourism it generated, led, in 1926, to Parliament amending the Fisheries Act 1908. The resultant Fisheries

80. Section 14 of the Native Land Amendment and Native Land Claims Adjustment Act 1926

81. This petition from Mere Wiari and seven others is no 14 in the inventory of petitions in section 4 of this chapter.

82. NZPD, 1926, vol 211, p 287

83. *Ibid*

Amendment Act enabled the Governor-General 'to make regulations providing for the issue of special licences to fish for trout and perch in the rivers, streams and lakes of the Rotorua Acclimatisation District, or in any one or more of such rivers, streams, and lakes, but in no other part of New Zealand, and prescribing fees to be paid in respect of such licences'.⁸⁴

For the Crown, the legislation it enacted in the 1920s in order to remove native customary title from the Rotorua lakes and Taupo was a major affirmation of its assumption of ownership of the beds of lakes and rivers in general. As a result, title for Native reserves on riverbeds could only be granted by specific statutory provision. The Native Land Amendment and Native Land Claims Adjustment Act 1927 was an example. It issued title for the bed of the Arahura River within the Arahura Native Reserve to the tangata whenua.⁸⁵ Many years later, in 1976, the Arahura riverbed was vested in the 'Proprietors of Mawhera' as Maori freehold land by section 27 of the Maori Purposes Act.⁸⁶ These provisions affirmed traditional Maori ownership of the riverbed and thus the rights that went with such ownership.

In the Crown's view, this kind of provision was exceptional. By the 1930s, the Crown was operating on the principle that it was the owner of lakes and rivers through its allodial title emanating from its acquisition of sovereignty. It wanted as little legal acknowledgement as possible of the existence of customary title. The problem the Crown had with Maori claims to lakes and rivers – and foreshores, in fact⁸⁷ – was forthrightly expressed by the Minister of Lands in 1938; a time when the Crown was becoming increasingly frustrated by Maori litigation in respect of the Whanganui:

I cannot help a feeling of exasperation at the multiplicity of claims arising from the application of present-day legal principles of interpretation to the century-old layman's wording of the Treaty of Waitangi; and I have had a discussion on the matter with the Attorney-General, to whom I referred certain questions for his personal opinion . . . He shares my views that the claims made border on the fantastic, and we would both welcome the views of the Solicitor General on the expediency of introducing legislation definitely stating that the beds of the rivers and the lakes are vested in the Crown, and have been since the date of the Treaty, but preserving the Maoris' fishing, food and other rights. The legislation might even go further, to settle once for all 'confiscated lands' troubles,

84. Section 2(1) of the Fisheries Amendment Act 1926

85. Section 62 of the Native Land Amendment and Native Land Claims Adjustment Act 1927

86. The proprietors of Mawhera were a Maori incorporation constituted pursuant to section 15(a) of the Maori Reserved Land Act 1955 by the Mawhera Incorporation Order 1976.

87. Similar Crown concern about Maori foreshore ownership in the early 1930s is reported in the section on foreshore reclamation in chapter 3.

and the question of ownership of the strip of tidal land between the lines defined by the Crown Grants Act and the Harbours Act respectively.

I appreciate, of course, that the legislation would not prevent petitions for compensation, but the legal position would be clear-cut, and it would be possible to deal with petitions on the basis of the real equity of the claims rather than have them hinge on 'hair-line' decisions of a succession of Courts.⁸⁸

In 1931, Parliament debated the general issue of Maori fishing licences in connection with the Native Purposes Bill.⁸⁹ The debate was almost entirely concerned with the Taupo and Rotorua lakes.⁹⁰ For the iwi of the those lakes, the Act provided for some of the practical consequences of the legal recognition the Crown had given to Maori customary fishing rights. Section 54 provided for moneys from fishing licences and camp-site fees to be paid to the Tuwharetoa Trust Board, together with half of all fines and penalties recovered under the Fisheries Act 1908, the Harbours Act 1923, and section 14 of the Native Land Amendment and Native Land Claims Adjustment Act 1926.

A significant provision of the Native Purposes Act 1931 was the authorisation it gave Tuwharetoa to take trout or other fish from Lake Rotoaira. Seven years later, the Native Purposes Act 1938 expanded on that provision by prohibiting anyone other than 'members of the tribe of Maoris known as Ngati Tuwharetoa, and their descendants' from fishing in Lake Rotoaira and the Poutu Stream. Furthermore, the Act stated, 'it shall not be necessary for any of the said Natives to take out any license or pay any fee for fishing in, and taking trout or other fish from, the said lake and stream'.⁹¹ Flaunting of the rules and regulations relating to the 1938 Act led to section 48 of the Maori Purposes Act 1947 increasing the penalty for fishing in Rotoaira by non-Tuwharetoa people.⁹²

In principle, these tribally-based provisions gave Tuwharetoa a level of authority over Rotoaira of the kind they had traditionally exercised over their fishing resources prior to the trout liberations. Rotoaira was somewhat exceptional as a Maori-owned lake. Notwithstanding this fact, Rotoaira was later substantially altered, as a lake ecosystem, by the Tongariro Power Development Scheme. The Crown actions in the scheme, and the issues of Maori ownership and rangatiratanga were reported on to the Waitangi Tribunal in John Koning's 1993 study, *Lake Rotoaira: Maori Ownership and Crown Policy towards Electricity Generation 1964-1972*.⁹³ The main points are summarised below, chiefly because

88. Memorandum from Minister of Lands to the Under-Secretary for Lands, 19 November 1938, LS1 1307/261, pt1, NA

89. NZPD, 1931, vol230, pp559-579, fishing at Lake Taupo, native fishing licences and payments to natives

90. Section 66 of the Native Purposes Act 1931 also specifically provided for the Kaiapoi Scenic Reserve Board to 'grant and regulate fishing privileges as part of the bylaws for the "management, preservation and disposition of the said reserves"'.
91. Section 22(2) of the Native Purposes Act 1938

92. Section 48 of the Maori Purposes Act, 1947

93. John Koning, *Lake Rotoaira: Maori ownership and Crown Policy towards Electricity Generation, 1964-1972*, Waitangi Tribunal Research Series, 1993, no2

Rotoaira is not discussed in White's *Inland Waters: Lakes* report to the Waitangi Tribunal. While an exotic fish species – trout – is central to the issue of Rotoaira, the Crown's actions are reported on at length because of the lake's significance as an ecosystem whose Maori ownership was given statutory recognition.

Legal recognition of Maori ownership of Rotoaira resulted from the first application to the Maori Land Court for an investigation into title of the lake in 1937. The Department of Lands and Survey raised the question of whether the Government should not be advised to extend the Rotoaira fishing legislation of 1931, so as to declare the bed of the lake to be customary Native land, while preserving the Crown's right to reasonable use of the waters of the lake in connection with the adjoining Crown lands.⁹⁴ In response, the Native Department expressed its concern that this might set a precedent at a time when other Maori claims to lakes, notably Waikaremoana, were before the Courts. The Under-Secretary for the Native Department referred to 'the compromises effected in regard to Lake Taupo and the Rotorua Lakes'. He considered it 'essential that the lake should be vested in the Crown':

if the Crown abandons any claim to the ownership of this lake, it cannot reasonably attempt to sustain a claim against the Natives in, for example, the case of the Waikaremoana Lake. It is not merely a question as to whether or not Lake Roto Aira is of any value to the Crown – a question of principle is involved. In my opinion, the Court should be asked to grant an adjournment of the hearing of the application in respect of Lake Roto Aira, in view of the intention, shortly it is hoped, to prosecute the Crown's appeal against the decision of the Court as to the ownership of Lake Waikaremoana. Should the final decision in that case go against the Crown, the way would be cleared in so far as Lake Roto Aira is concerned, and it would render unnecessary any legislation in the matter of any action by the Crown either to oppose or consider the Natives' claim to ownership.⁹⁵

The Department of Internal Affairs considered that, in view of the lake's history, 'fishing in the waters and those running into it, and the Poutu River between the Outlet and the Falls should be definitely handed over to the Ngatituwharetoa. All the fish are Lake Roto Aira fish and the Falls are a natural barrier, and we have no rights of access for anglers'. The Department was comfortable with the prospect that it would be 'able to

94. Department of Lands and Survey to Minister of Lands, 16 November 1938, LS1 1307/261, pt 1, NA Wellington

95. Under-Secretary of Native Department to Under-Secretary of Lands, 1938, LS1 1307/261, pt 1, NA Wellington

wash its hands altogether of all matters affecting fishing in the waters referred to, leaving the Natives to deal with the fish in their own way'.⁹⁶

The Crown, however, opposed Tuwharetoa's application to the Maori Land Court for title to the lake bed, and continued to oppose it until 1943. That year, it withdrew its objection on the condition that any decision on Lake Rotoaira should not be taken as a precedent for the ownership of the beds of other inland waters. Between 1955 and 1956, the Maori Land Court investigated the title to the lake. It found in favour of the applicants and determined there to be approximately 3500 owners. The lake was consequently vested in trustees under section 438 of the Maori Affairs Act 1953. In total there were 11 trustees, each of whom represented a hapu of Tuwharetoa.⁹⁷

The vesting order gave the trustees powers to negotiate and alienate resources and contained provisions relating to fishing and wahi tapu. The Lake Rotoaira Trust was empowered to utilise, develop and exploit the natural resources of the lake for the benefit of the owners. This included the right to grant and regulate fishing licences and concessions on the lake. It was the Lake Rotoaira Trust with which the Crown had to negotiate regarding the use of the lake for electricity generation. The trustees had an obligation to 'arrange and decide on behalf of the Maori beneficial owners upon the conditions affecting the right to carry out such works, including the consideration payable to the owners thereof', and to safeguard 'the graves of the Maori people and all historic and sacred places in and around the lake together with the natural resources of water supply to the lake'.⁹⁸

In 1959, the Maori Purposes Act gave powers to the Rotoaira Trust Board with respect to fishing permits. It prohibited any person from entering upon, or fishing from, Lake Rotoaira and the Poutu Stream, without first acquiring a permit. It also modified the application of the provisions in the Fisheries Act 1908 concerning acclimatisation society authority regarding permits within 'Lake Rotoaira District', on the basis that Rotoaira was a Maori owned lake.⁹⁹

Part I of the Maori Purposes Act 1959, which vested the administration of fishing on Lake Rotoaira and parts of the Poutu Stream in the Rotoaira Trust Board, caused some debate when the Bill came before Parliament. The intention was to empower the board to regulate fishing activities in the lake, acting in trust for the rest of Tuwharetoa. Beneficial owners were reserved the right to use the lake without acquiring a permit from the

96. Memorandum from the Under-Secretary of Internal Affairs to Minister of Internal Affairs, 9 March 1938, LS1 1307/261 pt1, NA Wellington

97. Koning

98. Ibid

99. Section 90 of the Maori Purposes Act 1959

board. But, in allowing the board to sell permits to fish from the lake and the Poutu Stream, the Bill contravened section 89 of the Fisheries Act 1908 which prohibited the letting or sale of rights to fish in any waters. For this reason, the member of Parliament for Waikato, Geoffrey Sim, believed that the Government should be wary of the powers it was vesting in the Rotoaira Trust Board. He questioned whether, in fact, the Government was entirely aware of the Bill's implications. In the Government's defence, the Associate Minister of Maori Affairs, Eruera Tirikatene, assured Sim that the legislation was well thought through. He reminded the House that the bottom of Lake Rotoaira had already been vested in Tuwharetoa by the Maori Land Court, and said he believed that conditions should be created that would give Tuwharetoa the right to unrestricted fishing on the lake.

In the Fisheries Amendment Act 1962, Lake Rotoaira and the Poutu Stream were identified as not being subject to requirements for general 'tourist fishing licences'. A tourist fishing licence was a licence to fish for acclimatised fish in any New Zealand waters, but fishing in Rotoaira and Poutu Stream was confined as of right to Tuwharetoa. The Rotoaira Trust Board could, however, license the general public to fish in those waters.

Between May and September 1964, a number of meetings took place between Tuwharetoa and officials from the Ministry of Works and other Government departments. At these meetings the Tuwharetoa Trust Board and Lake Rotoaira Trust, along with other interested parties, sought an assurance from the Minister of Electricity that the fishing potential of the Turangi area would not be materially affected by the Tongariro Power Development Scheme. In giving such assurances, the Minister stated with regard to Lake Rotoaira that 'the scheme will be designed and operated in such a way that the lake will be substantially unaffected'.¹⁰⁰ The scheme was approved in September 1964. At the time, the Minister of Electricity stated that 'one of the pleasing features of the negotiations in preparation for this project, has been the friendly co-operation of the Maori people of the district in negotiations for the purchase of land and the use of traditional preserves, particularly Lake Rotoaira'.¹⁰¹

Late in 1970, the Ministry of Works notified the Lake Rotoaira Trust that the title to Lake Rotoaira would be acquired by the Crown under the Public Works Act. The Ministry was 'dedicated to the compulsory taking of the lake title as never before had the Crown faced the situation where a lake to be used for the generation of electricity was not under the absolute

100. T P Shand, Minister of Electricity, to R E Tripe, Tuwharetoa Trust Board solicitor, 13 August 1964, PW92/12/67/6/34, pt1, NA Wellington (cited in Koning)

101. *Evening Post*, 22 September 1964 (cited in Koning)

control of the Crown'.¹⁰² The Lake Rotoaira Trust opposed the plan. However, in 1972, placed in an invidious position by the Ministry of Works, the trustees 'were forced to sign a deed which although it left their lake title in their ownership, surrendered their rights to a fair and reasonable compensation for the use of their lake'.¹⁰³ The Trust has since maintained that the Tongariro power development irretrievably damaged the Lake Rotoaira trout fishery, but under the terms of the 1972 agreement, the Maori owners are prevented from making any claim against the Crown for this loss.

Work on the construction of the Tongariro Power Development Scheme commenced in October 1964. Despite the assurances of Ministry of Works officials, its damaging effects on the fishery was being reported in the press only two years later. The *Evening Post*, for example, described how 'spawning streams of the world famous fishery, Lake Rotoaira, have been destroyed despite repeated promises by the Government to protect fishing in the Tongariro power development area'.¹⁰⁴ The *Daily News* reported that during the construction of access roads, the Ministry dumped large quantities of pumice, which ruined the Warehu and Otara as spawning streams. Only small quantities of fish fry had needed to be imported to stock Lake Rotoaira, where 30,000 trout were caught in 1964. In 1966, with mud and silt now covering the gravel and shingle stream beds necessary for spawning, it was apparent that substantial imports of fry would be necessary to rebuild the population.¹⁰⁵

The Lake Rotoaira Trust subsequently commissioned a report on the state of fishing in the area. The report, written by a respected angler, noted that the spawning waters of Lake Rotoaira – the Warehu, Otara, and Poutu streams – had all in some way been adversely affected by construction work. The report concluded that the capacity of the existing spawning streams to supply young fish to replace the fish removed by ever increasing angling pressure, had been seriously retarded: 'Indications are that [the Lake Rotoaira Trust] is now committed unnecessarily to a very costly programme of artificial stocking and [the] streams and lake shores will carry unsightly scars for years into the future'.¹⁰⁶

This led to a discussion on the potential for Maori to claim compensation for damages to the lake. The Crown, meanwhile, investigated the option of acquiring the entire lake. In return, it would 'compensate for the loss of income, compensate for high lake levels as for Taupo and open the lake to the public'.¹⁰⁷ In 1970, the Government decided that such a major

102. J T Ascher, secretary, Lake Rotoaira Trust, to registrar, Waitangi Tribunal, 25 February 1991 (cited in Koning, p18)

103. Ibid

104. *Evening Post*, 23 June 1966

105. *Daily News*, 23 June 1966

106. H K Payne to Lake Rotoaira Trust, 4 July 1966, PW92/12/67/6/34, pt 1, NA Wellington (cited in Koning)

107. A W Gibson, Project Engineer, to Assistant Commissioner of Works, 31 March 1970, PW92/12/67/6, pt 4, NA Wellington (cited in Koning)

Crown investment should not be prejudiced by private ownership. Following that decision, the Commissioner of Works asked the Minister of Works to authorise discussions on the control and ownership of Lake Rotoaira.¹⁰⁸ On 10 September 1970, Cabinet accepted this proposal and authorised the Ministry to negotiate with the owners of the lake to reach ‘a satisfactory basis for future control, subject to other departments concerned being fully consulted during these discussions’.¹⁰⁹

However, in 1971, following various meetings between Maori and the Crown, and some 11 months after diverted water had begun to flow into Lake Rotoaira, the Ministry of Works was still unsure about how to approach the issue of control of the lake. This was largely because of the existence of significant opposition to the sale of the lake. The Crown undertook valuations of Rotoaira and considered the option of leasing it. While this was going on, departmental officials based in Turangi became increasingly concerned by the possible damage to fishing in the area and the likelihood of weed growth in Rotoaira. It was predicted that the diversion of water into Lake Rotoaira would have a serious effect on fish life, by disrupting the food supply.

By the end of 1971, Ministry officials had still not agreed on the estimated value of Lake Rotoaira, and consequently no offer of purchase had been received by the owners. In early January 1972, prompted by concern at pressure being applied by Ministry officials for purchase or compulsory acquisition of Lake Rotoaira, the Rotoaira trustees requested a meeting with Keith Holyoake, the Prime Minister, and other Government Ministers and officials. It was rumoured that the Government was considering seeking to acquire the lake to avoid the possibility of any future compensation claims. At a meeting in Wellington, the trustees sought an assurance from the Prime Minister that the Crown would not compulsorily acquire Lake Rotoaira for that reason. However, the Prime Minister replied that he was ‘only vaguely aware of most of the matters raised in the submissions’, and as a result was unwilling to give any assurances ‘except that the government would take into account the rights and wishes of everyone’. He thought that Crown ownership and control of the lake was the most sensible option given the possible levels of pollution.¹¹⁰

In early May 1972, the Minister of Works informed the Cabinet that if the Crown wanted to obtain ownership rights and avoid continual disputes about the control and management of Lake Rotoaira, then voluntary sale or compulsory acquisition had to be considered. The Minister

108. Commissioner of Works and general manager, Electricity Department, to Minister of Works and Electricity, 14 August 1970, PW92/12.67/6, pt5, NA Wellington (cited in Koning)

109. Cabinet Minute, Tongariro Power Development Land Acquisition Stages 1 and 2, CM(70) 37/18, 7 September 1970, PW92/12.67/6/34 pt1, NA Wellington (cited in Koning)¹¹⁰

110. Deputation from Ngati Tuwharetoa to the Prime Minister, 28 January 1972, PW92.12.67/6 pt6, NA Wellington (cited in Koning)

recommended the purchase of Lake Rotoaira for a sum of \$200,000, 'having regard for efficiency factors, future revenue prospects, the fact that the owners are unwilling sellers, and that the Crown wishes to buy'. The Minister concluded that 'the implications of compulsory acquisition should be considered'. He believed there was no doubt that because of 'the wider interests involved including tourism, fishing, and sporting activities and the future requirements of the hydro-electric developments, a strong case for compulsory acquisition should be made'.¹¹¹ If compulsory acquisition of the lake was not considered to be appropriate, the Minister recommended that a lease in perpetuity be negotiated whereby all rights of control and use of Lake Rotoaira, including fishing rights, would be acquired by the Crown.

After further discussions between the Lake Rotoaira Trust and the Ministry of Works, an agreement was signed between the parties on 30 November 1972. Under this agreement, the Crown could exercise all the rights and powers contained within the Public Works Act 1928, the Electricity Act 1968, and the Water and Soil Conservation Act 1967, for the maintenance and protection of the Tongariro power development. The Lake Rotoaira Trust was prohibited from any act or activity which in the opinion of the Electricity Department could jeopardise the operation and maintenance of the scheme. The owners of Lake Rotoaira discharged the Crown from all liability to pay compensation under the Public Works Act 1928 and from the payment of consideration for any alteration to the water levels or condition of the lake.

In return, the Crown agreed not to compulsorily acquire Rotoaira. While the Ministry refused to extend the Rotoaira Trout Fishing Regulations to the new lakes at Otamangakau and Te Whaiiau, the Crown did consider that Tuwharetoa had an interest in the management and administration of fishing in them. The regulations were amended to cover the extension in the boundaries of Lake Rotoaira through the rise in water levels.¹¹²

The second stage of the power scheme was completed in 1973, with the diversion of water from the Tongariro River via the Poutu canal and dam into Lake Rotoaira.¹¹³ In 1977, the physical and hydrological changes that the Tongariro Power Development Scheme had brought to Rotoaira were given legal expression in the Maori Purposes Act. This Act covered the Poutu inflow and dam, the Wairehu canal, the Tokaanu intake tunnel and the 'waters that from time to time cover lands adjoining Lake Rotoaira

111. P B Allen, Minister of Works, memorandum for Cabinet, 4 May 1972, PW92/12/67/6, pt 6, NA Wellington (cited in Koning)

112. Koning

113. J E Martin (ed) *People, Politics and Power Stations. Electric Power Generation in New Zealand, 1880-1990*, pp221-229 (cited in Koning, p6)

resulting from any rise in the level of the lake'. Section 10 of the Act amended section 6 of the Maori Purposes Act 1959, by providing 'that, where the waters of the Lake cover land adjoining Lake Rotoaira resulting from a rise in the level of the Lake, every owner of such adjoining land shall be deemed to have consented to entry on any portion of his land that for the time being forms part of the lake'.

Long before the Tongariro Power Development Scheme, lake shores, or riparian zones as they were often called, were a matter of concern in the wider environment of the central North Island lakes. Following the legislation of the 1920s that 'freed and discharged' the beds and waters of the Rotorua lakes and Taupo waters from customary title, and declared them to be the property of the Crown, Taupo and Rotorua Maori continued to seek compensation for the loss of their riparian rights. As the member of Parliament for Eastern Maori, Apirana Ngata, told Parliament in 1936, part of their concern was the way in which Crown policies were disadvantaging Maori with lakeshore interests compared to European landowners:

The riparian rights around the lakes were owned by the Crown, the Maoris, and Europeans, and suggestions had been made that in the dealing with the acquisition of land to enable access to be given to the water, particularly in the neighbourhood of Lake Rotoiti, there was an inclination to protect the private European holdings, whereas in regard to the Native land abutting on the lake there was not the same disposition to protect those interests or to give as compensation as much for the Native land as the pakeha asked for his . . . A number of Maoris were concerned and felt that in the adjustment of the access to the lakes they were going to be prejudiced compared with the private Europeans.¹¹⁴

Ngata went on to outline the current situation at Lake Taupo and requested compensation be paid to Tuwharetoa for the loss of their rights in the streams flowing into Lake Taupo.¹¹⁵

Compensation for loss of some riparian rights was provided for by the Native Purposes Act 1946. Section 8(2) required the Crown to pay compensation to 'any person who has any estate or interest in any land over which a right-of-way is reserved under paragraph (b) of section 14(4) of the Native Land Amendment and Native Land Claims Adjustment Act, 1926, [who] suffers or has suffered since the date of the passing of that Act any loss by reason of his having been deprived of the right to let for camping-sites or for fishing purposes any part of that land'. However,

114. NZPD, 1936, vol246, p511

115. NZPD, 1936, vol246, p512

legislation and other Crown actions continued to affect customary Maori riparian interests.

A Taupo example was the Lake Taupo Compensation Claims Act 1947, which set lake levels with no reference to the traditional Maori relationship with the lake. However, Maori riparian rights were recognised the following year in the decision of the specially constituted Lake Taupo Waters Compensation Court. The Court's judgement that the beds of the rivers and streams flowing into Lake Taupo were in fact under Maori customary title and therefore belonged exclusively to Tuwharetoa established a very important legal precedent for Maori. The Court, set up pursuant to section 14 of the Native Land Amendment and Native Land Claims Adjustment Act 1926, made its award of compensation to the owners of Maori land bordering upon rivers flowing into Lake Taupo:

Under the Act of 1926, a Proclamation was issued declaring to be Crown lands the beds or rivers and streams flowing into the lake for specified distances, and provision was made for a right-of-way 1 chain wide along the banks of the rivers and streams to give public access to them. . . . A total sum of £45,600 was awarded to the owners for the damage suffered in the use of their land and the losses suffered by deprivation of the right to let any part of the land for camping-sites or for fishing purposes.¹¹⁶

In 1955, the Maori Trust Boards Act was passed. Among other things, it enabled fishing licence and campsite fees, as well as fines and penalties associated with fishing, to be paid to Maori who had customary interests in Taupo's indigenous fisheries and riparian lands, via the Tuwharetoa Maori Trust Board.¹¹⁷

The idea of a 'Treaty partnership' did not exist in the 1950s in the way it has come to exist since the 1980s. However, legal provisions of this kind can be seen as constituting a degree of Treaty partnership between the Crown and Maori. Only in the cases of the Rotorua lakes and at Lake Taupo, though, was there any real evidence of Maori freshwater fishing rights being under at least some Maori control. And in neither area did the legislative provisions that were in place by the 1950s lead to any further Maori control. Those provisions, furthermore, were not universally accepted. In a parliamentary debate in 1958, the member for Manukau, Mr Gotz, stated that:

116. 'Lake Taupo Waters Compensation', AJHR, 1949, C-9, p19

117. Section 10 of the Maori Trust Boards Act 1955

part of the revenue from fishing licences went to the Maori people through the Tuwharetoa Trust. It amounted to a considerable sum but for years the Maoris had been taking advantage of their position as land-owners and had been barring fishermen from access to certain waters, except on payment of a fee.

He was of the view that the Minister should look into the matter.¹¹⁸

While Maori-owned lakeshore land was an asset that could earn revenue for its owners, it was also a matter of interest to the Crown. Well into the 1970s, the Crown continued to acquire Maori riparian land around Lake Taupo for lakeshore reserves. Reports to Parliament by the Department of Internal Affairs indicated Maori land abutting Lake Taupo was a target for acquisition by the Crown. In 1971, for example, the department noted:

Progress continues to be made by the working party of the Taupo Basin Co-ordinating Committee in defining areas and exploring ways and means of acquiring land around Lake Taupo for lake-shore reserve purposes. Areas of land acquired for reserves under the scheme are as follows:

- 9125 acres in various Crown development blocks;
- 1080 acres of Maori land at Tokaanu; and
- 214 acres of Maori land north of Turangi; near the Waiotaka and Waimarino River.¹¹⁹

The following year, it was reported that:

- Progress continues; an additional 200 acres have been acquired:
- 180 acres of Maori freehold land north of the Kuratau River in Te Hape Bay;
 - 20 acres of Maori freehold land north of the Waitahanui River mouth between Main highway and lakeshore.¹²⁰

While by the middle of the century there had been some limited Crown recognition of Maori customary rights with respect to lakes, notably in the central North Island, this was not the case with most inland waterways. Even where statutory recognition had been made, it had failed to safeguard the indigenous fisheries to which customary rights were tied. By the late 1940s, the great majority of indigenous freshwater fisheries had been either destroyed by the successful liberation and establishment of

118. NZPD, 1958, vol 318, p1424

119. Internal Affairs, 'Lake Taupo Reserves', AJHR, 1971, H-22

120. 'Lake Taupo Reserves', AJHR, 1972, H-22

introduced fisheries for game and sports fishing, or their destruction by such introductions was in progress. For many years, the Crown had played a dominant role in the introduction and acclimatisation of exotic fish. In 1948, this was consolidated with the Fisheries Amendment Act.

Part II of the Fisheries Amendment Act 1948 dealt with Freshwater Fisheries. Its primary purpose was to provide for the Governor-General 'to make any regulations as may be deemed necessary or expedient for the protection, preservation or development of the freshwater fisheries of New Zealand'.¹²¹ While it was designed to assist the acclimatisation of trout and salmon, and control New Zealand's waterways to that end, the Act also contained provisions that affected Maori fishing rights. Nothing in the Act was to affect the operation of section 14 of the Native Land Amendment and Native Land Claims Adjustment Act 1926, or of section 22 of the Maori Purposes Act 1938, the Acts that had legislated the Crown's agreements with Te Arawa and Tuwharetoa. Section 11 of the Fisheries Amendment Act provided for restrictions to be imposed in the mode and method of taking fish, and specifically provided for Maori with whom the Crown had negotiated historic agreements to be exempted from such restrictions in relation to indigenous fish. It stated that 'the Governor may make regulations for the purpose of exempting Maori from any restriction upon the taking of indigenous fish species. Such restrictions may be made either wholly, partially, conditionally, or in respect of any specified waters.'

This exemption clause meant that Maori rights to indigenous species could be maintained, while concessions to Maori with regard to introduced fish species were avoided. The Minister for the Marine Department, Mr Hackett, believed that the clause reflected the Government's 'full recognition of the existing rights of the Maori people'. David Wilson, a Legislative Councillor from Wellington, concurred. He believed that because it preserved certain rights which Maori had possessed in relation to rivers and lakes for many years, the discretionary exemption of Maori from the fishing regulations in regard to indigenous fish was a most important provision. The research for this overview did not locate any instances of exemptions to the Fisheries Amendment Act 1948 being issued.

Despite these significant provisions relating to Maori in the 1948 amendment, there were no such provisions in the Fisheries Amendment Act 1953. The 1953 amendment was primarily concerned with the establishment of 'Fisheries Experimental Waters' in which registered

¹²¹ Section 11 of the Fisheries Amendment Act 1948

acclimatisation societies could undertake research. Other users could be excluded from these declared experimental areas, and unlike the 1948 amendment, the 1953 amendment contained no exemption for Maori. It had the potential, therefore, to adversely affect the Maori relationship with the indigenous flora and fauna if a traditional fishing ground was reserved as a fisheries experimental water.

An example of a fisheries experimental area in which the interests of acclimatisation societies in exotic fish prevailed over any interest in native fish was reported to Parliament in 1958. The area was located in the upper part of the Waimakariri River in Canterbury. It involved complete removal of a stream's eels:

A permanent two-way trap, which will provide a record of all fish moving in and out of the area, is now almost completed. In addition, a considerable amount of work has had to be done to prepare the stream itself for the experiment. Willows have had to be removed in many places to make it possible to get the electric fishing equipment through. Care has been taken, however, to leave the stream as little changed as possible from the trout's viewpoint. This trap will provide complete control of the fish population of the area and will enable the effect of eel removal to be accurately determined.¹²²

Freshwater fisheries legislation was amended in 1962 and again in 1965. The Fisheries Amendment Act 1962 confined the requirement of licences to acclimatised exotic fish. The Act applied to all waters in New Zealand. It made specific provision for preserving the rights of Tuwharetoa in their customary fishing grounds in Taupo and its associated waterways.

The Fisheries Act 1965 amendment to the 1908 Fisheries Act increased restrictions on Maori access and fishing rights within lakes and rivers, in order to allow for the successful breeding and establishment of introduced game fish. It enabled 'any specified waters' to be declared spawning grounds for fish. Fishing could be prohibited, and restrictions and conditions imposed on 'entry into any such waters or onto land within a specified distance of any such waters'.¹²³

By the 1960s, Taupo had been a world famous trout fishery for over half a century, and the trout had been liberated and acclimatised into Taupo waters without regard for the indigenous flora and fauna. In its natural state, Taupo did not contain indigenous eel species. The construction of the Tongariro power scheme, and the diversion of waters into waterways

122. AJHR, 1958, H-15
123. Section 16 of the Fisheries Act 1965

flowing into Taupo, raised the prospect that eels would enter the lake. There were fears that the eels would eat the trout. This was a matter of concern when the 1965 amendment to the Fisheries Act was debated in Parliament. The member for Onehunga, Mr Watt, asked whether any investigations had been carried out concerning the possibility of young eels entering Lake Taupo by means of the proposed diversion of the Wanganui and other rivers into the Tongariro network. He was assured by the Minister of Works, P B Allen, that the investigations that had been completed recommended that 'no action should be taken to prevent eels from reaching Lake Taupo'.¹²⁴

The Fisheries Amendment Act 1971 widened Crown control over the sale of fishing rights, and carried implications in that regard for Maori fishing rights concerning indigenous fauna. The Act applied to private fishing rights and included all waters, even private waters.¹²⁵

The Fisheries Act 1983 consolidated all previous fisheries legislation. Part v of the Act dealt with freshwater fisheries. Section 88(2) stated that nothing in the Act would affect any Maori fishing rights. But it vested 'the conservation of all species of indigenous fish and their habitats'¹²⁶ in the acclimatisation societies in each district, along with responsibility for the protection, management, and enhancement of all acclimatised fish species and their habitat. The Act included provision for acclimatisation societies to grant special permits to take indigenous fish from any waters situated in a national park or reserve within the society's district. Such permits were also subject to the Reserves Act 1977.¹²⁷ Although the Act vested power in fisheries officers to enter or pass across any land, 'if the officer has reasonable grounds to believe an offence has taken place', the provision did not apply to land reserved under the Maori Affairs Act 1953.

In the parliamentary debate on the Fisheries Bill 1983, the question of the Treaty of Waitangi was raised – the first time this had happened in connection with fishing for many years. The issue arose because the Bill, while it included the term 'existing Maori fishing rights', did not define it and left it open to interpretation. The 1983 Act repealed the Fisheries Amendment Act 1962 under which Maori in the Rotorua lakes district were afforded 'special' rights to fish their customary fisheries. It can only be assumed that those particular rights were considered to be 'existing Maori fishing rights' under the 1983 Act and that it in no way restricted them. The 1983 Act did, however, abolish any specific statutory reference to such groups.

124. NZPD, 1964, vol339

125. Section 89 of the Fisheries Amendment Act 1971; NZPD, 1972, vol381, p2681

126. Section 71 of the Fisheries Act 1983 (pt II)

127. Section 72 of the Fisheries Act 1983

Two Opposition Maori members of Parliament, the member for Western Maori, Koro Wetere, and the member for Northern Maori, Bruce Gregory, were concerned that a significant principle with considerable historic standing was being lost in the 1983 Fisheries Bill. They cited, in this regard, section 8 of the Fish Protection Act 1877, which stated that ‘nothing in this Act shall be deemed to alter, annul, or breach any of the rights of the provisions of the Treaty of Waitangi or to take away, annul, or breach any of the rights of the aboriginal natives of any fisheries secured to them thereunder’. Wetere and Gregory’s assertions were influenced by the Waitangi Tribunal’s recently completed report on the Motunui-Waitara claim, from which they both quoted extensively. Wetere concluded that ‘if the recommendations of the Waitangi Tribunal have any validity, the House should re-examine the [1983 Fisheries] Bill’.¹²⁸

The Government members believed that the new clause did nothing to alter Maori fishing rights. They considered that the most appropriate medium for Maori Treaty rights was Maori affairs legislation. As a result, the 1983 Act made no reference to the Treaty of Waitangi.

The Crown’s fisheries legislation provided, alongside provisions relating to introduced fish species, for certain customary rights which Maori had possessed in relation to the indigenous fish of rivers and lakes. From the 1950s, several statutes concerning specific lakes and rivers were enacted as part of a Crown effort aimed at negating Maori customary title. Significant among these were those that affected the Whanganui River.

Since early in the twentieth century, Whanganui Maori had sought legal affirmation of their ownership of the riverbed. In 1951, following the 1950 royal commission into Maori claims to the Whanganui River,¹²⁹ the Court of Appeal was conferred jurisdiction in relation to ownership of the river’s bed.¹³⁰ Subsequently, section 6 of the Maori Purposes Amendment Act 1954 amended this 1951 provision, enabling the Court of Appeal to order the Maori Appellate Court ‘to take further evidence in respect of any question of fact or of Maori custom or usage relating to the rights of Maoris in respect of the bed of the Wanganui River’. These provisions did not guarantee Maori ‘ownership’ rights as such, but they did give statutory recognition to the fact that the river’s iwi had a traditional relationship with the river. This issue and the history of the Whanganui River claim is comprehensively reported in the Waitangi Tribunal’s 1999 *The Whanganui River Report*.

128. NZPD, 1983, vol 452, pp2265–2269

129. ‘Report of Royal Commission Appointed to Inquire into and Report on Claims Made by Certain Maoris in Respect of the Wanganui River’, AJHR, 1950, G-2

130. Section 36 of the Maori Purposes Act 1951

In 1956, two special provisions were enacted that gave comprehensive legislative recognition to Muaupoko's customary ownership of the freshwater ecosystem of Lake Horowhenua and the Hokio Stream. Section 18(2) of the Reserves and Other Lands Disposal Act 1956 declared 'the bed of the lake, the islands therein, the dewatered area, and the strip of land one chain in width around the original margin of the lake . . . to be and to have always been owned by the Maori owners . . . notwithstanding anything to the contrary in any Act or rule of law.' Section 18(3) provided similarly for the Hokio Stream and a strip of land one chain in width along a portion of the stream's north bank. The Act also vested authority over the lake in the trustees appointed by the Maori Land Court, and provided for free public access on all this Maori land and the lake.¹³¹

From about 1915 when Tuhoe, Ngati Ruapani and Ngati Kahungunu applied to the Native Land Court to have Lake Waikaremoana's lake bed title determined, the Crown claimed in the courts that it owned the lake. Government officials stocked Waikaremoana with trout, issued licences and employed rangers to police the fishery, but the Crown remained unsuccessful in its effort to establish its legal title to the lake. Finally in 1971, after a long drawn-out and complex legal dispute between Urewera Maori and the Crown, legislation was enacted to confirm the long-term lease of Lake Waikaremoana by its Maori owners to the Crown. The lake was then managed by the Crown as part of Urewera National Park.¹³² The ambit of the Lake Waikaremoana Act 1971 extended beyond the lake bed to include the islands within the lake and the dry land between the water's edge and the title boundary. It afforded Urewera Maori no fishing rights above and beyond those of the general public.¹³³

The net result of litigations such as that over Waikaremoana was that, by the time an increased environmental awareness and concern for the scenic value of freshwater ecosystems developed in the 1970s, Crown policy considered only a tiny minority of New Zealand's lakes and rivers to be Maori in any way other than historically. As a consequence, the principle became embedded throughout all Crown agencies and operations that, with only a few exceptions, all lakes and rivers were public features under the allodial title of the Crown. This is evident, for example, in nationwide studies such as the *Inventory of New Zealand Lakes* and the *National Inventory of Wild and Scenic Rivers* that were undertaken by Crown agencies in the 1980s.¹³⁴ Neither of these studies made any reference to Maori or to the Maori relationship with lakes and rivers as taonga.

131. Section 18 of the Reserves and Other Lands Disposal Act 1956

132. The establishment of Te Urewera National Park is the subject of section 4 of chapter 6 of this report.

133. The Crown quest for ownership of Waikaremoana is comprehensively reported in Emma Stevens, 'Report on the History of Lake Waikaremoana and Waikareiti', report commissioned by the Crown Forestry Rental Trust, 1996, and in White, ch5.

134. *Inventory of New Zealand Lakes*, Part I North Island; Part II South Island, Water and Soil Miscellaneous Publications nos 80, 81, Wellington, Ministry of Works and Development, 1986; *A Draft for a National Inventory of Wild and Scenic Rivers*, Water and Soil Miscellaneous Publications no 42, Wellington, Ministry of Works and Development, 1982

The inventory of wild and scenic rivers was a product of a late 1970s policy initiative aimed at ‘ensuring protection of rivers, of sections of rivers, in their undeveloped state when they have outstanding wild, scenic, or other natural characteristics’.¹³⁵ The draft of part I of the national inventory, published by 1982 by the National Water and Soil Conservation Organisation, included many rivers, such as the Whanganui, that were of considerable significance to Maori and for which Maori had been in protracted litigation with the Crown. The inventory made frequent references to the indigenous flora and fauna, but no reference whatsoever to Maori or Maori values.

4.4 AN INVENTORY OF MAORI PETITIONS TO PARLIAMENT CONCERNING LAKE AND RIVER ECOSYSTEMS, 1912–1983

Lake and river ecosystems and the issues of resource ownership and customary fishing rights therein were a major source of Maori petitions to Parliament. The great majority of these petitions were made before the early 1930s.

Given this is an overview study, the petitionary research was confined to a search of key record groups at National Archives in Wellington and the compilation of the inventory of petitions below. All of the petitions surviving in the Legislative Series and listed in the *Appendices to the Journals of the House of Representatives* that refer to the indigenous flora and fauna of lakes and rivers are listed below. Given the nature and extent of Crown policies concerning lakes and rivers, and the Maori grievance they caused, it remains likely that there were many more Maori petitions to Parliament than which survive and were located.

Only the petitions which made clear reference to the indigenous flora and fauna of lakes and rivers were recorded in any detail. Many that simply referred to ownership issues are not listed here. Often, this distinction was not able to be readily determined because, if the petitions were identified by words at all, it was according to the names of the land blocks in which the petitioners’ concern lay, rather than by subject. Thus, it was not possible to determine from the listed petitions in the AJHR which, or how many, related specifically to the indigenous flora and fauna of lakes and rivers. Some petitions recorded by the Maori Affairs Department stated only the block numbers. Such files could only be found by a thorough

¹³⁵ Venn Young, Minister for the Environment, NZPD, 1978, vol 420, p3096

search of all of the petitions. Searching on a title basis alone would have not revealed these files.

A few petitions, such as the first petition listed below, were located in departmental files and were neither listed in the AJHR nor located in the LE Series. In these situations, it would appear that the original petition does not survive in the Maori Affairs record; a record of it survives only in the file of the Government Department to which it was referred. In other cases, including several unresolved petitions, the summary information listed in the AJHR is all that has survived. Items 7, 9, 10 and 11 below are examples.

It should be noted that a number of petitions that relate to lake and river ecosystems are presented in this report under other themes. At least three petitions presented in the chapter on scenery preservation, for example, concern lake or river ecosystems.

The petitions are set out chronologically. They are presented together with any recommendation from the Native Affairs Committee that survived with them, and with minimal interpretation.

1. *Kuru Rutene and 49 others of Taupo (Ngatituwharetoa)*: to the Honourable Maui Pomare, Internal Affairs, 1 September 1913.

This petition related to freshwater fishing rights being impacted upon by Crown laws and introduced fish species:

(1) The Taupo-nui-a-Tia lake, where these trout fish occur, belongs to us the Maori of Taupo – absolutely.

(2) Our native fish which originally abounded in this lake, such as our trout, craw-fish, toitoi and inanga, and upon which we largely subsisted have now all been devoured by these trout fish.

(3) The Pakeha had no right over our original fish which have thus been devoured by these trout, neither have the Pakeha any right over our lake itself . . . We now therefore entreat of your honourable Government to confirm the . . . resolution adopted by us so that it become a permanent law for our protection and the protection of our lake Taupo, so that Maori be not charged with licences for fishing.¹³⁶

This petition was located in a Department of Internal Affairs file, but was neither listed in the AJHR nor located in the LE Series. No record of what happened to the petition was found.

¹³⁶. Petition in IA1 26/42, NA Wellington

2. *Haora Tareranui and 60 others, of Paeroa*: 'Praying for relief in respect of damage to their land, which is caused by the silting-up of the Ohinemuri River in consequence of operations by the gold-mining companies'.¹³⁷

The Native Affairs Committee reported that they were of the opinion that the interests of the Native petitioners should be conserved as far as possible, and that the petition should be referred to the Goldfields and Mines Committee.

3. *H Rangikumea and others of Wairoa, Hawke's Bay*.

This petition, concerning the coastal lagoon of Lake Whakaki, emphasised the traditional relationship Maori had with the indigenous flora and fauna. The petitioners referred predominantly to their customary rights being impacted upon through the imposition of close season regulations, despite their rights to the lake being reserved for them by their forefathers and ancestors:

Whereas an injustice has been inflicted upon us by the appointment of a Committee of the incorporated owners of Lake Whakaki . . . in January 1934 to control the fishing in and the shooting on the said lake. Eels, flounders, carps and herrings are obtained from this lake. We have had the right to fish here at any time and shoot ducks and swans during the shooting season.¹³⁸

There is no record of any recommendation from the Maori Affairs Committee in relation to this petition. Whakaki is discussed in more detail in section 5.6 in chapter 2 of this report, on swamp ecosystems. The petition is included here because the petitioners identify Whakaki as a lake.

4. *Wiremu Poakatahi and eight others of North Auckland District*: 'Praying for legislation to clearly define and preserve fishing rights of Native tribes'.¹³⁹

Such non-geographically specific petitions commonly received 'no recommendation' from the Native Affairs Committee. On 19 October 1914, the Under-Secretary of the Native Department stated that the question in the petition was one affecting policy, and he had no remarks to make.

5. *Rupuha Te Hianga and five others*: 'Praying for an inquiry regarding the interests which petitioners allege they have in Whatuma Lake'.

¹³⁷. 'Petition of Haora Tareranui and 60 Others, of Paeroa', no102 (1913), AJHR, 1913

¹³⁸. 'Petition of H Rangikumea and Others of Wairoa, Hawkes Bay', no367/1914, LE series, NA Wellington

¹³⁹. 'Petition of Wiremu Poakatahi and 8 Others of North Auckland District', no1592/14, LE series, NA Wellington

The petition stated that:

We, the applicants whose names are shewn hereunder know our rights to the said lake viz:– The conflict between our ancestors, their proverbs, the names given to the eel weirs or pas, (kokopu) place where big eels are caught, the landing place of canoes, the kakahi beds, the names of places where ducks were captured, the places where they used to get the pollen of the flowers of raupo, and other food places that they had.¹⁴⁰

In response to this petition, the Native Affairs Committee recommended that the Native Land Court be empowered to hear their claims to Whatuma Lake. Although other petitions relating to freshwater ecosystems referred to ancestral lineage as the basis for affirming ownership, generally they did not make such explicit reference to the indigenous flora and fauna.

6. *Areta Kerei and another, of Wairoa*: ‘Praying for an inquiry regarding their claims to fishing-grounds known as Te Mango, Wairoa River’.

The petitioners sought to retain their traditional control of the mouth of the Wairoa River for fishing purposes:

This is a petition from us your petitioners in reference to a certain eel lake (roto tuna) named Te Manga, situate in the mouth of the Wairoa River, a place where we killed (ie caught) inanga (whitebait) kokopu (grey ling), other fish and eels; and our eel weirs are in that lake (now), and others or our eel weirs are on the beach side (ie seaward side), the said beach being known by the name of Tahuna-mai-i-Hawaiki. On the said beach is a large urupa (burial place) existing from the times of Tapuae coming down to the time of our parents, they are all buried there. Our ancestors were accustomed to net the fish on the said beach and to toil for the pipis on the said beach, Tahuna-mai-i-Hawaiki. When the floods descended, firewood was deposited upon the said beach at the time when our parents were living, and no pakehas ejected Maoris who came to gather the firewood, but now in our days the Pakehas come down and turn us off, and say to us that the said beach and the said lake (lagoon) are now theirs. We now pray to you, the Government, to instruct a Judge of the Native Land Court to adjudicate upon and inquire into our claims and ancestral rights, because the said lake (lagoon) and beach have never been adjudicated upon (by the Native Land Court).¹⁴¹

140. ‘Petition of Rupuha Te Hianga and 5 Others, no 1416/14’, LE series, NA Wellington

141. ‘Petition of Areta Kerei and Another, of Wairoa, no 142/1915, AJHR; LE series, NA Wellington

On 8 October 1915, the Native Affairs Committee reported it had no recommendation to make because the petitioners had not yet exhausted their legal remedy.

7. *Hoani Te Hau Pere and 39 others, of Wairewa*: 'Praying that Lake Forsyth be set aside as a fishing reserve for members of the Ngaitahu Tribe resident in Wairewa, Onuku, and Opukutahi'.¹⁴²

On 23 October 1919, the Native Affairs Committee reported that it had no recommendation to make.

8. *Maera Kuaao and 102 others*: Praying that Lake Kereru be reserved for their use.

The petition concerned customary rights to a small lake and urupa near Kaikohe, but had limited reference to the indigenous flora and fauna:

(1) Your petitioners pray that Kereru a freshwater lake be set aside for us for thereabouts is a dug out pit for containing human remains. For there also are 'Wharehuinga and Motuharangi' where the remains of our ancestors live. (2) From 'Wharehuinga' the human remains have been exhumed by the Europeans living near Lake Kereru. (3) Mutoharangi is an island in the middle of Lake Kereru. Persons were buried there by Matiu Kapa a Minister of the Church of England. These were exhumed by the said Europeans who were caught in the very act by the Maoris. (4) Therefore your petitioners make an earnest request in accordance with the law that the said European should not have any right to the said lake but that the said right be vested in the Maoris, for the main land only was sold by the Maoris and their solicitor Blomfield. The said European has assumed the sole right to the pit containing the remains of our ancestors and also the rights of the Maoris to the sacred places and to the said lake.¹⁴³

A title search at the time established that there was no exclusion of the lake in the sale of the land. On 30 September 1924 the Native Affairs Committee referred this petition to the Government for inquiry and report by the Chief Judge under section 6 of the Native Land Amendment and Native Land Claims Adjustment Act 1922

142. 'Petition of Hoani Te Hau Pere and 39 Others, of Wairewa', no 21/1919, AJHR

143. 'Petition of Maera Kuaao and 102 Others', no 1327/1922, AJHR; LE series, NA Wellington

144. No 125/1927

9. *Petition of Haora Tareranui and another*.¹⁴⁴

This petition was for compensation for losses sustained through flooding of their land, alleged to have been caused by public works on the

Ohinemuri River. The Native Affairs Committee recommended this petition should be referred to the Government for inquiry on 3 October 1927.

10. *Petition of W D Barrett and 27 others; and Petition of W Genet and 36 others:*¹⁴⁵ Praying that the use of set-nets for catching whitebait in the Ashley River may be made illegal.

The Native Affairs Committee recommended this petition should be referred to the Government for inquiry on 15 September 1927.

11. *Petition of Tē Aputa Ihakara and Others:*¹⁴⁶ 'Praying for the removal of restrictions against whitebait-fishing in the stream flowing out of Whakapuni Lake'.

The petition concerned a stream associated with coastal dune lakes in the Manawatu. On 18 September 1928, the Native Affairs Committee recommended this petition should be referred to the Government for consideration.

12. *Pakete Ruata and 36 others, of Foxton:*¹⁴⁷ 'Praying that whitebait-fishing may be strictly prohibited in the Whakapuni Stream, Manawatu Heads'.

The petition concerned whitebaiting in the same Manawatu coastal dune environment as the prior petition. It is an example of Maori petitioning Parliament to ensure that a customary fishing resource was conserved and to protect the species because of its importance to the functioning of the wider ecosystem.

(1) At present the Whakapuni Stream is closed by an Act of Parliament. (2) The Whakapuni Stream is the outlet of two lakes to the sea, Whakapuni and Tewahaotengarara. (3) These are the only two lakes that supplies the Manuwatu River with the Inanga, mother of the whitebait. (4) In the month of March and April the Inanga from the above lakes goes to sea to spawn, and in July, August and September the Inanga returns as whitebait up the River. (5) If the catching of whitebait is strictly prohibited (as at present by law) in the Whakapuni Stream, there would be no fear of the whitebait being exterminated. (6) It may be noticed since the Whakapuni Stream has been closed (5 years) the whitebait has increased by 70 per cent. (7) In conclusion we your petitioners strongly urge that rangers be set apart to guard the stream from poachers, and the penalty be increased.¹⁴⁸

145. No 48/1927 and no 57/1927

146. No 26/1925

147. No 246/1929, AJHR and

LE Series

148. 'Petition of Pakete Ruata and 36 others, of Foxton, no 1246/1929', AJHR; LE series, NA Wellington

Despite its concern with resource conservation, the subject of the petition was deemed by the Native Affairs Committee to be a 'Matter of policy – no recommendation'. This matter was, however, reinvestigated in 1929, following the petition below.

13. *Te Aputa Ihakara and others*: 'Praying that restrictions, as to fishing for whitebait in the stream flowing from Whakapuni Lake, may be removed'.

The petition concerned the same coastal dune lakes and associated streams in the Manawatu as the two previous petitions. The petition stated that the lake concerned was a significant customary fishery for eel, whitebait and other species. The primary petitioner stated:

This is a petition from me and the Ngati Raukawa tribe residing in the Manawatu District praying for the removal of restrictions imposed by the Crown on the stream flowing from Whakapuni Lake, that is, the restrictions prohibiting me and my people from fishing for whitebait for our own use and maintenance. Wherefore I and my people hereby petition under the provisions of the Treaty of Waitangi that this stream be exempted from the Act prohibiting us from fishing in the same and that such Act be made to operate on the European people who are conversant with the framing of such Acts. The reasons for this petition are as follows:- (1) This lake namely Whakapuni has been the life water of our ancestors and had also been mine and my peoples today. The fish which we obtain from this Lake are eels, flounders, whitebait and other freshwater fish and also a shellfish called Kakahi. (2) When Ihakara Tukumarū was living he reserved this lake from his sale of Rangitikei-Manawatu to the Crown, for life water for me, Te Aputa-ki-Wairau Ihakara and my people and from that time to this I have fished in that lake.¹⁴⁹

The Crown investigation of this petition revealed the poor level of knowledge of the Maori resource environment by Crown officers. The Native Affairs Committee could find no reference to this lake in any of the old plans. Furthermore, no reservations for the area were mentioned in the Crown purchase deed for that land. It was therefore decided that the lake must be situated at the mouth of the Manawatu River, and that it was included in the Awahou purchase of 12 November 1858. Along with reference to a prior petition,¹⁵⁰ the issue was forwarded to the Marine Department to ascertain why the restrictions had been imposed, as Maori had

149. 'Petition of Te Aputa Ihakara and Others', no 1260/1929, LE series, NA Wellington

150. A 1922 petition of which no record survives.

taken fish from the lake and stream for many years previously. In response, the Marine Department stated:

The position with regard to this stream is that in 1922 a number of local Natives at Foxton petitioned to have all the drains and creeks flowing from Lakes Te Whakapu (presumably Whakapuni), Koputara and Kaikokopu, closed for taking whitebait, the reason for their petition being to enable whitebait to proceed up into the lakes and also back to the sea to spawn in the autumn . . . It was considered quite a reasonable thing to impose restrictions with a view to endeavouring to increase the supplies of whitebait; and furthermore, the Chief Inspector of Fisheries stated that one of the drains mentioned had been the cause of a lot of trouble for many years, as the person who got the position nearest the mouth of the drain blocked it up and got all the whitebait which came from the river. Under these circumstances, regulations . . . were made prohibiting the taking of whitebait in the creeks and drains running from these lakes . . .

In their petition they [the petitioners] state that Lake Whakapuni has been the life water of their ancestors and themselves and that they obtain eels, flounders, whitebait and other fresh-water fish from the lake. If that is the position, it appears to me that the Department is assisting the Natives by prohibiting the taking of whitebait in the drain, so that these fish can get into the lake where the taking is not prohibited, and I do not quite understand their reason for requesting the removal of the restriction which, in the opinion of the Department, is assisting them.¹⁵¹

An earlier notice in the *New Zealand Gazette* had amended regulations governing the taking of whitebait from the Manawatu River and its tributaries under the Fisheries Act 1908. It stated that ‘no nets of any description shall be used for taking whitebait in any of the tributaries or drains flowing from the lakes known as Tewhkapu, Koputara, and Kaikokopu into the Manawatu River’.¹⁵² On this basis, the Native Affairs Committee on 2 October 1929 deemed the 1929 petition of Te Aputa Ihakara and others to be a matter of policy and made no recommendation.

14. *Mere Wiari and seven others*: ‘Praying that the Waihaha Stream and adjacent land be excluded from “The Taupo Waters Settlement” and returned to the owners of Waihaha No 3B Block’.

151. Marine Department to Native Affairs Committee, 6 September 1928, in file of ‘Petition of Te Aputa Ihakara and Others, no 1260/1929’, LE series, NA Wellington

152. *New Zealand Gazette*, no 161, 10 August 1922

This petition had limited relevance in indigenous flora and fauna terms. It concerned the loss of the lakeshore and lake bed of a former Native Reserve, as a result of the 1926 Taupo Waters Settlement. It is evidence of the lack of Maori agreement to the Taupo Waters Settlement. The petition expressed the loss in terms of the loss of cultivations and kaingas:

1) That we your humble petitioners of Mokai and Rotorua aboriginal Natives of the Dominion of New Zealand, being registered owners of the land called Waihaha No 3B, do pray that legislation be made for the revocation of any confiscation of the beds of the Waihaha Stream if the same had been taken under the Taupo Lake Settlement. 2) The said Waihaha is within the above land which contains 425 acres and practically declared a Reserve, the boundaries of which had been made in 1897. 3) The said reserve was made being the kaingas and cultivations and the urupas are mainly situated therein and by taking the one chain as made it would materially disturb the above. 4) The beds of the said Waihaha Stream are continually occupied and cultivated by a section of the petitioners but formerly and also to the present time looked upon as tabooed.¹⁵³

The Crown's response was mainly concerned with setting a legal precedent for further claims against the 1926 settlement which it had negotiated with Tuwharetoa, and the risk that such petitions posed to the settlement:

The prayer of the petitioners does not ask for the exercise of these powers, but requests that the Waihaha Stream be wholly excluded from the operation of the Act [sections 14, 15 and 16 of the Native Land Amendment and Native Land Claims Adjustment Act 1926]. The Waihaha Stream is an integral portion of the Settlement, and to exclude it therefrom would break down the whole fabric and give rise to further requests of a similar nature while in no way relieving the Crown of its responsibilities under the Agreement towards the Tuwharetoa people generally and the Board.¹⁵⁴

The Native Affairs Committee eventually decided to make no recommendation on this petition, as it considered the subject to be a matter of policy.

153. 'Petition of Mere Wiari and 7 Others', no 125/1929, LE series, NA Wellington

154. Memorandum from Under-Secretary of Internal Affairs to Under-Secretary for the Native Department, 11 September 1929, in file of 'Petition of Mere Wiari and 7 Others', no 125/1929, LE series, NA Wellington

15. *Hera Hape and six others*: 'Praying that claims to the bed of the Awa-o-te-Atua (Ngaruroro Stream) be heard and ownership be determined'.

The petition concerned riparian rights and river resources in a Hawke's Bay river. It stated that:

(3) In or about the year 1872 the Ngaruroro River changed its course leaving its former bed comprising an area of some 78 acres dry. (4) Prior to the change in the course of the said river the Native owners exercised riparian rights, rights of fishing and other Native rights therein. (11) None of the co-owners of the Te Awa-o-te-Atua Block assented to any surrender of their claim to the river bed.¹⁵⁵

The Native Affairs Committee made no recommendation on the petition.

16. *Wiremu Karawana and 126 others*: regarding the 'Foreshore of Lake Rotorua'.

The petition, which referred to the Treaty of Waitangi, concerned proposals by the Crown to acquire lands abutting the foreshore of Lake Rotorua:

(4) We, the Natives interested in the lands along the foreshores of Lake Rotorua, have never at any time obstructed the Pakehas from going over our lands to the lake either for fishing or picknicking, but we have gone further, we have granted them the privilege to set up camps along the shores of the lake, free of any charge whatsoever. We are therefore at a loss to know why the proposed taking of the foreshores is necessary.

(5) When the Treaty of Waitangi was prepared and accepted by our Elders as our Magna Charta [sic], it was our late Queen Victoria's sincere hope that the rights of her Maori people be protected from the future mis-government of the Pakeha.¹⁵⁶

This petition was located in a Department of Native Affairs file. There is no record of it being discussed by the Native Affairs Committee.

17. *Te Puea Herangi and 34 others*: 'Praying for the return of their fishing rights in the Waikato River'.

In seeking the return of Tainui's customary fishing rights to the length and breadth of the Waikato, this petition led by Te Puea Herangi referred to court decisions and legal settlements involving several North Island iwi with lakes in their rohe, in some case on the incorrect assumption that

¹⁵⁵. 'Petition of Hera Hape and 6 Others, no 126/1929', LE series, NA Wellington

¹⁵⁶. 'Petition of Wiremu Karawana and 126 Others', 10 April 1935, concerning 'Foreshore of Lake Rotorua', MA1 19/1/164, NA Wellington

these decisions and settlements were about the restoration of customary fishing titles.

(1) We respectfully request the return to us of the rights of our fishing grounds in the Waikato River.

(2) For a large number of years through exercising these rights we have been able to obtain a living. The number of persons who obtain a living each year by exercising these rights is 3000 in addition to our children. Our pakeha friends have now deprived us of these rights and the question of our rights to fish in this river has been bought before the Magistrates Court. It is quite likely that it will be a question for the Supreme Court to decide.

(3) It is our wish that our rights remain to us as was the case in the days of old when no trouble arose but only peace. We have seen reported in the newspaper dated 13th September 1929 that any person desiring to fish in this river will require to be licensed. This would be inflicting an injustice and hardship upon us. This is the reason for our respectful request that our fishing rights throughout the length and breadth of this river be returned to us. The fish obtained from this river are whitebait, eels, mullet and parikou, and the summer fish obtained from this river is kaeo.

We therefore ask you to mete out to us the same justice that you meted out to the Ngati-Tuwharetoa when you returned them Lake Taupo, to the Te Arawas Lake Rotorua and the Ngapuhis Lake Omapere. We therefore ask that the rights of this river be returned to us for from it we have been able to obtain our living from the times of our ancestors even to the present.¹⁵⁷

Perhaps because of the prominence of the primary petitioner, Te Puea Herangi, this petition led to a significant amount of investigation by the Crown. On 26 October 1929, the Under-Secretary for the Native Department advised the Chairman of the Native Affairs Committee that:

This refers to a very vexed question. The Natives claim that they were confirmed in their rights of fishing in the lakes or rivers of New Zealand. The Supreme Court, however, has held that they have no greater right than Europeans owning property have and that they are subject to the regulations affecting the necessity of obtaining licences to fish for imported fish, There is no licence required for eel fishing. The matter for granting such rights is one of policy.¹⁵⁸

157. 'Petition of Te Puea Herangi and 34 Others', no 1395/1929, AJHR, LE series, NA Wellington

158. Memorandum from Under-Secretary, Native Department, to chairman, Native Affairs Committee, 26 October 1929, in file on 'Petition of Te Puea Herangi and 34 Others', no 1395/1929, LE series, NA Wellington

Although the Native Affairs Committee stated that the matter raised by the petition was one of policy (and thus outside the committee's domain), on 7 November 1929 it referred the petition to the Government for consideration.

18. *Tupito Maruera and 21 others*: 'Praying for relief in connection with Crown Grant 3789 (Patea, Taranaki District)'.

The early 1930s saw a substantial shift in the number of Maori petitions to Parliament, as well as in the way the Crown dealt with those relating to freshwater customary fishing rights. This petition, which was concerned with customary river eeling, stated:

(2) That your petitioners do hereby petition your Honourable House that such legislations your Honourable House may think fit be enacted empowering the Native Land Court to inquire into and report on the lands set aside by the Fox Commission of 25th February, 1882 for the removal of our eel weirs in the Patea River (Vide Journals of the House of Representatives Vol. II, 1882 G-5 pages 16, 17, 18. Also Vide Appendices Vol. II, 1880, p.30).

The petition referred to the 1882 Fox commission having set aside 'certain reserves in the Patea District in consequence of the taking of certain fishing grounds in the Patea River belonging to the Tribes mentioned above'. It named the fishing grounds as: 'Te Ngana, belonging to Taurua and his tribes Ngati Tuatahi and Ngati-Kotuku'.¹⁵⁹

The Native Affairs Committee ruled that it had no recommendation to make on the petition. The petition was later re-submitted to the Government for inquiry.

19. *Te Korerehu Mihaka and 65 others, of Morven*: 'Praying for free and undisturbed right to fish in certain of the rivers and lakes of the Canterbury Province':

We, your Humble petitioners do hereby pray to your Honourable House that legislation be enacted giving us the free and undisturbed right of catching and fishing and torching for eels, flounders and kanakana (lampreys) on Lake Wainono and Waihao and Waitaki Rivers situated in the Canterbury Province. In reference to Wainono Lake from time immemorial our elders have been fishing, torching and catching

¹⁵⁹. 'Petition of Tupito Maruera and Another', no 1122/31, LE series, NA Wellington

eels on the Lake and we, their descendants, have also enjoyed the privilege left to us by our elders. Our elders have reserved 10 acres in the South end and 20 acres at the North end as fishing easements. During the year a petition was presented to Parliament by our elders praying that the Wainono Drainage Board be not allowed to lower the lake by cutting a drain and emptying it into the sea. The result of our petition was that the Board was stopped from continuing the work. Today we, the descendants of those elders, are stopped from catching and torching eels on the Wainono and Waitaki Rivers by the Waimate Acclimatisation Society. We also claim the whole of the Lake and land adjoined to our lake reserves and the present water line of the lake. At the time fishing reserves were set aside the area of the lake was about 999 acres. We also claim the right to gather swans eggs without the interference from the Waimate Society.¹⁶⁰

This petition was largely in response to regulations promulgated by the Crown, following a request by the South Island Council of Acclimatisation Societies to outlaw the torching of eels so as to enable trout to breed and not be caught by illegal torching. The response of the Under-Secretary for the Native Department revealed the widespread perception among Crown officials in the 1930s, based on court decisions, that the Treaty of Waitangi did not give Maori particular rights with respect to fishing in streams and lakes:

The Natives are probably basing their claim on the Treaty of Waitangi which sought to preserve the original fishing rights, but the Supreme Court has held that they have got no more rights than a European landholder adjacent to the stream and lake would have. Petition is returned herewith.¹⁶¹

Despite this view, on 2 March 1933 the Native Affairs Committee referred the petition to the Government for inquiry.

20. *Tame Kerei and 34 others, of Wairau*: 'Praying for free and undisturbed fishing-rights in rivers and lakes in Marlborough Province'.

We hereby petition your Honourable House for the free and undisturbed right of fishing for our native fish, namely Flounders, Kahawai and Whitebait in the Wairau and Opawa Rivers; also the right to go and catch eels in the Mataora Lake, known as Big Lagoon. In reference to

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160. 'Petition of Te Korerehu Mihaka and 65 Others, of Morven', no 126/1931, AJHR; LE series, NA Wellington

161. Letter from Under-Secretary, Native Department, to Chairman, Native Affairs Committee, 30 July 1931, in file of 'Petition of Te Korerehu Mihaka and 65 Others, of Morven', no 126/1931', LE series, NA Wellington

catching Flounders and Kahawai in the Rivers, from time immemorial, our elders down to ourselves have been catching these fish with nets, but today most of our nets are taken and confiscated by Rangers of the Acclimatisation Society, with the result that we are deprived of the privilege enjoyed by elders, of fishing for our Native fish and shooting our Native game, known as the Grey Duck. We also pray that no licence be required to give the Maori people the right to catch whitebait in our Rivers and to shoot our Wild Grey Duck.¹⁶²

In its reference to ‘Rangers of the Acclimatisation Society’ this petition treated them as effectively agents of the Crown, in terms of having the powers to deprive Maori of their customary fishing rights, through the confiscation of netting equipment, and imposing other restrictions within their traditional fishing areas. The Crown responded to the petition in almost identical terms to the previous petition:

This petition refers to a grievance which the Natives consider they have in not being permitted to freely fish in the sea waters and rivers. They partly found this claim upon the Treaty of Waitangi but the Supreme Court has held that they have no greater fishing rights than ordinary Europeans have. Petition is returned herewith.¹⁶³

However, on 16 November 1932 the Native Affairs Committee referred this petition to the Government for inquiry, as it had done with the previous petition.

21. *Aputa Ihakara and 29 others of Foxton*: ‘Praying re Maori fishing rights’.¹⁶⁴

On 2 March 1933, the Native Affairs Committee referred this petition to the Government for inquiry. There is no further record on the petition.

22. *Arawa Confederation of Tribes*: regarding the ‘Government contemplation of taking foreshore rights on the lakes and streams in the Rotorua and Taupo Districts’.

The petitioners’ subtribes had previously gifted areas of lakeshore around several lakes in the Rotorua district to the Crown for scenery preservation. The petitioners’ concern was that the Crown wanted to take more of their lakeshore lands. The petitioners considered that this would be a violation of the Treaty of Waitangi. They stated:

162. ‘Petition of Tame Kerei and 34 Others, of Wairau’, no 172/1931, AJHR; LE series, NA Wellington

163. Memorandum from Under-Secretary, Native Department, to chairman, Native Affairs Committee, 6 August 1931, in file of ‘Petition of Tame Kerei and 34 Others, of Wairau’, no 172/1931, LE series, NA Wellington

164. ‘Petition of Aputa Ihakara and 29 Others of Foxton, no 1178/1931’, AJHR

1. That the Arawa tribe . . . generously gifted to the people of New Zealand 1000 acres of foreshore scenic reserve on Rotoiti and Rotoehu lakes; 3000 acres on the shores of Lake Okataina including the whole of its foreshore and a considerable area between Lake Rotoiti and Lake Rotoehu together with a further area along the road to Okataina Lake around Lakes Roto-atua and Roto-ngata.

2. That it is on the records of the Lands Department that a distinct promise was made to the sub-tribes mentioned that the Crown, in view of the large areas gifted by Ngati Pikiao and Ngati Tarawhai, would not acquire any further lands from these tribes without their consent.

3. That the tribes affected by this proposal view with regret the indifference and neglect which the Government Departments concerned show in the preservation of scenic attractions and of the urupas.

4. That the wholesale or even sectional taking of land by the Crown for this purpose without the consent of the Maori people properly obtained is in violation of the clauses of the Treaty of Waitangi which assured to the natives their freedom to treat with the Crown 'if they so desire.'¹⁶⁵

Following a report on the proposed acquisition of lakeshore lands for scenic purposes,¹⁶⁶ the Prime Minister wrote to the Arawa Trust Board to alleviate the fears of the petitioners. In reply, the trust board conveyed:

the thanks and appreciation of the Arawa Tribes to the Right Hon. Prime Minister for the clear and precise assurance he has given in respect to the prayer of the several petitions addressed to him, namely, (1) That the Crown has no present intention of taking steps arbitrarily or compulsorily to deprive the Natives of the ownership of their lands abutting on the Lakes. (2) That the Government will give the subject of protection of the gifted Scenic Reserves on Lakes Rotoiti, Rotoehu, Okataina and elsewhere in the Arawa District its careful and sympathetic consideration.¹⁶⁷

The Prime Minister later replied to the Chairman of the Arawa Trust Board that he was:

in receipt of the letter signed by yourself and 76 others, stating that it is rumoured that the Government contemplates the taking of certain foreshore rights on the lakes and streams in the Rotorua and Taupo districts and protesting against any action being taken in that direction. I have noted the representations and statements made, but I can assure the

¹⁶⁵. MA1 19/1/164, access and foreshore rights, Taupo and Rotorua lakes and scenic reserves

¹⁶⁶. From the Under-Secretary of Lands to the Minister of Lands

¹⁶⁷. Chairman, Arawa Trust Board, to Prime Minister, 30 September 1935

Natives that nothing will be done without the fullest investigation including consultation with the Maori tribes or owners concerned.¹⁶⁸

The Department of Maori Affairs file in which this petition was found indicates it was repeated in 1934 by a petition from Te Reiwhati Puwhakaoho and 228 others. No other reference to that subsequent petition was found.

23. *Eru Pou and 20 Others, of Kaikohe*: Praying for the establishment of their title to Lake Omapere and that the lake be made a Native reserve.

This petition came after a 1929 Native Land Court decision that Maori were Lake Omapere's rightful owners. However, by 1945 no title to the lake had been issued.¹⁶⁹ The petition was directly concerned with securing title to Omapere so as to maintain access to its natural resources:

Whereas our people derive innumerable benefits from this lake in which eels and kauri gum are found and that such has been the case from ancient times even to the present time, which lake was reserved by our ancestors and parents against alienation to Europeans or to the Crown.¹⁷⁰

The Crown's response was that it was still awaiting the result of its appeal to the Native Appellate Court against the Native Land Court's 1929 determination of Maori title. On 7 August 1946, the Maori Affairs Committee recommended that the question of the ownership of subaqueous land claimed by Maori be bought to finality.

24. *Rore Rutene and 12 others, of Taupo*: 'Praying for relief in relation to land abutting the Waitahanui River and the bed thereof'.

This petition was made with the intention of retaining customary riparian rights to the lands abutting the Waitahanui River, a famous trout-fishing stream. The petition also sought to secure repeal of the section of the Native Land Amendment and Native Land Claims Adjustment Act 1926 that had established the Taupo Waters Settlement, through which the petitioners had lost their riparian rights to the Waitahanui.¹⁷¹

However, the Maori Affairs Committee considered that section 14 of the Native Land Amendment and Native Land Claims Adjustment Act 1926 provided for the issue raised by the petitioners. The committee stated that the Act gave legal effect to an agreement between the Crown and representatives of Tuwharetoa which vested 'the bed of the Lake itself and the

¹⁶⁸. Prime Minister G W Forbes to Henariata Te Ohia, Arawa Trust Board, 24 October 1935

¹⁶⁹. Because Lake Omapere was substantially a swamp environment, it is reported in section 5.4 of chapter 2.

¹⁷⁰. 'Petition of Eru Pou and 20 Others, of Kaikohe', no 1102/1945, AJHR; LE series, NA Wellington

¹⁷¹. 'Petition of Rore Rutene and 12 Others, of Taupo', no 1101/1945, AJHR; LE series, NA Wellington

Waikato River between the lake and the Huka Falls in the Crown, and empowered, by subsection 4(a), the Governor-General by proclamation to declare the bed of any river or stream flowing into the lake, Crown land'.¹⁷² The committee's decision was based on a memo from the Under-Secretary of Internal Affairs to the Under-Secretary for the Native Department advising that:

by Proclamation dated 7th October 1926, strips of land along various rivers in the district were made subject to a right of way by holders of Taupo trout-fishing licences, but that the right of user was restricted so that these areas are not available to any person for occupation as camping sites or for any purposes other than for a right of way on foot for purposes connected with angling. In the case of the Waitahanui River, the strips of land extended on both sides of the river from the mouth to the source. The repeal of subsec (4) of sec 14 of the Act would have the effect of invalidating the reservation of areas not only on the Waitahanui River but in connection with various other rivers and streams within the district.¹⁷³

On 28 August 1946, the Maori Affairs Committee reported that it had no recommendation to make regarding this petition.

25. *Hori Temautaranui and 47 others of Waitahanui Pa, Taupo*: 'Praying for relief in re Rotongaio Lake'.

The petitioners were concerned with retaining ownership and control over traditional mahinga kai resources. They requested:

That consideration be given concerning the Rotongaio Lagoon part of Tauhara Block in the Waiariki Land Board district, Rotorua. This lagoon is in the Rotongaio Reserve set aside by our immediate forebears as a burial ground. The lagoon was reserved as a fishing and eeling reserve for our forebears. The food materials obtained from this lagoon were whitebait, crayfish, kokopu and shell-fish. Then the shores of the lagoon were inhabited. The lagoon was included in the Reserve for a burial ground because our forebears wanted to secure it against any sale. From that time to this we have been under the impression that the lagoon is ours. But we learnt from Judge Harvey's statement in the Court House at Taupo that our lagoon had been included in the Lake Taupo sale [the 1926 settlement between the Crown and Tuwharetoa] . . . because of this

172. Memorandum from Under-Secretary, Native Department, to clerk, Maori Affairs Committee, 17 July 1946, in file of 'Petition of Rore Rutene and 12 Others, of Taupo', no 1101/1945, LE series, NA Wellington

173. Under-Secretary of Internal Affairs to Under-Secretary, Native Department, 7 June 1946, in file of 'Petition of Rore Rutene and 12 Others, of Taupo', no 1101/1945, LE series, NA Wellington

we the owners of the lagoon did not claim compensation as we claimed in the case of the rivers.¹⁷⁴

Investigations established that a reserve had been designated at Rotongaio Lagoon for Maori purposes. The Under-Secretary for Maori Affairs advised the Clerk of the Maori Affairs Committee that:

The petitioners are under a misapprehension in the matter. The lagoon and an area of land surrounding it were constituted a Maori Reservation in 1945 and trustees appointed to control it early this year. There has certainly been no alienation of any kind affecting this land. The petition apparently arose from a misunderstanding of some casual remarks made by Judge Harvey as to the practical effect on the lagoon if the level of Lake Taupo were to rise to any considerable extent.

The Maori Affairs Committee made no recommendation on the petition.

26. *Petition of Titi Tihu and Hikaia Amohia*:¹⁷⁵ Praying that the title to the bed of the Wanganui River be vested in nine named Maori Tribes.

This 1955 petition cited article 2 of the Treaty of Waitangi in respect of 'land and Estates, Forests, Fisheries and other properties' It was part of a long succession of litigation concerning the Whanganui on which the Waitangi Tribunal has recently reported in *The Whanganui River Report* of 1999.

Not until 9 December 1980 did the Maori Affairs Committee state that it had carefully considered this petition and recommended that it be referred to the Government for consideration. In doing so, it stated that 'whenever possible the Government take account of that part of the petition which lays emphasis on the restoration of Mana O Te Turangawaewae as distinct from material rights'.

27. *Ngaitahu Maori Trust Board on behalf of the Ngaitahu elders and people of Otago*: 'Praying for a Commission of Inquiry into the sale and use of Ancestral Lands and the loss of fishing rights'.

This 1967 petition was perhaps the most comprehensive petition concerning the customary relationship of Maori with their mahinga kai resources between 1912 and 1983. In particular, the petitioners wanted 'the actions of the Crown concerning the loss of fishing rights consequent

174. 'Petition of Hori Temautaranui and 47 Others of Waitahanui Pa, Taupo', no 169/1949, LE series, NA Wellington

175. 'Petition of Titi Tihu and Hikaia Amohia', no 79/55

upon the draining of Lake Tatawai' to be investigated. A submission was subsequently made to the Maori Affairs Select Committee on 20 March 1980 concerning Lake Tatawai. It stated that the lake was:

a traditional mahinga kai or food gathering place for the Ngaitahu-Ngati Mamoe people living on the Taieri. It was also seasonally visited by their relatives living on the coast and at Otakou. Traditionally, however, it was the families living on the Taieri who were regarded as holding the mana whenua or authority over the land and its resources.¹⁷⁶

The key issue was again the ownership of the bed of the lake. As the Secretary of the Department of Maori Affairs told the Maori Affairs Committee:

The lake bed was Crown land and consequently this land has never been recorded in the Maori Land Court. However, the Crown permanently reserved to the Aboriginal Natives use of the lake for fishing purposes, by notice in the *New Zealand Gazette* signed by the Minister of Lands on 23rd March, 1901. We understand that the lake has since been drained but have no details. We strongly recommend this claim for further investigation.

The Department of Maori Affairs subsequently advised the committee that:

under the Taieri River Improvement Act 1920, Lake Tatawai together with Lakes Waiholo and Waipouri were vested in the Taieri River Trust as an endowment. The lake bed was never Maori land – it was a reserve of Crown land. Provision was made in the Taieri River Improvement Act of 1920 for compensation to be paid to any Maoris who may have lost rights. (Fishing rights were granted to the aboriginal natives who resided in the Taieri Maori village by notice in the *New Zealand Gazette* dated 23rd March 1901.) The Act required that any Maoris who could establish that they had made substantial use of the lake within one year before the passing of the Act, could apply to the Taieri River Trust for the payment of compensation. There were apparently very few, if any aboriginal natives living in the Taieri Maori village at the time. We have been unable to establish . . . if any compensation payments were made, but it seems likely that none were made. Although no longer relevant to the Petitioner's claim Lake Tatawai was reclaimed some time between 1920 and

176. 'Petition of Ngaitahu Maori Trust Board on Behalf of the Ngaitahu Elders and People of Otago', no 179/67, LE series, NA Wellington

1939 when a plan of subdivision of the land was produced. This claim now seems to require no further consideration.¹⁷⁷

4.5 CONCLUSIONS

Of the different natural ecosystems that the indigenous flora and fauna form, and which article 2 of the Treaty of Waitangi suggests are taonga, some of the most significant to Maori traditionally were lakes and rivers. Ancestral and spiritual associations with lakes and rivers, as with mountains, are key determinants of Maori tribal identity. But lakes and rivers are also important because of the biological productivity of their ecosystems, and the ecological connections they make to swamps and coastal estuaries. This is especially so for fish species.

The biological productivity of lakes and rivers depends on much more than just the water bodies and beds by which they are legally defined. It lies in a principle of ecological connection, in which lakes and rivers constitute ecological systems. The problem faced by a historical review of Crown actions between 1912 and 1983 concerning lakes and rivers, is that Crown law and policy through this period rarely considered this kind of systemic view. Instead, based on the conventions of English law, the Crown treated lakes and rivers as discretely bound entities, able to be precisely and absolutely defined and delineated on title documents.

In the case of the Whanganui River, the Waitangi Tribunal found that the Crown, in adopting this narrow legal view and approach to waterways, had little or no regard for the customary Maori perception of waterways as 'living beings'.¹⁷⁸ The Tribunal considered the Crown's approach to be part of a general legislative trend in which the Crown failed to adequately establish the nature and extent of Maori rights to natural resources before to passing legislation that impacted upon those resources. Instead, the Crown simply assumed control rights, and for the most part the Treaty was barely thought of.

Lakes and rivers were customarily of enormous importance to Maori. The Treaty of Waitangi did not specify lakes or rivers or waterways, but it guaranteed Maori the exclusive possession of them, as fisheries and properties in the English version and as wahi hiinga ika and taonga in the Maori version. Historically, Maori never ceded their title to waterways to the Crown in any general fashion. The Crown simply assumed the right to

¹⁷⁷ Secretary, Department of Maori Affairs, to chairman, Maori Affairs Committee, in file of 'Petition of Ngaitahu Maori Trust Board on Behalf of the Ngaitahu Elders and People of Otago', no 179/67, LE series, NA Wellington

¹⁷⁸ *The Whanganui River Report*, pp336–337

legislate with respect to lakes and rivers – a right it considered was attendant upon its sovereign rights acquired by virtue of the Treaty. The history of that legislation has been described as constituting an abrogation of Maori rights.¹⁷⁹

Central to the Crown's actions concerning the indigenous flora and fauna of lakes and rivers was the Crown's assumption, historically, that it should be the owner of all waterways in New Zealand. Ben White's Rangahaua Whanui study, *Inland Waterways: Lakes* reported how this objective never found expression in clear policy, but rather remained a nebulous imperative that drove Crown officials. Although from time to time senior Crown officials suggested general legislation, there was never any systematic attempt to secure title to lakes either by decree or purchase.¹⁸⁰ As White revealed, in a series of case studies of lakes, the Crown tacitly assumed that its rights to waterways were paramount, only overtly asserting them in the face of a claim by Maori to the ownership of a particular lake. In general, the situation with rivers was similar.

There is substantial evidence that in these instances the Crown acted against Maori efforts to retain what, to Maori, were customary rights and title guaranteed by the Treaty. These Crown actions extended to appealing court decisions in favour of Maori customary ownership when Maori rights and title had been clearly established. In efforts to prevent these claims, the Crown questioned whether the jurisdiction of the Native Land Court extended to the beds of lakes and rivers. Most of these actions were in the period between 1912 and 1935. But some Crown appeals lodged in the 1930s against court decisions in favour of Maori title dragged on into the 1950s.

By 1912, the Crown was firmly of the opinion that it should be the effective owner of New Zealand's lakes and rivers. Whenever Maori challenged the notion, as Te Arawa did in relation to their Rotorua lakes, and Tuwharetoa did with Lake Taupo and its associated rivers and streams, the Crown argued strenuously that waterways were not subject to customary ownership. In 1914, the Court of Appeal rejected this argument in *Tamihana Korokai v Solicitor General*, concerning Lake Rotorua. Fearing the court's decision could have ramifications for other lakes, the Solicitor General, John Salmond, determined that the Crown 'should dispute the rights of the Natives to obtain freehold orders for the inland navigable waters of the Dominion'. In the process, Salmond made a distinction between navigable inland waters and 'small unnavigable streams, lagoons,

179. Ben White, *Inland Waterways: Lakes*, Waitangi Tribunal Rangahaua Whanui Series, 1998, introduction

180. An example being provided by the Minister of Lands in 1938, who suggested the 'expediency of introducing legislation definitely stating that the beds of the rivers and the lakes are vested in the Crown, and have been since the date of the Treaty, but preserving the Maoris' fishing, food and other rights': memorandum from Minister of Lands to Under-Secretary for Lands, 19 November 1938, LS1 1307/261, pt1, NA Wellington.

and other waters [which were] undoubtedly merely appurtenant to the adjoining land and subject to customary title and capable of inclusion in freehold orders.¹⁸¹

Regardless of whether or not the waters of the Rotorua lakes were navigable, there was considerable evidence supporting their customary ownership. When the Native Land Court heard Te Arawa's application for customary title of the lake beds in 1918, knowledgeable Pakeha witnesses gave evidence that Te Arawa had elaborate systems of lake resource ownership, use and management rights. The former Native Land Court judge, Gilbert Mair, stated in his evidence that 'no land in New Zealand has been more absolutely, more completely, and more thoroughly under Maori owners' rights than these two lakes'.¹⁸² The Crown did not dispute the evidence, but contested the Native Land Court ruling in favour of Maori. Then, by threatening proclamation of Crown ownership without compensation, it forced Te Arawa and Tuwharetoa into separate settlements that were then formalised by legislation under the Native Lands Amendment and Native Land Claims Adjustment Act.

One consequence of this was that the Crown became accustomed to treating lakes and rivers as entities it owned and controlled, and for which it could make laws and policies unconstrained by customary title and other rights and interests of Maori. As a result, the spectrum of actions by various Crown agencies between 1912 and 1983 had a cumulative and comprehensive negative effect on the indigenous flora and fauna of lakes and rivers. Many actions by the Crown, that detrimentally altered lakes and rivers as indigenous ecosystems and as Maori environments of high prestige and resource value, might not have occurred had the Crown acknowledged customary Maori authority over particular waterways.

The legislation relating to lakes and rivers between 1912 and 1983 was of two kinds. First, legislation was enacted to assert Crown ownership of lake and river beds. Its purpose was to negate and eliminate customary ownership. Its effect was to extinguish the authority of rangatira and kaitiaki over the indigenous flora and fauna of lakes and rivers on which Maori had been customarily dependent. It commonly led to deleterious ecological effects in that regard. Secondly, legislation governing freshwater fisheries in New Zealand was primarily aimed at the acclimatisation and management of exotic fish species, the introduction of which had a lethal effect on the indigenous species of customary Maori lake and river fisheries. In principle, this legislation provided for what Fisheries Acts from the

181. Solicitor General to Under-Secretary for Lands, 11 June 1917, concerning Lakes Rotorua and Waikaremoana, CL174/1, NA Wellington (full text quoted in R P Boast, *The Foreshore*, Waitangi Tribunal Rangahaua Whanui Series (first release), November 1996, pp87–89, app4)

182. Evidence of Gilbert Mair to Native Land Court, 1918 (quoted in White)

1900s to 1983 termed 'existing Maori fishing rights'. In effect, customary Maori fishing rights were specifically acknowledged in only a few, special instances.

In response to Maori litigation for customary title to lake resources between 1909 and 1916, a series of legal enactments and Crown legal opinions ensured that any legal provision of customary title in the New Zealand landscape was limited. By the 1930s, the Crown was operating on the principle that it was the owner of lakes and rivers through its allodial title emanating from its acquisition of sovereignty. It wanted as little legal acknowledgement as possible of the existence of customary title to lakes and rivers.

The Crown's view throughout the 1912 to 1983 period was that Maori rights concerning rivers and lakes and their ecosystems were confined solely to fishing. Provisions in earlier legislation from 1877 had guaranteed such rights. However, the history of Crown actions concerning Maori freshwater fishing rights after 1912 is predominantly one of abrogation. That history is paralleled by another, in which Maori contested the Crown's view on the basis that these freshwater fishing rights were Treaty rights. Crown actions took two forms. First, when Maori came before the courts on charges relating to fishing in waterways without licences, the courts were reluctant to give meaningful effect to guarantees that customary Maori rights existed in lakes and rivers. Secondly, when the courts actually affirmed Maori ownership rights in these environments, as was the case with many lakes, the Crown acted in a variety of ways to abrogate them. In some instances, the Crown achieved its objective with special legislation.

A series of case studies of the legal history of New Zealand's lakes for the Waitangi Tribunal revealed the extent to which, when the Crown was unsuccessful in securing legal ownership of lakes, it secured ownership by special legislation.¹⁸³ Each of these instances involved protracted negotiations between Maori and the Crown in which iwi, their customary rights to the lakes notwithstanding, were eventually forced to yield to the Crown. This was partly for the practical reason of resourcing their litigation, but also to avoid the prospect of the Crown taking their lakes by proclamation and without compensation.

The great majority of the legal contests in this period between Maori and the Crown concerning lakes and rivers took place before 1960. If the record of petitions to Parliament is any guide, the period from the late

183. White

1920s to the early 1930s was the most contentious. This was in the immediate wake of the actions the Crown took in relation to the Rotorua lakes and Taupo waters, and when Maori were in active litigation concerning Lakes Waikaremoana and Omapere and the Whanganui River.

The Crown only asserted its assumption of ownership rights to lakes and rivers when its paramouncy was challenged by claims by Maori. It would appear that, in most circumstances, the precipitating factor was the growth of tourism in the early decades of the twentieth century.

By 1912, the Crown was seriously pursuing the development of a tourist industry based on New Zealand's natural scenery and waterways and the fishing therein (see chapter 5). The Rotorua lakes, in particular, were a major tourist locale. The Crown determined that customary indigenous title to waterways could limit public access and opportunities to exploit the natural environments around which tourism was developing. It considered Maori customary rights to lakes and fishing, like similar private rights that existed in England, to be contrary to the egalitarian society it was establishing and into which Maori were being required to assimilate. The Treaty of Waitangi notwithstanding, the Crown was determined to eliminate Maori rights to lakes and navigable rivers so that all people could have free access to their waters and edges – not just those who owned them.

The Crown's assumption in all these situations was determined to a large extent by the colonial imperative that the English situation, of individuals holding private rights in waterways, should not be allowed to pertain in New Zealand. In the case of rivers and lakes, it would appear that this imperative led to Maori losing rights that the Treaty of Waitangi had guaranteed. As the Waitangi Tribunal has found in a number of claims, this raises questions of acknowledgment or compensation. With rivers, such as the Whanganui, historical evidence shows that Maori often did not consider themselves to have alienated their interests in water when they alienated adjacent land. However, the Crown determined that public rights of navigation would be best protected by its ownership of all navigable rivers, and it attempted to extend its prerogative rights to those rivers. When the courts rebutted this contention, the Crown passed legislation to vest the beds of navigable rivers in the Crown.

With respect to lakes, the Crown acted somewhat differently. When Maori pressed a claim of ownership to a particular lake, the Crown opposed it. In such instances, the Native Land Court inevitably ruled in

favour of Maori, mainly on the evidence of customary fisheries, but also other values, including metaphysical ones. In the case of Lake Omapere, Judge Acheson stated that Omapere's Maori regarded their lake as 'a treasured possession'. He observed that if its Nga Puhi owners had considered that they would lose their title to the bed of Omapere by signing the Treaty of Waitangi, they would not have signed, and their numbers would have been sufficient to reject it.¹⁸⁴

By 1912, the Crown was strenuously denying that such customary rights had any basis in statute, and opposed their continued existence as inappropriate to the modern egalitarian society it was establishing in New Zealand. However, when the Crown entered into settlements with Maori to secure control of lakes where Maori had challenged its authority, it did so on the basis of compensation for loss of customary rights. The Crown entered into a variety of compensatory arrangements with the tribes affected. How adequate these arrangements were continues to be debated.

The perspective on lake and river ecosystems that was obtained from the legislative review for this overview provides only a limited understanding of the Crown's actions in relation to the indigenous flora and fauna of lakes and rivers. Crown actions and policy relating to lake and river ecosystems were influenced by a very limited set of factors; mainly ownership (specifically of lake and river beds) and freshwater fishing rights (mainly concerning introduced exotic fish, but with provision for indigenous fish and Maori rights therein). This was largely because Crown law, with respect to lakes and rivers, evolved reactively: to Maori challenges to the Crown's assumption that its allodial title extended to the beds of waterways; and to the demands of its agents, such as the acclimatisation societies.

The spectrum of Crown actions involving lakes and rivers between 1912 and 1983 that had bearing on their indigenous flora and fauna was considerable. The introduction of exotic fish transformed lakes and rivers biologically as ecosystems. Lakes and rivers were harnessed for hydroelectricity and used as conduits and repositories for human waste and industrial effluent. The Crown was also an active agent in lakes and rivers by way of the management regimes it established nationally, regionally and locally for catchment control and river management. Furthermore, the Crown's long-standing policies of rural land development have had cumulative downstream effects of significantly altered lake and river ecology, to the detriment of many species of the indigenous flora and fauna.

184. Bay of Islands Native Land Court minute book 11, 19 June 1929, pp 4–5 (quoted in White, pp 232–234)

Few of these actions have been reported on in the Waitangi Tribunal reports on lakes and rivers to date. This overview does no more than highlight them as matters which have a bearing on the indigenous flora and fauna, and which will need much more research in light of the indigenous flora and fauna claim. Many of the functions of the Crown's management regimes for waterways were primarily carried out by regional authorities such as catchment boards. The records of these bodies need to be researched, as well as the records of the Government Departments such as the Electricity Department and the Ministry of Works and Development, and national authorities such as the National Water and Soil Conservation Organisation.

This overview has focused on the issues of ownership and customary rights and on lakes and rivers as ecosystems. It has done so because in order to begin to understand the effects of Crown actions on the indigenous flora and fauna and on customary Maori rights therein, the principles on which the Crown acted and how the Crown effected those principles in law and policy need to be understood. Alan Ward, in the recent *National Overview* report to the Waitangi Tribunal, considers the question of Maori Treaty rights in respect of inland waterways to be one of the major outstanding Treaty issues requiring resolution. Alongside this, however, Ward regards the question of public access to waters to be of the highest importance to the community generally, whether the owners of adjacent lands are now Maori or Pakeha. This, he says, 'to some degree at least, need not be incompatible with respect for and restoration of Maori customary fishing and other rights, and Maori involvement by right, in controlling authorities, in recognition of customary mana over inland waters'.¹⁸⁵

From the customary Maori perspective, in which the indigenous flora and fauna and their ecosystems constitute taonga, lake and river ecosystems are particularly significant. They are also ecosystems in which the Crown has been particularly active, in ways that have affected the indigenous flora and fauna and customary Maori relationships with them. For the Waitangi Tribunal to gain a comprehensive understanding of the effect of Crown actions on the indigenous flora and fauna of lake and river ecosystems, further research on the full spectrum of Crown actions will be needed.

185. Alan Ward, *National Overview*, Waitangi Tribunal Rangahaua Whanui Series, 1997, vol 1, p98

