
**KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA I
TE TIRITI O WAITANGI**

BEFORE THE WAITANGI TRIBUNAL

WAI 2200

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF The Porirua ki Manawatū Inquiry

**SUMMARY OF INLAND WATERWAYS HISTORICAL REPORT
BY HELEN POTTER, WAI 2200, #A197**

16 Hōngongoi 2020

RECEIVED

Waitangi Tribunal

16 Jul 2020

Ministry of Justice
WELLINGTON

WOODWARD LAW OFFICE

Lead Counsel Filing:

Donna M T T Hall

Lyndon Rogers

PO Box 30411

Lower Hutt 5010

+64 (04) 560 3680

info@mokoia.co.nz

E TE KAIWHAKAWĀ, TĒNĀ KOE.

Introduction

1. This summary gives a brief overview of the Porirua ki Manawatū Inland Waterways Historical Report and highlights the findings that relate specifically to the waterways of Ngāti Raukawa in the inquiry district.
2. As per the brief, the project team considered a number of key themes and sought out Crown and local authority records in relation to those themes, supported by the oral histories shared by claimants.
3. In short, the report provides a supporting body of evidence that the history of colonisation in the inquiry district since the signing of the Treaty of Waitangi in 1840, has also been a history of the destruction, degradation and pollution of its inland waterways. This came about in three key ways:
 - a) through the acquisition of vast tracts of land by the Crown and others from the 1870s onwards;
 - b) through the Crown's ongoing failure to protect the inquiry district's waterways from destruction, degradation and pollution in the laws passed from the 1850s onwards; and
 - c) through the persistent failure of the Crown and its delegated local authorities to recognise the rangatiratanga of hapū and iwi in relation to their waterways and the principles of kaitiakitanga they use to maintain their mauri.
4. The scale of environmental change from these failures has been immense: transforming it from a once abundant and sustainable waterscape to a highly compromised farming landscape. Intensive deforestation to create pasture land for farming, the near total drainage of the district's vast network of wetlands for even more land for farming, the erosion and silting up of waterways, the large-scale abstraction of water to supply farms and towns and industry, the development of systems to discharge waste into waterways, engineering and flood control works to protect farms and towns and to remove the build-up of silt and gravel – these have destroyed much of the mahinga kai and food economy hapū and iwi once relied on to sustain them; they've limited hapū and iwi access to their remaining mahinga kai and sites of significance; and they've impacted on water quality to the point where rituals are often unable to be

practised and where kai and rongoā species are often unable to be found or are not safe for eating or use.

5. The report contains 7 chapters which examine 7 key themes.
6. There are large number of inland waterways of significance to hapū and iwi in the inquiry district. There was insufficient time and resourcing to research them all in a comprehensive way, and instead a case study approach was taken focusing on certain waterways to illustrate the key failures of the Crown. As such, the report includes 21 case studies which were selected as a result of oral history interviews and wānanga with claimants – and on the availability and accessibility of Crown and local authority records.

Theme 1: title and ownership

Key findings

7. The Crown failed to uphold the rangatiratanga of hapū and iwi over their inland waterways and instead legislated for the near wholesale transfer of hapū and iwi lands and associated waterways into private hands.
8. This left many hapū and iwi with limited or no access to their waterways, and their mahinga kai and wāhi tapu, limiting their ability to learn and pass on important tikanga and mātauranga associated with them. This has also impacted on the use and transmission of te reo Māori.
9. The transfer of ownership meant that waterways were drained for farming or degraded and polluted and unable to support aquatic species. In some cases these waterways are no longer in existence.
10. Where hapū and iwi have been able to retain a degree of ownership, degradation has been less severe.
11. Three case studies in this chapter relate to Ngāti Raukawa waterways.

Case study of Pukepuke Lagoon (case study 2)

12. Pukepuke Lagoon is a traditional mahinga kai of Ngāti Raukawa. When the surrounding land block was acquired by the Crown, the original Māori owners retained rights in relation to its waters and access for fishing. However, the Crown did not maintain access and, over time, the lagoon was also drained which dramatically reduced its size and its capacity as a mahinga kai.

13. A further key issue for Ngāti Raukawa has been the ongoing failure of the Department of Conservation to recognise their mana whenua in relation to the Lagoon and their failure to consult with them.

Case study of Lake Whakapuni (case study 3)

14. This lake is also a traditional mahinga kai of Ngāti Raukawa. When the Crown acquired the surrounding land block, the waters of the lake were also reserved so that the original Māori owners could continue to access their fishing sites. However, by 1927 the Crown had prohibited fishing from the lake and descendants of the original owners petitioned for the prohibition to be lifted. The Crown subsequently dismissed the petition and instead claimed that the lake's waters were not exempt from sale.

15. Case study of Lake Waiorongomai and Lake Kahuwera (case study 4)

16. Both lakes were pā sites, mahinga kai, puna rongoā and wāhi tapu and were of a similar size in the late 1800s. Today, however, Lake Kahuwera no longer exists.
17. The different fates of the two adjacent lakes is explained as a result of transfer of ownership and the legal obligations on new the owners to 'improve' their lands by draining them to create pasture for farming. As part of Waiorongomai Block 7, ownership of Lake Kahuwera was transferred to Pākehā farmers who drained the lake and surrounding wetlands for the grazing of stock.
18. In contrast, as part of Waiorongomai Block 10, Lake Waiorongomai has remained in hapū ownership. Despite this, Lake Waiorongomai has also been impacted by drainage and cattle and its size and fisheries stocks have reduced as a result.

Theme 2: flood control and gravel extraction

Key findings

19. Large-scale deforestation and drainage of wetlands to create farmland exacerbated flooding in the already flood-prone inquiry district.
20. In response to flooding, local authorities have undertaken numerous flood control mechanisms – including further drainage schemes and modifications such as stopbanks and the straightening of rivers.
21. The purpose of river control mechanisms has been to protect townships or provide for their expansion and to protect commercially valuable farm lands

from flooding, but have consistently failed to also protect Māori customary rights and interests. They have almost always been undertaken without any involvement or consultation with hapū and iwi, and have resulted in the removal, destruction or depletion of mahinga kai, the further taking of Māori land and have eroded sites of significance such as urupā.

22. As a particular mechanism of flood control, gravel extraction has also resulted in the further taking of Māori land – both directly through the Public Works Act to gain access to gravel and indirectly through erosion. Local authorities have continued to extract gravel from many of the major rivers in the district – almost always without consultation and almost always without compensation to Māori landowners.
23. Except for a few instances in the late 1800s, it would appear that no hapū or iwi has derived any financial benefit from gravel extraction despite its development into a multi-million-dollar industry.
24. Five case studies in this chapter relate to Ngāti Raukawa.

Case study of the Kuku Drainage Scheme (case study 6)

25. To protect the farm lands of non-Māori lessees in the Kuku district from floods, the Kuku Drainage Board was established in 1927. It sought to control flooding by draining inland streams and springs and wetlands whose resources were used by Ngāti Tūkorehe for food, housing, weaving and medicines.

Case study of the Ōhau River Scheme (case study 7)

26. The scheme was developed by the Manawatū Catchment Board in the 1970s to protect farm lands from flooding by the Ōhau River. It included a large cut on the lower river to divert water away from a loop. The cut also disconnected the river's backwater, known locally as 'blind creek'. Some Māori land owners, including the Tahamata Incorporation, supported the scheme while others raised concerns about its adverse impacts on wāhi tapu and mahinga kai.
27. By the mid-1990s, the water in the loop was so oxygen-depleted it was unable to support aquatic life and fresh water oysters and koura had disappeared from blind creek. The numbers of many other species of fish and shellfish had also decreased – including on the foreshore.

Case study of the Manawatū River (case study 9)

28. The Manawatū River has been subjected to a large number of flood control interventions, undertaken by various river and drainage boards and local and regional authorities, since the late 1800s. These have included the extensive drainage of surrounding wetlands, the installation of floodways and stop banks, and the Whirokino cut which disconnected a loop of the river east of Foxton. The interventions also involved the further alienation of land from Māori owners.
29. The river was a substantial pātaka kai for Ngāti Raukawa. However, these measures destroyed most of the mahinga kai in and around the river and severely impacted others.
30. The flood control measures have also had a number of other impacts. For example, to address the pollution caused by the Whirokino cut, Māori-owned land in Matararapa was taken under the Public Works Act to erect sewage oxidation ponds. The cut also caused the destruction of a number of urupā through erosion.

Case study of the Oroua River (case study 10)

31. This river was also a substantial pātaka kai, and a wāhi tapu for Ngāti Kauwhata. It too has been subjected to a number of flood control interventions including the extraction of gravel.
32. An ongoing issue for Ngāti Kauwhata has been that while the council has issued consents for companies to extract gravel on a Māori-owned section of the river, no royalties have been paid to those owners. Numerous agreements have been made with local bodies about this over the years but none have been honoured to date.
33. The value of the gravel extracted from the river in the 24 years between 1992 and 2015 is estimated to be \$16.6 million.

Case study of the Ōtaki River (case study 11)

34. Gravel extraction from the Ōtaki River began in the 1870s. Records show instances of companies paying royalties to non-Māori land owners but not Māori land owners.

35. Records also show that gravel extraction has eroded the river's banks near the mouth. While the Greater Wellington Regional Council has undertaken river realignment work to control this, it has resulted in even more erosion of the south bank area which is Māori-owned.
36. There has been no compensation paid to Ngā Hapū o Ōtaki for the loss of their lands nor royalty payments for the gravel extracted. The value of the gravel extracted from the river in the 25 years between 1965 and 1990 is estimated to be \$181million.

Theme 3: water use

Key findings

37. Water abstraction from rivers and streams across the inquiry district has continued to increase over the past 150 years, with the vast majority used for irrigation for farming and horticulture. Demand for water has now outstripped supply in most catchments where permits for water take are over-allocated.
38. Despite awareness that increased abstraction reduces the capacity of waterways to dilute the waste discharged to it, the Crown remains committed to further increasing abstraction to further intensify and expand farming and horticulture. Groundwater is increasingly being used as a water source but is insufficiently regulated and monitored in at least some areas.
39. Despite the passage of numerous pieces of legislation regulating both water take and discharge to waterways over the past 150 years, there has been insufficient regard for the impacts on water quality and on aquatic flora and fauna. Instead, Crown management and regulatory regimes have consistently put the economic interests of the farming and horticultural sectors ahead of the environment.
40. There has also been very little regard for the impacts of water take and discharge on the customary use of these waterways by hapū and iwi.
41. The Crown has failed in their obligation to uphold and protect these rights. Instead, these interests have been continually marginalised or, at best, considered as one set of stakeholder interests alongside others.
42. Three case studies in this chapter relate to Ngāti Raukawa waterways.

Case study of the Ōhau River (case study 12)

43. The Ōhau River was a site of pā, papakāinga and mahinga kai. Water has been drawn from it via council supply schemes since the early 1900s, the volume of which has greatly increased over time as demand has increased – and especially from farming and horticulture. For example, in the decade from 1995 to 2005, dairy cattle numbers in the Horowhenua district doubled. Water levels in the river have dropped markedly as a consequence. No evidence was found of council engagement with iwi in relation to the development and management of the schemes, nor of consideration of their values and interests.

Case study of the Ōtaki River (case study 13)

44. This river was also a site of pā, papakāinga and mahinga kai – and was also a puna rongoā. In 1996, the Kāpiti Coast District Council tabled a proposal to pipe water from the Ōtaki River to supply the expanding Kāpiti Coast area. The proposal was strongly opposed by Ngāti Raukawa and many others. Despite this, the council approved the proposal and began preliminary work until the opposition mounted by iwi saw the scheme set aside because it was ruled as inconsistent with a sustainable management approach. However, the council's proposal resurfaced in 2009 and 2010. It did not go ahead, however, as the council deemed it unaffordable. As demand for water grows in the Kāpiti Coast, there are fears the proposal will be re-tabled and that iwi values and interests will be marginalised in the process.

Case study of the Oroua River (case study 14)

45. Water supply from and wastewater discharge into the Oroua River has also greatly increased over the last 100 years, and again, without any evidence of council engagement with iwi and consideration of their values and interests. By the 1970s, water supply was fully allocated and by the late 1980s, water take was exceeding allocation. In the 1990s, a 'multiple use' framework was set in place that put farming interests above the wellbeing of the river and the values and interests of Ngāti Kauwhata. Since the early 1990s, there has been a 446 per cent increase in water take. The Discharge schemes have not only added the burden of pollution to the river but have also meant the compulsory acquisition of more Māori-owned land for their development. Ngāti Kauwhata has strongly opposed

the continued abuse of their river but consents for discharge continue to be granted.

Theme 4: resource management

Key findings

46. Crown resource management of water doesn't consist of a few discrete incidences of impact. Instead, it can be described as a regime of removing the natural cleansing systems of wetlands in favour of industries that are highly polluting to inland waterways, followed by a systemic failure to manage their cumulative and devastating effects.
47. Historically, iwi representation and involvement in local authority decision-making on the management of waterways has been very limited.
48. While this has changed with the passage of new laws and provisions since the late 1980s, the application of these provisions and the degree of iwi involvement allowed vary across the different council bodies in the inquiry district. These differences are indicative of the lack of Crown direction as to how councils should meet their obligations under the Treaty.
49. Furthermore, none of the council partnership arrangements with iwi recognise their rangatiratanga in the regulation and management of water. As a consequence, the political, economic and other interests that iwi and hapū hold in relation to water have been and continue to be ignored by councils with iwi and hapū interests minimised as merely cultural interests and as contributing a cultural perspective.
50. Six of the case studies in the chapter relate to the waterways of Ngāti Raukawa.

Case study of the drainage of the Taonui and Makerua Swamps (case study 15)

51. Beginning in the 1890s and in response to the demands of the agricultural industry to create pasture land for farming and cropping and to protect that land from flooding, a series of drainage boards worked to drain the once extensive Taonui and Makerua swamps and surrounding areas. A cost benefit analysis conducted in 1977 focused on the benefits to the farming community and the costs to the drainage boards but failed to consider the costs to iwi from the destruction of their economic interests in the areas in terms of flora and fauna resources such as flax and kai.

Case study of the drainage of Poroutawhao, including the Tangimate Lagoon (case study 16)

52. Poroutawhao was once an expansive wetland area and Tangimate Lagoon a significant mahinga kai of Ngāti Huia, particularly for eels – as evidenced by the extensive whakamate or eel-trapping channels that were established there. The lagoon was drained in the 1940s by the Manawatū Catchment Board and almost completely disappeared. Claimants have said that eels can now only be found in the area when there is significant rainfall.

Case study of the wastewater discharges in Foxton and Matararapa (case study 17)

53. The Foxton Wastewater Treatment Plant was established in 1976 to address pollution of the loop of the Manawatū River. Its oxidation ponds were sited at Matararapa, a Ngāti Raukawa hapū-owned and occupied settlement on the loop's peninsula, where treated wastewater was discharged from the ponds onto their land and into the loop. In 2015, the Horowhenua District Council applied for consents to upgrade the treatment plant and undertook consultation with the various hapū as part of the process. All hapū objected to the continued use of their land for the treatment of wastewater and suggested alternative sites for land discharge: views which the council noted but ignored. At the time this report was written, the matter was before the Environment Court.

Case study of wastewater discharges in Shannon (case study 18)

54. In 2013, the Horowhenua District Council applied for new consents to discharge treated wastewater from the Shannon Wastewater Treatment Plant into the Otauru Stream which flows into the Manawatū River. HDC deliberately sought to exclude the Ngāti Raukawa hapū of Ngāti Whakaterere from the process, in a myriad of ways, because of their strong opposition to ongoing discharge to the river. The consents were granted in 2015 and, at the time this report was written, consent conditions in relation to HDC setting up a cultural monitoring programme had not been met and Horizons Regional Council had not taken action to ensure they were compliant.

Case study of wastewater discharge into Waitawa/Forest Lakes (case study 19)

55. The lake area is considered highly tapu by Ngāti Raukawa being the site of many urupā and the lake supports a number of threatened indigenous aquatic species. A 2012 report on water quality showed the lake was severely degraded and unsafe due to consented and diffuse discharges, including from agricultural sources, and

because of limited or no water flow into the lake from the wetlands and streams that historically fed into it. New consents for wastewater discharge were applied for in 2014 and granted in 2016. No data of the effects of discharge was collected in that two-year period, and the monitoring conditions that accompanied the consent had not yet been actioned at the time this report was written. The recommendations for cultural health monitoring put forward by Ngā Hapū o Ōtaki as part of the consent process were not adopted.

Case study of Lake Horowhenua and the Hōkio Stream Catchment (case study 21)

56. The catchment was one of the most significant sites of settlement and mahinga kai in the inquiry district due to its size and the abundance of fish which sustained large numbers of people from many hapū and iwi. The failure of successive councils to manage and protect the lake and stream, however, has resulted in almost 100 years of destruction and pollution from drainage and toxic discharges. The resulting assault on water quality and its species of aquatic life from these failures has been multi-faceted and relentless. From the 1950s, councils were unwilling to restore the catchment and instead accepted its total degradation. As a consequence, Ngāti Pareraukawa was forced to leave the area as it was no longer able to support their economic and socio-cultural survival. Its degradation can also be attributed to the total lack of representation of Ngāti Pareraukawa in those authorities empowered by the Crown to manage it, which excluded them from being able to influence decision-making.

Theme 5: the impacts of Crown failures on water quality

Key findings

57. The Crown has failed to protect the health of inland waterways in the inquiry district which has had a major impact on their life-supporting capacity and thus their use by hapū and iwi.

58. The Resource Management Act has not halted degradation. If anything, it appears to be contributing to it because significant impacts on water quality through sedimentation, nutrients and pathogen pollution are being ignored. Ignoring these impacts has allowed increased degradation of waterways in the inquiry district, and particularly those which flow through farmland – such as the lower Manawatū River and its tributaries – as the majority of these impacts

result from the intensification of agriculture. Groundwater too is being degraded by the leaching of nitrates and pathogens from dairy farming.

59. Freshwater management approaches undertaken by the Crown have also failed to protect ecosystem health and fish habitats. Over time, those failures have led to local species extinction and unless significant changes are made, and soon, more species will appear on the threatened list.
60. The Crown's National Policy Statement on Freshwater and its National Objectives Framework are not backed up by meaningful water quality limits, and in most cases the bottom lines they set are much weaker than the guidelines they replace. This is exacerbated by the fact that the wrong things are measured in the wrong way. Given that regional councils are not required to fully implement the policy framework until 2030, it means there will be no potential for any net improvement in water quality for many years, at best.
61. In this environment, many lake ecosystems in the inquiry district have already passed ecological tipping points. Estuaries and harbours at the end of catchments are under severe pressure with ocean fish nursery areas, such as for eels, lost from most harbours and estuaries, which is, in turn, having a major impact on ocean fisheries. River ecosystems in the lower reaches of the district's intensive pasture catchments regularly pass tipping points with sediment and nutrient impacts.
62. The inquiry district contains waterways among the worst and the best catchments nationally. For example, the Oroua catchment is among the worst while Ōtaki is in the top 20 per cent. However, the habitat in the lower reaches of the Ōtaki River, where it is managed by flood protection, is poor with limited biodiversity and limited stocks.

Theme 6: the impacts of Crown failures on fisheries and wetlands

Key findings

63. There have been three main processes by which the Crown has reduced the availability of fisheries in the waterways of the inquiry district, and decimated much of the traditional way of life of hapū and iwi:

- a) Through large-scale land acquisition by the Crown and settlers, whereby they controlled vast stretches of land alongside waterways, and thus, controlled access to them;
 - b) Through the introduction of exotic fish species coupled with Crown failures to adequately protect tuna and other indigenous freshwater fisheries; and
 - c) Through allowing and encouraging the degradation of waterways, and more recently, through their failure to protect waterways by allowing unlimited intensification of agriculture which has further impacted on water quality.
64. The extent of landscape and land use change in the inquiry district since 1840 has been immense. Wetlands previously dominated the lowlands of the inquiry district, especially in the northern half. 88 per cent of these have been drained or covered over, and those remaining are in a poor state.
65. The value of these lost wetlands is immense and using their ecosystem services value to indicate this in dollar terms the loss, is somewhere between \$7.0 and 8.6 billion.
66. Habitat loss for fisheries has occurred on multiple fronts – through the actual physical removal and degradation of waterways and wetlands, and through the removal of access by hapū and iwi to remaining waterways.
67. In terms of the tuna fishery, an assessment of their habitat loss has also meant an assessment of their loss in terms of biomass - somewhere between 10,000 and 180,000 tonnes of tuna.
68. Habitat damage continues to this day through Crown or private development schemes on rivers and lakes including sewage discharges, farming intensification and water abstraction.
69. A series of maps in the report show the distribution of 21 different freshwater fish species in the inquiry district, including in the waterways of significance to Ngāti Raukawa. More than half of the different species are in decline, one is already extinct and two others are classified as threatened or vulnerable species.

Theme 7: the impacts of Crown failures on hapū and iwi wellbeing

Key findings

70. The oral evidence of claimants and the analysis of iwi wellbeing statistics together show that the devastation of inland waterways has affected a corresponding devastation on the wellbeing of hapū and iwi - economically, socially, culturally and spiritually.

71. These impacts have been experienced across multiple generations and have greatly affected the inter-generational transmission of mātauranga, tikanga and te reo Māori.

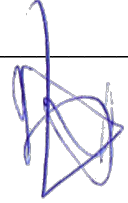

72. These impacts have compounded over the generations as waterways have continued to be destroyed, degraded and polluted.

73. Hapū and iwi in the inquiry district have, however, sought to mediate the impacts of Crown failures to affirm and uphold their tino rangatiratanga in relation to themselves and their inland waterways. This is evidenced by the multiplicity of projects and initiatives undertaken by hapū and iwi to restore and revitalize the mauri and wellbeing of both their own people and of their taonga waterways.

74. These have included the iwi development project, Whakatūpuranga Rua Mano, and the establishment of:

- a) The Save Our River Trust;
- b) The Oroua River Declaration;
- c) Restoration projects at Lake Waikorongomai, Lake Koputarā, Te Hākari wetlands and the Tokomaru River; and
- d) A multitude of rehabilitation and revitalisation projects in relation to lakes, rivers, streams, estuaries and wetlands throughout the inquiry district.

Dated at Wellington this 16 Hōngongoi 2020

Donna Hall

Lyndon Rogers


Woodward Law.

Lead Counsel for the Witness.