

Breaking new ground: Re-inventing Māori role in Te Waihora /Lake Ellesmere's governance

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Abstract

Struggles relating to governance of water resources by indigenous peoples are a well documented issue in social science literature world-wide. Informed by the debates in this literature, our research examines recent initiatives to enhance Māori role in water governance in Aotearoa/New Zealand based on a case of the recently reinvented governance arrangements for Te Waihora/Lake Ellesmere in the Canterbury region. In the New Zealand context, governance of freshwater has undergone significant restructuring in the last twenty-five years, with wide-ranging changes being precipitated by the neo-liberal agendas of recent governments. Emerging alongside this neo-liberal agenda was the revival of indigenous rights language in New Zealand, a reflection of recently growing recognition within the wider New Zealand society of the aboriginal customary natural resource ownership and management rights guaranteed to Māori by the Treaty of Waitangi signed in 1840. We argue that three factors: property rights, globalisation and the regulatory planning environment for management both enable and constrain indigenous peoples to govern natural resources within a post-colonial society such as New Zealand, using Te Waihora as a case.

1. Introduction

Struggles' relating to effective participation by indigenous peoples in natural resource governance in post-colonial societies is an important question in the social science literature (Howitt *et al.*, 1996; Wilson and Memon, 2010). A key theme in current literature is the significance of collaborative institutional arrangements for natural resource governance as a means of giving agency to indigenous peoples. Arguably, as a means of power sharing, collaborative governance institutions can enable engagement by hitherto disenfranchised indigenous groups in natural resource management, participating with other stakeholder groups and the state (Berkes, 1986; Smith and Wishnie, 2000; Rangan and Lane, 2001).

Such potentially innovative hybrid governance institutions are becoming increasingly evident in post-colonial societies as a means to settle long-standing land grievances (Hunn *et al.*, 2003; Petchey, 2007; Breton *et al.*, 2007). However, critics of collaborative governance from an indigenous perspective argue that such seemingly 'inclusive' natural resource governance arrangements have been far from successful as a means to both empower local indigenous communities and to promote sustainable environmental management practices (Peluso 2008; 2009). Far from identifying 'inclusive' governance structures, these studies highlight continuing struggles over highly contested issues such as property rights and differing culturally-informed understanding of 'sustainable management' and how it should be achieved in practice (Wilson and Memon, 2010). Do the voices of the 'subaltern' continue to be buried amongst predominant Western institutions

which as Ellis (2005) argues, take away the power of indigenous peoples to move towards more substantial sustainability?

In the New Zealand geo-political context, governance of freshwater has undergone significant restructuring in the last twenty-five years, with wide-ranging changes towards devolved environmental governance being precipitated by the neo-liberal agendas of recent governments keen to encourage expansion of agricultural exports in the global economy. Emerging alongside this neo-liberal agenda was the revival of indigenous rights language in New Zealand during the 1970s, a reflection of an emergent political recognition within the wider New Zealand society of the ownership and governance rights over natural resources guaranteed to Māori by the Treaty of Waitangi signed in 1840 with the British Crown, coupled with realisation of injustices caused by dispossession of natural resources and impoverishment of Māori precipitated by European colonisation and settlement. Both major political parties have thus agreed to restitution measures in recent times which have included opening up unique spaces for indigenous participation in natural resource governance. Restitution measures include collaborative natural resource governance initiatives with Māori communities at *iwi* (tribal) and *hapū* (sub-tribal) levels as part of the Treaty settlement process.

Set within the above context, in this study we set out to critically examine the continuing contest over governance of a lake of culturally historic importance and a source of *mahinga kai* (food sustenance) to Māori in the Canterbury region of the South Island of New Zealand. This lake was the subject of recent Treaty claims by the Ngāi Tahu tribe in the South Island. As discussed in this paper, the Treaty settlement between the Crown and the Ngāi Tahu people has partially restored tribal property rights in the lake and required the development of a joint management plan with the central government conservation agency (Department of Conservation, hereafter DoC) which also has a statutory function to manage the lake. While these measures have empowered the *iwi* and *hapū* as stakeholders in the management of the lake and its catchment, as well as enabling them to exercise a wider role in freshwater governance in Canterbury, informed by our empirical research findings, we argue that Māori agency in lake governance is fundamentally constrained by three inter-related factors: property rights, globalisation and the regulatory environment.

Data for this study was obtained from multiple sources including published and unpublished archival source and 16 in-depth interviews with key Ngāi Tahu informants from the tribal authority (te Rūnanga o Ngāi Tahu, hereafter TRONT) and the local rūnanga's (sub-tribal or *hapū* authorities), central government officials, local and regional government officials, elected members of council as well as non-governmental environmental advocacy groups. The confidential in-depth interviews took place during June and July 2010 and lasted between one and two hours each. The recorded interviews were subsequently transcribed for content analysis. The interviews sought to elicit from respondents their perspectives and understandings of the role Māori currently exercised in freshwater governance of Te Waihora and its catchment within the broader historical and current socio-political settings of the Canterbury region.

The paper is organised as follows. Based on a literature review, section 2 sets the conceptual framework for this study by exploring factors shaping the environmental governance of freshwater in post-colonial societies with a specific emphasis on the

significance of property rights, globalisation and the regulatory planning environment. This literature review informs the empirical analysis in the rest of the paper. Thus, section 3 examines the historical antecedents to the contested Māori role in water governance in New Zealand while section 4 will examine the contested governance history of Te Waihora from a similar perspective. Section 5 then extrapolates the significance of factors presented in the literature review in section 2 in order to assay the extent to which Māori are able to exercise agency in the current governance landscape for Te Waihora. Section 6 will review the wider significance of our findings with section 7 concluding.

2. Conceptual context

Indigenous peoples in post-colonial societies (Said, 1978) face a challenge in ensuring their customary ownership rights, practices and indigenous knowledge systems are reflected in institutional arrangements for natural resource management (Isin and Wood, 1999; Coombes, 2003). Given this context, recent policy initiatives in post-colonial societies to respond to indigenous demands for ownership and management rights of their ancestral domains are an important issue for examination (Bridge and Perreault, 2009). The signing of the Treaty of Waitangi in 1840 enabled European settlement in New Zealand but it also promised Māori unqualified exercise of their *rangatiratanga* (chieftainship or governance) in regards to valuable natural resources, including water. Thus, it has been argued by Matunga (2000) that the Treaty anticipated two parallel planning mandates for natural resource governance: a Māori planning mandate and a *Pakeha* (European) planning mandate. The failure of the successive colonial Governments to honour these Treaty rights has meant that “Māori planning, with its associated traditions, approaches and practises...has for the last 140 years occupied a space outside [the Pakeha] framework, through a process of deliberate colonial exclusion.” History has shaped Māori as a ‘subaltern’, a group who exists outside of the hegemonic power structure (Coombes, 2007). Hence, a question that has motivated our study is to what extent do collaborative natural resource governance arrangements negotiated with Māori tribes in recent Treaty settlements address this concern?

A focal point in post-colonial studies is the effects of colonisation on cultures in a modern setting, describing the perpetuation of colonial practices in contemporary societies often relating to land alienation and the relationship between Western and non-Western ideals (Radcliffe, 2005). Some post-colonial writers argue that despite efforts by recent governments to address injustices resulting from the historic processes of colonisation, the underlying logic of colonialism is still alive. In natural resource governance, these logics can be manifested in the continuing marginalisation of indigenous systems of governance by global economic interests, Western nature conservation values and formal resource management planning and decision making processes primarily reliant on scientific, rather than local knowledge.

Hybrid natural resource governance institutions have been mooted to provide a sense of participation and agency to indigenous people. Post-colonial theorists retort by arguing that these plans attempt integration of indigenous knowledge but end up forcing the subaltern to speak through foreign systems and lexicon in order to gain recognition for their own management styles. What occurs is either a dilution of indigenous models, or that mainstream policy makers will choose to fall back on institutions and ideas that they are

most familiar with (Stevenson, 2006). It is argued further (d’Hautesserre, 2005; McKinley, 2005) that in the New Zealand context, Māori systems have been regarded by policy makers as honourable but without applicability to scientific rationale – therefore alienating Māori from any real engagement with science and management.

How then do indigenous people gain legitimate power if they co-exist in an environment which views their values, ideals and models as those of the subaltern? Is Spivak (1988) correct in his assertion that the subaltern ‘cannot speak’ and that by attempting to speak or translate on their behalf naturally belittles the content of their ideas? Removing the political and cultural content of indigenous knowledges in order to apply them to co-management or hybrid governance schemes, in the view of some authors (Ellis, 2005), takes away the power that could liberate Western systems from mere window dressing towards substantial sustainability.

Post-colonial literature offers a robust critique of indigenous people’s role in natural resource governance in societies such as New Zealand and underpins the theoretical significance of our study to develop an understanding of to what extent indigenous people exercise an active role in freshwater governance in Canterbury. We address this question in the Waihora case in terms of three factors: property rights, globalisation and the regulatory environment for management.

Indigenous property rights and the associated issues of historical land sales and allocations are key to understanding the environmental governance of freshwater resources (Ostrom and Nagendra, 2006). The way in which property rights are defined and re-defined will play a great role in the amount of agency accorded to indigenous peoples to govern water resources. The notion of indigenous freshwater management only becomes meaningful if there are specific areas or territories which have been set aside for indigenous ownership, title or management. This could include the return of important waterways which had previously been ceded, the demarcation of indigenous water reserves or a co-management role in a locally important waterway (Ostrom and Nagendra, 2006).

Arguably, globalisation has been a powerful driver in shaping modern post-colonial economies and reconfiguring political economy relationships between the colonisers and the colonised. Its economic influence has become more pervasive during the late 20th century in terms of subjecting local economies to the influence of global markets, consumers and capital. As Swaffield and Brower (2010, p.161) explain:

Its characteristics include the global integration of industrial and agricultural production and marketing ... (Goodman and Watts, 1997; Held et al, 1999), the deregulation of financial markets and increasing mobility of capital (Harvey, 2000), and increasing interconnection of local and regional communities within a global network society (Castells, 2000).

In addition to property rights and the processes of globalisation, recent authors have identified the regulatory environment for management as an important dynamic which has shaped the evolution of indigenous natural resource management institutions (Coombes and Hill, 2005; Silver *et al.*, 2007; Pinkerton *et al.*, 2008). In the indigenous management context we can draw two regulatory distinctions: first, are exogenous regulations relating to state planning policies and secondly, are *endogenous* regulations, which recount the specific

practises and self-regulations of the indigenous communities (Ostrom and Nagendra, 2006). Indigenous territories are nearly always embedded within a larger nation-state with the consequence being that *exogenous* regulations are always going to have a role to play in the management of indigenous territories, with legislature controlling water use and local government resource management plans limiting or enhancing the possibilities for action. *Endogenous* regulations on the other hand are unique to the community, for example, how they implement their own 'moral codes' in management decisions; the structure of governance institutions and the enforcement of specific bans to allow resources to regenerate (Roberts *et al.*, 1995).

In section 5 we examine how the above three factors interact with Māori agency in governance of Te Waihora/Lake Ellesmere in the South Island of New Zealand in the wider historical and current geo-political setting of Canterbury and wake of the recent Treaty settlement with the Ngāi Tahu tribe. We will ask to what extent redefinitions of property rights, globalisation and the regulatory environment enable Māori inhabitants to exercise *tino rangatiratanga* (chieftainship) over the resource.

3. Māori concerns on water ownership and its governance: A historical perspective

As a context to the Canterbury case study, this section will focus on the historical antecedents to the current understanding amongst Māori that water ownership rights guaranteed under the Treaty of Waitangi and a water governance role in partnership with the Crown should be discussed in contemporary political discourseⁱ. Māori argue that they never ceded ownership or governance rights over water during the process of large scale 19th century land sales to Europeans and that these customary rights are still intactⁱⁱ.

3.1. Pre-colonial Māori water ownership and endogenous regulation institutions

In the pre-colonial Māori society, freshwater was regarded as a valuable resource collectively owned and allocated by communities. Perception of water was bound in cultural and spiritual beliefs and the physical and spiritual realms were interlinked. Access to water and other natural resources was governed under customary law. In these relatively tight knit communal societies, the practices and uses of water were embedded within a holistic setting, with water being considered a *taonga* (treasure). Under *tikanga Māori* (customs), water which existed within the sea, river, creek, lake or spring was not viewed as being separate entities. Its life giving force and importance in sustaining aquatic life, which was vital to Māori as a food source, was recognised. Thus, it was common for restrictions to be placed on the uses of certain waters, or the taking of fish and shellfish from water at certain times of the year to ensure that food stocks were sustained. A stretch of water or a body of water considered *tapu* (sacred) may be guarded by protective spirits known as *taniwha*. In these cases there were rituals symbolising both the spiritual and physical values of water (Ward and Scarf, 1993; Memon, 1997a)

As discussed below, notwithstanding Treaty obligations, the early colonial settler government transplanted the riparian water ownership regime in New Zealand which led to erosion of Māori rights. This private property regime has been subsequently replaced by state monopoly over water allocation and pollution rights since 1967. The wider significance of the above changes in property rights in water discussed in the rest of section 3 has to be understood in the broader political economy context of the role of the state as the largest

land owner and developer in New Zealand until the advent of wide ranging neo-liberal state sector reforms during the 1980s .

For nearly a century and a half, the state played a pivotal role to successfully foster the development of a grasslands economy to enable New Zealand carve out a comfortable niche within the global capitalist economy (Hawke, 1985). Māori values, economic systems and forms of government, including traditional institutions for resource management, were overlooked or deliberately ignored in the growing apparatus of state sponsored development initiatives (Memon, 1993). In Māori eyes, the state was the biggest offender in terms of adverse environmental impacts, with its wide ranging economic development and infrastructure provision activities affecting the quality and supply of freshwater. Until the 1970s, the state exempted itself from statutory environmental and planning regulations.

Despite wide ranging state involvement in the New Zealand economy and society, central and local government politicians were extremely solicitous of private property owners. Rural land owners jealously guarded their assumed rights to make land use decisions and demand access to water unencumbered by what they perceived as excessive regulations.

The cumulative consequences of decisions and actions which displaced the endogenous Māori economy by successfully transplanting an exogenous export based economy , and the attitudes and understandings they have engendered amongst the present day descendents of European settlers, underpin the long standing impasse, still not fully resolved, over the highly contested issues of Māori water ownership and governance rights. Only relatively recently have efforts been made to address Māori water grievances by the Government within the tribal Treaty settlements.

3.2. Riparian water rights regime

The early European migrants brought with them their own cultural perspectives and associated property rights institutions relating to water. Water was primarily valued as a key input in the new land based economy producing bulk agricultural commodities for distant northern hemisphere markets. The settlers transplanted from Europe the common law riparian water rights system based on land ownership. Under common law, there was no ownership in water but land owners had the right to take and use surface water in any quantities provided this not impact on downstream users. Land owners also had a right to abstract groundwater, but in this instance there was no restriction on negatively impacting on other users of the resource (Ward and Scarf, 1993; Memon and Skelton, 2007).

Even though the riparian regime was abolished in 1967, arguably the attitudes and practices it engendered still prevail today as forces of formal and informal institutional inertia. The riparian scheme engendered the belief among farmers and local authority decision-makers that there was no need to use water frugally (Memon and Skelton, 2007). A still commonly held attitude amongst rural land owners and some central and local government decision makers today is that rural land owners are entitled to use water for economic gain as part of their bundle of land ownership rights without having to pay for it.

3.3. Water and Soil Conservation Act 1967

The Water and Soil Conservation Act 1967 (WSCA) laid the foundations for the current devolved water planning regime. The Act abolished riparian rights in water and instead vested the right to allocate and use water in the Crown, thus ignoring the rights of Māori. The Act was based on the multiple-use philosophy which accommodated the values of the predominantly Pakeha farmers and recreational and environmental groupsⁱⁱⁱ but effectively ignored Māori values.

The WSCA created a two-tier system for water planning and established the “prior appropriation” (first in line, first in right) practice for water allocation by regional water boards. However, until the late 1980s, devolution of water allocation functions to farmer dominated regional water boards was mediated by the National Water and Soil Conservation Authority (NWASCA), a powerful central Government *quango* which had a quasi-judicial role to resolve conflicts over water allocation (Memon, 1993; Roche, 1994).

In hindsight, irrespective of the two *de jure* water rights regimes which were arguably superimposed on Māori customary values, initially as private property and subsequently as state property, *de facto* water has commonly been perceived as an abundant resource and for this reason has tended to be managed akin to open access property. Māori were also excluded in the role of decision-makers in the new two tier water bureaucracy that was established to address growing conflicts over water allocation.

3.4. Resource Management Act 1991

The current statutory water planning framework is based on the Resource Management Act 1991 (RMA). It is a devolved water planning mandate. The RMA places responsibility for water resource planning in the hands of elected regional councils based on the subsidiarity principle. The economic logic of subsidiarity has meant that central government has failed to exercise leadership. At the same time, local government has struggled to undertake its water planning functions on account of lack of resources, capacity and capability (Memon, 1997b; McNeill, 2008).

From the particular perspective of Māori, the RMA juridical water planning framework has a number of weaknesses. Firstly, during the process of enacting the RMA legislation, it was anticipated that the Act would define Māori property rights in water but this did not transpire for political reasons (Memon, 1993). Secondly, Māori are grossly under-represented in local government as elected decision makers. Rural land interests, commonly hostile to Māori aspirations, continue to exercise strong dominance in local government in provincial regions. Māori have been forced to rely primarily on advocacy in order to promote their particular values and concerns about water allocation and quality. This constrains their ability to exercise rangatiratanga.

Third, regional and district councils have been politically reluctant to regulate water allocation and land use intensification (Memon, 1997b; Memon and Selsky, 2004). Water scarcity and declining water quality are ranked as prime public environmental concerns as well as those of Māori communities. Fourth, the RMA juridical framework, embedded in an Anglophonic culture of adversarial conflict resolution, has struggled to cope with the cultural complexities of water conflicts.

A final concern of Māori is that local authorities have struggled to give adequate consideration to the provisions of the Act which pertain to taking into account Māori values and interests^{iv}. Some critics question the degree to which Māori and non-Māori values can be integrated within a single statute (Matunga, 2000). For example, Section 33 of the RMA permits local authorities to transfer their power, functions or duties to a local authority which may not be part of the local council. This includes iwi authorities which as long as they meet the four criteria for transfer (mutual agreement, appropriateness for the community, efficiency and technical capability), are eligible to be devolved a great deal of power (Thomson, Rennie and Tutua-Nathan, 2000). To date, no devolution of power under section 33 of the RMA has been granted to iwi authorities.^v

4. Te Waihora/Lake Ellesmere Case Study

The Te Waihora case study exemplifies long standing Māori concerns highlighted in the previous section focussed on dispossession of water resources and the struggle to secure ownership and governance rights. It also provides insights into the socio-political dynamics which have shaped recent efforts by Māori to secure and exercise these rights in the context of the recent Treaty settlement negotiations.

Te Waihora is a large body of water located in the South Island region of Canterbury, just south of the largest city in the island, Christchurch (Figure 1). The lake is low lying, with a shallow depth and is naturally eutrophic. Its closeness to the Pacific Ocean coastline also means that it harbours birdlife and fish life much like an estuary would (Singleton (2007)^{vi}. Most of the lake catchment is drained by the Selwyn River and small ground water fed streams.

Te Waihora was managed by the local Māori communally prior to colonisation, providing a rich source of food. Taumutu is said to be the first permanent settlement on Waihora. Historians believe it was established by Te Rakitamau (or Te Rangitamau) of the Ngāi Tahu approximately 300 years ago, although it is doubtful that he was the first to camp in the area (Singleton, 2007). During the 1840s, Māori reportedly opened and closed the outlet of the lake into the sea for the purpose of draining the Taumutu Township as well as helping *mahinga kai* to flourish as much as possible.

During this period, Ngāi Tahu sold large amounts of their land in the South Island to the Crown, a deal which has subsequently become known as the Kemp Purchase. In regards to Waihora, the Kemp Purchase boundaries have been the subject of a historical Treaty claim lodged with the Waitangi Tribunal by the Ngāi Tahu^{vii}. During Waitangi Tribunal hearings, the argument raised by the claimants was that the Crown enforced interpretations of the eastern boundaries of the Kemp purchase that were not agreed to by local Ngāi Tahu (Waitangi Tribunal, 1991: 459). In the words of the Tribunal:

Ngāi Tahu wanted the eastern boundary to follow the line-of-sight from Otomatua to Taumutu and thus to exclude from the sale Kaitorete, most of Waihora and its north-eastern shoreline with the adjoining wetlands.

Following the Kemp Purchase, the eastern-boundary Ngāi Tahu had agreed too was slowly eroded. During a visit by Crown representative Walter Mantell shortly after the Kemp purchase, Ngāi Tahu once again raised their concerns about this eastern boundary. They

claim that repeated requests for this eastern boundary to exclude Waihora were ignored, and that:

It is clear that Ngāi Tahu did not intend to part with this treasured fishery. We are satisfied they fully intended to retain unimpeded access to both Waihora and the spit. This they made abundantly clear to Mantell. He deliberately chose to disregard their rights. In doing so he failed to comply with the terms of purchase which preserved Ngāi Tahu their mahinga kai, and acted in breach of the Treaty (Waitangi Tribunal, 1991: 466).

In the eyes of Ngāi Tahu claimants, it was inconceivable that they would sell such a valuable and necessary asset.

In regards to the day to day management of the lake, the Taumutu people still continued to manage the outlet during the early years of European settlement. According to Singleton (2007) the records show that Māori opened the outlet in 1852, 1854, 1856, 1865 and finally in 1867, by which time there was conflict over how much and at what times the lake should be opened. In 1868 the Pakeha farmer Charles Chapman opened the lake himself and from then on it became the accepted responsibility of the new European settlers around the lake to manage its margins. The priorities of the settler farming community were different from the traditional Māori inhabitants however, with the latter favouring higher water levels to maintain *mahinga kai* and Pakeha desiring the lake to be as low as possible to maximise the arable land for farming around the lakeside (Singleton, 2007).

Subsequently, Māori challenged these decisions by appealing to central Government. In 1865 the people of Taumutu, through their representative Natanahiri Waruwarutu, protested to the Natives Minister about the drainage of Waihora (Waitangi Tribunal, 1991). This continued throughout the next decade, with an 1878 protest arguing that drainage was damaging the eel population. A petition was also presented in 1881 and like the other appeals, fell on deaf ears^{viii}.

Since then, farming intensity has rapidly increased in the Waihora catchment, aided by the advent of mechanised irrigation from the rivers and groundwater (Memon and Selsky, 2004). The lake has been treated as a sink for waste, with the major causes of degradation being farm run off, sewage and the manipulation of the lake outlets to foster more arable farmland (Jull, 1989; James, 1991; TRONT, 1999). This was the situation which faced Māori up until a period of restitution for the ills of colonisation which began in the 1980s. The current institutional arrangements for the lake are partly an outcome of these negotiations.

During the Treaty negotiation process, Ngāi Tahu were assertive in their twin desires to reclaim ownership and governance of Te Waihora in order to restore the lake as a source of *mahinga kai* for the local tangata whenua and made this a key plank in their negotiation strategy (Waitangi Tribunal, 1991). One can debate to what extent the lake ownership and governance outcomes sought by Ngāi Tahu negotiators have been achieved. Even though the Tribunal found in favour of Ngāi Tahu on both issues (Waitangi Tribunal, 1991), the ensuing Treaty settlement negotiations significantly whittled down the Tribunal recommendations. The Crown refused for political reasons to consider transfer of ownership of the water in the lake to Ngāi Tahu. The Ngāi Tahu Claims Settlement Act 1998 gives the tribe only partial ownership over the lake, limited to the lake bed and some

surrounding lakeshore properties. The lake bed and the lakeshore land were formerly managed by DoC on behalf of the Crown. DoC continues to retain management control over the remaining lakeshore Crown properties as part of the national conservation estate.

In accordance with Ngāi Tahu aspirations for lake governance, the Tribunal recommendations had envisaged a four party collaborative agreement between Ngāi Tahu, DoC and the two local authorities (Canterbury Regional Council and the Selwyn District Council). The Treaty of Waitangi Policy Unit in the Department of Justice also investigated the options for a partnership between Ngāi Tahu and central and local government representatives to manage land and water use activities in the wider catchment (Department of Justice, 1994). Such an institutional arrangement would enable Māori to exercise a formal governance role over the lake and its catchment within the framework of the RMA. This again proved politically unacceptable, presumably in part due to opposition from local authorities and rural land owners.

Instead, the Settlement Act made provision for the preparation of a joint-management plan between DoC and Ngāi Tahu to enable coordination of activities between the two spatially contiguous land owners and to ensure that DoC took into consideration *mahinga kai* values. This is essentially a land management plan, not an integrated plan for the lake and its catchment. Institutionally, the governance of the lake is now fragmented between the local territorial authority (Selwyn District Council), the regional council (Canterbury Regional Council), the Crown conservation department (DoC) and Ngāi Tahu. There is no integrated catchment plan for the lake as yet. Within the RMA statutory framework, the Regional Council and the District council exercise water and land use regulation functions respectively, while DoC regulates the Crown land in accordance with the Conservation Act. All three authorities are expected to recognise the provisions of the joint management plan.

4.1. The Te Waihora Joint Management Plan

The Te Waihora Joint Management Plan (JMP) (DoC and Te Runanga o Ngāi Tahu, 2005) is the first statutory joint land management plan between the Crown and a tribal authority in New Zealand.

In accordance with a court ruling that enunciated partnership between the Crown and Māori as a Treaty principle^{ix}, the Conservation Act was amended in 1987 (s(4)) to stipulate that:

This Act shall be interpreted and administered as to give effect to the principles of the Treaty of Watiangi.

The Parliamentary Commissioner for the Environment (1988: 28) also encouraged government departments to consider co-management arrangements:

...the implementation of the Treaty principles of partnership and tribal rangatiratanga (iwi authority to make decision and control resources) requires a change in the existing power equation between the Treaty partners, giving tangata whenua an increased share in actual decision-making power at both central and regional levels.

This encouraged DoC to investigate with tangata whenua (local people) opportunities for shared decision making arrangements for parts of the Crown conservation estate:

...in line with the principles of the Treaty the Department of Conservation is seeking to achieve joint decision-making on any allocation of the resource, with the partners assuming shared and singular responsibilities in the process (Owen 1992: 14).

A year earlier, in response to the Waitangi Tribunal recommendation that collaborative management of Te Waihora would be a positive settlement initiative, James (1991: 25), from the Department of Conservation proposed that:

Te Waihora presents an ideal opportunity for the Department of Conservation to develop a partnership with Ngāi Tahu...The iwi is keen to take management responsibility and the Department acknowledges both its obligations to recognize the rangatiratanga of the tangata whenua, and the conservation concerns it has in common with them.

However, it was not until 1996 that the Crown and Ngāi Tahu finally reached an agreement for joint management of Te Waihora because other users of the lake (farmers, fishers, hunters and recreationists) colluded to block the arrangement (Prystupa, 1998). These groups were significant in size and often closely tied to DoC, making negotiations difficult. These difficulties along with the political sensitivity surrounding Treaty restitutions meant it took until 2005 to finally complete the JMP.

4.2 The JMP development process

The JMP articulates jointly negotiated objectives and policies for co-ordinated management of the land (including lake bed) owned by the two spatially contiguous landlords. Within the plan area (Figure 2), the DoC still continues to administer around 35% of the total area of Te Waihora, along with McQueen's Lagoon, another important ecological site in the Te Waihora environment. Ngāi Tahu under the plan own and manage the "bed of Te Waihora" as well as Te Waimakou on the Kaitorete Spit, an area which is referred to in the plan as the Ngāi Tahu 'lakebed'. The title to this land was granted to Ngāi Tahu under the Treaty settlement.

The plan development process was a cultural learning process for both parties. When describing the development of the JMP, a planner observed that:

The scope ... of the process was pretty much set out in the [Ngāi Tahu] Settlement Act. So the process was pretty much an extended policy planning process within a statutory framework. [But] we managed it on a values rather than [the conventional] issues based [management planning] approach [practised by DoC] [Respondent 10].

The Te Waihora Management Board, representing the six Ngāi Tahu rūnanga who were considered to have a close traditional relationship with the lake, were active in the planning process by instilling local values into the plan. According to a DoC respondent:

[The Board] had an informal function during the [earlier Treaty] claim process, [representing] about 6 rūnanga with an interest in the lake. When we were doing the

plan, [the Board was brought] together again in a semi-formal way [by the tribe] to represent the rūnanga [Respondent 6].

The values based planning approach helped merge the desires of the two parties together, even if some of the processes were novel for DoC. As one respondent recalled:

Department of Conservation tended to want to focus on species and the traditional scientific analysis for planning and Māori wanted to emphasis the cultural interests and values, the traditional stories, and knowledge which had gone before. One of the ways they [DoC] resolved it was to take a holistic approach. So one of the key projects we did was an oral history where we got a PhD student listening to and gathering information from people in the area, not just Ngāi Tahu but from recreationalists, farmers, fishers and the like. This gave a more personal perspective [Respondent 10].

Notwithstanding this, there were feelings of antagonism from the Waihora Management Board. A DoC official reminisced that the board had:

...a feeling they hadn't got what they deserved, they wanted all the conservation lands. Some of them also wanted that wider agreement [with Selwyn District Council and the Canterbury Regional Council], including the RMA things. They felt they hadn't got everything. And then occasionally there was perceived conflict between the mahinga kai and conservation values, but that only came to a head on this vehicle access issue [Respondent 6].

The vehicle access issue presented the biggest challenge of the plan development process, with DoC arguing that vehicle use over the ecological fragile greenpark sands area of Te Waihora was an affront to conservation values whereas the Waihora Management Board argued that their mahinga kai aspirations would be limited by restricting motor vehicles. Although this issue didn't require the use of official mediation procedures, it was only resolved when DoC managers in Wellington demanded a compromise be reached. This led to vehicle access being allowed on the wetlands.

The overriding Ngāi Tahu goals in the JMP are to rehabilitate the lake as an important site of mahinga kai and to provide the tribe with a sense of rangatiratanga. The Waihora Management Board plays a key role in implementing the plan with the support of the tribal corporate office. The statutory scope of JMP and the role of the Board are limited to managing activities on the lake bed and lake shore. The Board has no decision making authority over issues of water allocation and water quality and intensification of catchment land use. At the insistence of the Board, the JMP articulates policies relating to water quality and land use in the catchment but the Board is limited to an advocacy role with the local authorities in order to give effect to these^x.

5. Reflections on Māori agency in contemporary Te Waihora governance

The paper has so far been focussed on examining the historical legacy that has shaped the current Māori role in Te Waihora governance. We argue that this legacy has been shaped by three inter-related factors: property rights, globalisation and the regulatory environment for management. In this section we present insights from in-depth interviews with key Māori and non-Māori informants within Canterbury, answering to what degree Māori exercise

agency in Te Waihora governance today by extrapolating the significance of our three factors in enabling and constraining this agency.

5.1 Property Rights

According to a Ngāi Tahu respondent, discussions are ongoing between Māori and the Crown about indigenous water ownership rights. As a Māori respondent made it clear, the Ngāi Tahu leaders:

Always raise [the issue of] ownership of water because that's a national iwi concern. It's not one a regional council can resolve, but it is a basic concern of iwi. So rangatiratanga would involve reference to that and that hasn't gone away. As far as the iwi leadership is concerned, it is still on the table, as it is with other iwi throughout the country [Respondent 3].

While it is conceded that the Crown stands firm on its present position, the same respondent acknowledged that a greater management role which recognises the importance of the lake to them holistically could also enhance Māori agency in water governance. They state that:

Rangatiratanga sometimes translates into legal ownership, but maybe the more significant thing is management. The perception I have is that Ngāi Tahu more than anyone else is driving the management of Te Waihora. That's a form of rangatiratanga. They may not own the lake water, but whatever it means to own the lake bed, there is statutory recognition there [Respondent 3].

In this respect, the Te Waihora Joint Management Plan is considered a step forward by all respondents. The unique features of the lake, with its levels often rising over adjacent lands, meant that a plan which acknowledged the fluid boundaries of the lake is seen as important. The JMP has given Māori agency over the lake as explained by a Māori informant:

The rūnanga [around the lake] have rangatiratanga and can exercise rangatiratanga ...The eel fishers [rental issue see section 5.3] have been the test. Now Ngāi Tahu in owning a lakebed can stand up and say this is the level of activity we will allow to take place on our land, and where we don't want that activity, it will not occur. If we weren't able to do that, then my answer to that question [if they have been granted rangatiratanga] is no [Respondent 12].

During the treaty settlement negotiations, the option to include the two local authorities with Ngāi Tahu and DoC in a joint-management plan that would mediate land and water use in the catchment did not prove politically acceptable, as noted earlier. In hindsight, both Ngāi Tahu and DoC respondents see this option as being difficult to implement in practice, with a DoC respondent arguing that the two local authorities would have weakened the tenets of the agreement with their superior political power. They go onto to argue that exclusion of local authorities is in some ways strength of the plan:

...in many respects this document as just a land owners' plan has turned out to be a more powerful one than if we had done a whole catchment one. If we had done a whole catchment one including the councils then whatever Ngāi Tahu and ourselves

might have wanted would have been watered down from the regional influence...This document has come through quite strongly with what we want for the lake and has definitely given Ngāi Tahu and ourselves a stronger mandate for asking for things through the RMA process [Respondent 6].

The limited statutory lake bed management role has also enabled Ngāi Tahu, to an extent, to leverage agency over water management and land use in Waihora catchment in an advocacy role with local government. In order to improve water quality in the lake, DoC and Ngāi Tahu have removed all grazing stock on their properties and have undertaken riparian planting programmes while the Te Waihora Environment Trust has funded these activities on private lake shore land. Advocacy by Māori and non-Māori to the local authorities within the catchment has also been successful at halting point source pollution from sewage outfalls from small nearby towns such as Lincoln into the lake. Although these preventive measures are critical for improving water quality in Waihora, the over-riding issue remains the intensification of farming in the catchment and the non-point source pollution which this causes. Virtually all respondents interviewed expressed strong reservations about land use intensification, arguing it was a major contributor to increasing pollution of the lake and its ability to sustain its major functions including food provision. All the non-local authority respondents were critical of the failure of the two territorial local authorities to effectively regulate the impacts of intensification as a major contributor to lake eutrophication.

5.2. Globalisation

The driving force behind recent land intensification in the Waihora catchment is economic globalisation. This has been fuelled by recent booms in dairy prices and the emergence of a powerful dairy co-operative in Fonterra, with many farms converting from the more traditional dry stocks such as sheep to dairying.

The trend towards increasing intensification of land use is a major Ngāi Tahu concern:

Non-point source pollution is an enormous concern. You've seen the trajectory of growth of land use in this catchment, well you just need to plot the irrigation allocation graph and see that it's directly related to intensification. We haven't seen that waste water yet through the ground water system, [but] we are getting increasing degradation in lowland streams and they feed into Te Waihora. We're in for some worrying times; [while] people think it's bad now, I would argue we have a lot worse to come potentially [Respondent 4].

The trend toward land use intensification in the catchment is expected to continue for economic reasons. Central government views Canterbury's water resources as giving it a global comparative cost advantage in the dairying industry and its national economic strategy is to increase the area under irrigation in the region by easing the regulatory path. This will be examined in more depth through the next section.

5.3. Regulatory environment for management

The regulatory environment for management is arguably more important than property rights or the effects of globalisation in shaping the current Māori role in water regulation. As outlined in section 2, this section will examine both external (exogenous) and internal (endogenous) regulations. Exogenous regulations relate to the mandates set by central

government legislation and/or regional council and local territorial authority planning. Endogenous regulations refer to the internal ethos, ethics and values which inform indigenous management and regulation of natural resources.

5.3.1. Exogenous Regulations

The Local Government Act 2002 and the RMA are both enabling local government statutes with potential to enhance Māori role in water governance and land use planning^{xi}. However, their potential in this respect has not been effectively harnessed in the Canterbury region. Thus, Canterbury Māori have never had a decision making role in local government. In common with other stakeholder groups, the iwi and runanga, rely on advocacy via planning submissions and appearances in statutory hearings in order to raise concerns about water issues. The barriers facing Māori in this respect are the same as those facing others. As explained by a local authority decision maker:

When I look at the strength of submissions [under the RMA], it's the ability of a group to have strong representation in regards to money, time and resources to actually put forth an effective submission [Respondent 9].

A few of our respondents, both Māori and non-Māori thought that the Te Waihora catchment would be a good opportunity to apply section 33 of the RMA, which as we have described earlier, permits local authorities to devolve responsibilities to mandated iwi organisations. Ngāi Tahu is currently engaged in discussions with the regional council concerning devolving authority for lake openings consents under section 33 to the local rūnanga. A local authority respondent, however, was of the view that the current political climate would not be receptive to such moves:

At a political level, I don't think you're going to get that. I really don't. The reason being a lot of people in the political field, I feel, do not have a great understanding of the Treaty of Waitangi or how co-management actually works. I guess at the end of the day there is, dare I say it, an element of mistrust in the ability of local tribes within their structure to actually manage an overarching resource [Respondent 9].

Likewise, a Māori respondent thought that that this would never happen in Canterbury because “this is politics, nobody wants to give up power” [Respondent 3].

Even though the RMA empowers local authorities to regulate land and water resources, as noted earlier, the two Canterbury local authorities have been lax to do so. Thus, there are few regulations within the Waihora catchment in regards to enforcing environmental standards on farmers:

At the moment our district plan only regulates intensive poultry and pig farming, which comes under basically factory farming. It does not regulate, beef, sheep, cattle, deer [Respondent 9].

Under the RMA farmers have ‘existing use rights’, which allows their water use to continue unimpeded if the farm has not recently been converted from one stock to another. Farms which have recently converted, generally to dairying due to the higher profit margins, are required to fence the waterways on their properties. However, as a respondent argues:

It was contested by Federated Farmers, and the only streams and creeks that basically have to be fenced off are ones feeding the Selwyn River. No other small streams and creeks [Respondent 9].

Furthermore, economic pressures mean that farmers view fencing as taking away productive land from gainful use. As the same respondent goes onto state:

[By] ripping up your hedgerows; you will get a couple of extra hectares to farm which from an economic perspective is fine, but environmentally, no. When you have that sort of mentality, [that] by fencing of the waterways you are taking the land away from production. So some farmers are saying "we want to be compensated" [Respondent 9].

Māori frustration with local authorities' decision-making processes is evident in the following response to a decision this year by the Canterbury Regional Council to grant permission to a major irrigation project. This irrigation project is projected to bring economic benefits to the region despite negative environmental outcomes due to further land intensification that will occur. As recently reported (Te Rūnanga o Ngāi Tahu, 2010),:

Ngāi Tahu disagrees with the independent commissioners' conclusion that the additional nitrate and phosphorous inputs into Te Waihora/Lake Ellesmere via lowland streams "are unlikely to have such significant effect on phytoplankton (including algal blooms and flow on to the fishery) to the extent that the CPW scheme should not proceed" [as stated in the report of the planning consent commissioners].

Ngāi Tahu Te Waihora Management Board Chairwoman Terrianna Smith said it was distressing to hear of yet another decision to allow resource consents that would end up costing Te Waihora. "Clearly we are yet to learn from our past mistakes which have occurred time and time again so that our mahinga kai (customary food resources and practices) continue to be polluted and our relationship with Te Waihora is further degraded."

The tribal authority has appealed the decision to the courts.

5.3.2. Endogenous Regulations

There are two inter-related facets to the endogenous regulatory framework for Te Waihora: the Te Waihora Management Board and Te Rūnanga o Ngāi Tahu (TRONT).

The Waihora Management Board comprises the six papatipu rūnanga from Ngāi Tahu who have a historical links to the lake. These six rūnanga elect representatives to the Management Board, which effectively represent Ngāi Tahu on issues relating to the lake. Within Ngāi Tahu, this is seen as an act of devolution, giving power to those who have the most direct relationship with the lake, the people who still use it daily for mahinga kai. As a Ngāi Tahu respondent explained to us:

We [te Rūnanga o Ngāi Tahu] are the administrative agent in that way, but all the decision making and the strategic directions and the priorities are driven by the papatipu

rūnanga, I would tend to think they have more of an ownership in the lake and its resources than te rūnanga [Respondent 12].

TRONT is therefore a mediator on behalf of the Board but in a subsidiary relationship as a decision maker. Even within the Waihora Management Board, a number of the responsibilities for the lake are devolved to the closest rūnanga, Taumutu, located closest to the lake:

Part of the tikanga is the practice of recognizing one as having kaitiaki responsibilities. Taumutu, you're closest to this, you people are more involved with this lake more than we are, go and do what you can for us. There will be some rivalry and differences along the way but the basic principle is they are the leaders, they drive it, and they do it on behalf of the others [Respondent 3].

The recent agreement reached over charging commercial eel fishers on the lake to pay for environmental protection measures illustrates the power of lake bed ownership to be able to set its own 'endogenous' regulation. The agreement also permits Ngāi Tahu to limit eel fishing in certain areas of the lake, allowing customary sources in this area to regenerate and remain untouched. It is argued by some Pakeha that these regulations are unfair on the existing commercial fishers, as expressed by Fisheries Lawyer Bruce Scott (Donaghue, 2010) below:

When the Crown returns lakes, rivers or tributaries to iwi as part of the settlement process they are often not doing it in a manner which protects the rights of the existing commercial fishermen, including Māori fishermen. They are doing it in a way which creates a new injustice to resolve an earlier injustice.

This is typical of commonly held views on endogenous regulation. From their perspective, granting control to the dispossessed indigenous minority creates a new perceived injustice for the settled majority, in this case, commercial fishers.

Although these current gains are small, it is clear that endogenous regulation of Waihora enables Ngāi Tahu and the Te Waihora Management Board to exercise agency over the lake. The extent they are granted *ownership* is limited, but what ownership they do have enables them to leverage and implement their own *management* schemes informed by tikanga and the Māori worldview. These small gains will also help them leverage exogenous regulation, a situation which will be put to the test during resource consent hearings on new irrigation project (see section 5.3.1 above).

6. Discussion

We have argued in this paper that three factors enable and constrain the Māori role in water governance in Te Waihora: property rights, globalisation and the regulatory environment.

In regards to the first factor, Ngāi Tahu have been enabled to acquire agency in the lake through the vesting of ownership of Waihora's lake-bed as well as limited surrounding lands in the Treaty of Wataingī settlement. Although this property right has enabled Ngāi Tahu to exercise *rangatiratanga* in limited capacities (such as rent on commercial eel fishers and rehabilitating customary fisheries), it does not provide new capabilities for management of

the lake's *water*. As we examined, under the RMA, the Crown views water as a publically owned resource which it takes sole responsibility for allocating and managing.

Our paper then argued that the second factor, globalisation, is the primary driver of degradation in the lake's water quality. The Canterbury agriculture economy is deeply embedded in the global economy. Intensification of land use in Te Waihora's catchment and the rapid conversion to dairy farming in the region is driven by international market forces, supported by the policies of central Government, the territorial local authority and the regional council. The role of globalisation as a driver towards land intensification in Canterbury is expected to gather greater momentum in the near future.

Finally, we argued that changes in national policies precipitated by the Ngāi Tahu Treaty settlement broke the monopoly of 'white ruralities' (Panelli *et al*, 2009) in Canterbury by granting limited recognition of Māori ownership and management rights in Te Waihora. However, the RMA regulatory regime for water planning in Canterbury has been, at the *exogenous* level, not only permissive of greater land intensification but also unwilling to devolve lake management powers to local Māori. Provisions within the RMA could allow for devolution of responsibility for lake management to Ngāi Tahu; however, both parties are sceptical as to whether this would be a politically expedient measure. *Endogenous* regulations allow Māori to exercise their own specific *tikanga* and value sets over the lake, best embodied in our case study through the roles and responsibilities of the Te Waihora Management Board. Although ownership responsibilities over water in the lake may be a long way off, the Waihora Management Board and its agent, TRONT, are using their *endogenous* values and limited ownership powers to leverage exogenous policies.

The findings of this paper resonate with recent debates in the international literature on collaborative governance with indigenous peoples. Our findings lend support to both aspects of the debate highlighted earlier in the introduction to this paper. Thus, as has been demonstrated here, the hybrid governance landscape for Te Waihora has enabled local Māori to acquire a role relating to certain aspects of its management. Our study highlights the significance of property rights, globalisation and regulation in shaping Maori agency in Te Waihora. To this extent, the Te Waihora experience is in accord with international and New Zealand research findings (Berkes, 1986; Smith and Wishnie, 2000; Rangan and Lane, 2001; Hunn *et al.*, 2003; Petchey, 2007; Breton *et al*, 2007; Moller *et al.*, 1997; 2000; Memon *et al.*, 2003).

However, despite the significant gains toward indigenous governance of Te Waihora over the last twenty years, effective Maori agency in the lake and wider catchment continues to be burdened by the historical forces of institutional inertia. Ngāi Tahu's role as a decision making authority of the lake, legitimized by lake bed ownership and the Joint Management Plan, does not extend to a decision-making role over matters relating to the issues of water quality and catchment land use. As we have demonstrated, the forces of institutional inertia stem from property rights, globalisation and regulation. These three inter-related factors are powerful driving forces which continue to restrict Ngāi Tahu agency in the catchment to that of a stakeholder group. This conclusion lends support to international critics of collaborative governance cautious about the inclusive potential of collaborative governance institutions (Ellis, 2005; Peluso 2008; 2009). Comparable concerns about collaborative governance have been highlighted by New Zealand scholars (Matunga, 2000; Coombes

2003; with Hill, 2005; 2007;). As Matunga (2000: 46) states “compensation or redress is now as much about returning resources to Māori as it is about reinstating their right to make planning decisions.”

7. Conclusion

A theme that comes across strongly in our study is that Māori understand their water governance role as partners in decision making, a partnership that extends beyond advocacy within collaborative planning processes. An example of this can be seen in the recent Canterbury Water Management Strategy developed by the Canterbury Mayoral Forum (2009). Hence, Māori role in water governance in Canterbury will continue to be a highly contested topic. The significance of difference in perspective is possibly not fully grasped by policy makers and other stakeholder groups contemporarily. As the Māori Party co-leader Pita Sharples explained at the recent Indigenous People’s Legal Water Forum, the legislative framework for Māori participation is clear in the RMA, with section 6 requiring an acknowledgement of Māori relationships with the lands, section 7 illustrating a particular regard to katiakitanga and section 8 outlining that the RMA has to take into account the Treaty of Waitangi. However, he (Sharples, 2009) argues that:

While these, and other sections of the RMA, provide a valuable starting point for the inclusion of Māori values and perspectives in resource management, the overwhelming sentiment among Māori is that they do not go far enough. Māori have been calling for a shift, from being ‘consulted’ to having a meaningful role in governance and decision making over water.

What our paper has argued is that in the Te Waihora case study, this shift from being ‘consulted’ to having ‘governance’ over water is still work in progress. Lack of effective governance authority means that whatever limited decision-making authority Māori are devolved, their values are still subjugated, reframing them as ‘subalterns’ in the post-colonial society that is Aotearoa/New Zealand.

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Appendix 1: Glossary of Māori terms

Hapū - kinship group, clan, tribe, subtribe - section of a large kinship group.

Iwi - extended kinship group, tribe, nation, people, nationality, race - often refers to a large group of people descended from a common ancestor

Kaitiaki - trustee, minder, guard, custodian, guardian, keeper.

Kāwanatanga - government, dominion, rule, authority, governorship, province.

Mahinga kai - garden, cultivation

Māori - be native, indigenous, normal, usual, natural, common, fresh (of water), belonging to Aotearoa/New Zealand, freely, without restraint, without ceremony, clear, intelligible.

Rangatiratanga - sovereignty, chieftainship, right to exercise authority, chiefly autonomy, self-determination, self-management, ownership, leadership of a social group, domain of the *rangatira*, noble birth.

Rūnanga - to discuss in an assembly.

Taonga - property, goods, possessions, effects, treasure, something prized.

Tangata whenua - local people, hosts, indigenous people of the land - people born of the whenua, i.e. of the placenta and of the land where the people's ancestors have lived and where their placenta are buried.

Taniwha - water spirit, monster, chief, something or someone awesome - *taniwha* take many forms from logs to reptiles and whales and often live in lakes, rivers or the sea. They are often regarded as guardians by the people who live in their territory.

Tikanga - correct procedure, custom, habit, lore, method, manner, rule, way, code, meaning, plan, practice, convention.

Tino rangatiratanga - self-determination.

ⁱ The issue of restoration of Māori water governance rights enshrined in the Treaty is complicated by differences between the Māori and English translations of the Treaty. Arguably, the Māori version contains much stronger provisions relating to governance compared to the English translation. It is argued by Coombes (2003) that this divergence weakens the environmental governance provisions inherent in the document. The Māori version guaranteed *tino rangatiratanga* – or in other words, full chieftainship (akin to governance) – over natural resources and important habitats for food and harvesting. The English version only describes Māori as having limited government, translated into Māori as *kāwanatanga*.

ⁱⁱ The issue as to whether Māori have customary title to freshwater is unresolved. According to a recent judicial decision, the introduction of common law to New Zealand from England did not extinguish Māori customary title. This means that whatever customary title Māori held to freshwater, prior to the assertion of British Sovereignty in 1840, will continue to exist unless it has been lawfully extinguished. Some nineteenth century deeds of sale of Māori land did explicitly transfer the rights to use water associated with the land but other did not. The issue of whether there are currently any Māori customary rights to water has not yet been considered by the Courts, so the legal position is unclear (Ruru, 2009, pp. 76-86; Mulcahy et al, forthcoming, p. 53).

ⁱⁱⁱ In 1981 the WCSA was amended to create Water Conservation Orders (WCO's) which recognised for the first time the benefits provided by water in its natural state. WCO's can set limits on the consumptive use of water by being placed on a number of outstanding water features, usually rivers, thus limiting the availability of water for extraction. Much like the 'prior appropriation' framework above, WCO's have been carried forward into the new water governance regime for New Zealand's water, the Resource Management Act (RMA).

^{iv} The first of these is recognition of the relationship between Māori and their ancestral waters, as stated in Section 6 (e) of the Act. Secondly, Section 7 (a) states that kaitiakitanga have the possibility to exercise powers and functions of their roles under the RMA. Thirdly, Section 8 references the Treaty of Waitangi, stating that the spiritual and cultural significance of a local waterway can only be determined by specific tangata whenua who have traditional rights over that waterway.

^v Joseph and Bennion (2002, p.16) state that "a reason for this situation is because of the requirements of the legislation which set up preconditions and procedural requirements which are onerous." The processes behind devolution of authority are far from clear, with many councils and iwi being unsure as to how to physically devolve certain tasks. There is no format available on how to answer a request (from the council's perspective) or on how to physically lodge one in the first place (from the iwi perspective).

^{vi} As Singleton (2007, 264) explains:

“Technically, this wide, shallow, wind-blown water body is not a bona fide lake but a coastal lagoon that is intermittently opened to the sea. It is tenuously separated from the ocean by a 25-kilometre shingle bank called Kaitorete Spit which, at its lowest point, is four metres above sea level.”

^{vii} The Waitangi Tribunal is a commission of inquiry which was established under the Treaty of Waitangi Act 1975 to investigate grievances brought forth by Maori relating to actions undertaken by the Crown which breach promises made in the Treaty of Waitangi. Although initially intended to refer temporally to events *after* 1975, its legislation was altered to allow historical grievances to be heard as well.

^{viii} A significant flood in 1895 created the impetus to create more permanent structures at the Waihora outlet to better contain the lake (Singleton 2007). Attempts were made throughout the early 20th century to create permanent structures; however, they all suffered the same fate of being destroyed due to heavy seas. This led to the lake and its drainage being considered an ‘unruly child’ by the drainage administrators in the area.

^{ix} The New Zealand government introduced the State Owned Enterprises Act in 1986 which was designed to allow the transfer of Crown Land into a Land Corporation, with the intention of inducing sales onto third parties. Māori and the Waitangi Tribunal viewed the SOE Act as compromising the Treaty of Waitangi Act 1975, which stated that only Crown Land could be used in settlements. If the Crown therefore was attempting to sell off some of this land, it would limit the possible future applications of Māori to settle claims over these territories (Prystupa, 1998: 136). Following these criticisms the Act was amended, only permitting the Crown to use the Act in such a way that was consistent with the principles of the Treaty of Waitangi. Following this, the Conservation Act in 1987 (s(4)) was amended.

^x This is also the case with water and land use policies contained in the Te Taumutu Runanga’s Natural Resource Management Plan (2003) and the Ngāi Tahu Freshwater Policy (1999).

^{xi} The LGA 2002 states that a purpose of local government is to enhance Māori participation in local governance.