

Water: towards a bicultural perspective

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Preface

The research presented here was commissioned by the Centre for Resource Management because a need was perceived for written material that might guide managers as well as users of resources about things Maori. Legislative change in New Zealand as well as change in attitudes and actions of many Pakeha and Maori have raised our awareness that we have some unfinished history. The responsibility rests with all individuals to develop an awareness of Tikaka Maori and its relevance to New Zealand society in 1990 and beyond.

The Centre for Resource Management has made a commitment to assist in that consciousness raising by providing policy advice and information, wherever possible, on issues raised by the Treaty of Waitangi - especially where those issues relate to natural resource ownership; Iwi and Crown institutional and operational arrangements, and Maori approaches to environmental management practices. The production of this publication is one step towards achieving that goal.

However, information about traditional practices, customs and knowledge, as in all cultures, is a precious thing guarded carefully and passed on to chosen members of society. Some will come to know much, others will hold knowledge appropriate to their status and role in society. In Maoridom the conveyance of that knowledge is by oral means and relies upon recipients having a context within which they may appropriately interpret what they learn. Without that context, meaning is lost.

The North American authors of this publication, a national historian and a legal anthropologist, chose to use published sources of information only during their research "so as to avoid the danger of revealing what should remain under the protection of tapu and therefore in tangata whenua control". Some of these written sources document traditional practices as they were revealed to the authors of the various works i.e. post-European contact. The accounts recorded must also be recognised as interpretations offered by those observers. They have been rationalised and recounted after being processed through a set of values moulded by European and often nineteenth century thinking and experience.

The authors' disclaimer is an important statement that we recommend readers to attend to. The Centre for Resource Management further recommends that the information gleaned from this publication be balanced by discussion and consultation with takata

whenua. it should form just part of the learning about Tikaka Maori that we are all committed to.

The spelling of Maori terms used in this publication follows the preferences of Kai Tahu - a convention the Centre for Resource Management has chosen to adopt.

Finally, I would like to thank Mr Barry Brailsford and Reverend Maori Marsden for their thoughtful advice during the final stages of preparing this publication for printing. I would also like to acknowledge the support given by staff of the Centre for Maaori Studies and Research, University of Waikato, during this research.

John A. Hayward
Director
29 October 1990

Disclaimer

While this publication may be of interest to Maori persons concerned with water resources, it is primarily directed towards persons with little knowledge or expertise in Maoritaka. Therefore, it is advisable to supply some cautionary notes that a Maori reader would already understand and take for granted.

The authors of this work are Pakeha and claim no privileged knowledge or authority in the Maori world. Within the Maori world knowledge is tapu (sacred), therefore the policy throughout our research has been to use published sources to avoid the danger of revealing what should remain under the protection of tapu and therefore in tangata whenua control.

Generally, two types of sources have been used: descriptions of Maori culture recorded by Pakeha and Maori, usually of a scholarly or ethnographic nature; and the records and testimonies that result from court and tribunal hearings. When drawing from the first type of source it should be remembered that there are differences in belief and practice among Maori groups. Some sources tend to homogenise these into generalised notions; while this may be good enough for an introduction, people working with particular Maori groups should know that there will be local variations and should be ready to adapt to them. Also, it is not the purpose of this publication to explain fully or rationalise Maori thoughts, beliefs, and practices but merely to give insight to facilitate processes in a bicultural society. It is not possible to fit Maori concepts perfectly into Pakeha concepts or to rationalise them in a way to make them fully acceptable to Pakeha ways of thinking. As Pere (1982, p.47) wrote:

"Much has been said and written about the Maori people since the early Maori-Pakeha contact period yet very little of it has captured and reflected the ethos so strongly transmitted in oral tradition. So much of it has endeavoured to categorise and fit the Maori people into "closed" models with definite boundaries; models that do not have the structure nor the capacity to deal with the diversity that exists within proud tribal cultures."

When drawing from the second type of source, the reader should realise that in legal contexts particular points are being argued so that the full extent of some issues may not have been raised. Nevertheless, the examination of these disputes often allows values and expectations to be identified that are usually only implicitly formulated in other contexts.

New Zealand is currently in the process of re-evaluating its obligations and responsibilities to protect and recognise Maori rights. As Maori rights under the Treaty, and as they exist in common law in terms of aboriginal title, are further explored, we can expect that our understanding of resource managers' responsibilities will become better defined.

Introduction

The Treaty of Waitangi, signed in 1840, provides the charter for a bicultural society in New Zealand. For much of this country's history, however, the full potential of biculturalism has not been realised since the priorities of the Pakeha culture have held sway. It has consequently been possible for New Zealand's resource managers to operate with little or no knowledge of Maori views and values.

According to Pakeha understanding, water is a chemical substance, a commodity to be sold or licensed, its flow is to be regulated and channelled according to computer models, it is an appropriate site for the release of a variety of wastes, water courses are responsible for purification processes, and judgements of water quality are based on 'acceptable' levels of pollution rendering 'purity' a relative term. Within this context, Maori views seem to be metaphysical or religious notions that are out of place and are not appropriate for consideration by 'scientists'.

Recently, with the reference to the Treaty of Waitangi and to Maori spiritual and cultural values in legislation, the increased cognisance of the Treaty by the Courts and Tribunals, and renewed judicial recognition of Maori aboriginal rights, it is now necessary for decision makers to understand Maoritaka as well as the new obligations of their position. It is the purpose of this publication to provide an introduction to these issues, especially as they relate to water resources.

The first part of this publication outlines some principles of Maori worldview, social organisation, resource ownership and use to provide a basis for understanding Maori views and values. The second part of the publication focuses on Maori rights and values in a legislated and legal context. Some of the legislation and hearings where Maori water-related issues have been included or raised are discussed. Because it is hoped that this information will be of use, some consideration is also given to the ways in which resource managers can move towards including a Maori perspective in the operations of their departments or agencies.

Part One Maori cultural principles relevant to issues of resource ownership and use

1 Maori cultural concepts

1.1 Rakinui and Papatuanuku

The beliefs and worldview of a people are embedded in their language; their language is a reflection of their culture. When Pakeha speak of the water, soil, forests, or wildlife, they see them as separate entities that can be placed under the broader heading of “natural resources”. A dictionary definition of “natural resources” explains: that they are “naturally occurring materials such as coal, fertile land, etc.”. “Materials” are further defined as “the equipment necessary for a particular activity”. Under “resource” we find the following among the definitions: “a source of economic wealth...; a supply or source of aid or support; something resorted to in time of need; a means of doing something” (Collins Precise English Dictionary, 1982). Therefore, natural resources are materials to be used by people and to assist people in their needs. The value of resources seems to lie in their ability to serve humanity.

On the other hand, when Maori speak of the water, soil, forests or wildlife, they often speak of them in conjunction with Papatuanuku, Rakinui, Tane, Tawhirimatea, or Takaroa. A closer examination of the reasons for this provides an insight into the Maori perception of the natural world. Although there are tribal variations, the basics are the same throughout New Zealand.

The primeval parents are Papatuanuku (Papa) the Earth Mother and Rakinui (Raki) the Sky Father. Their union resulted in the birth of about 70 children, all males. These children lived in darkness, pressed between the bodies of Papa and Raki who were locked in embrace. Some of the children devised a plan to separate their parents so as to give themselves more room and to let in light. Several attempts by various brothers failed, until Tane finally succeeded in the separation. Both Raki and Papa grieved over their separation; the tears of Raki so copious that they caused flooding. It was then decided to turn Papa on her back, to avert her sorrowful gaze from Raki, and thereby lessen the parents’ tears and grievings. Raki’s tears still fall as rain, although much mitigated, and the rising mists are Papa’s sighs (Buck, 1949; Grey, 1988).

Since Raki and Papa’s children were all male, Tane went out to find the uha, the non-supernatural female element, as formed of the earth (Best, 1924c, p.73), from which human life (ira takata) could be produced. The gods themselves were supernatural life

(ira atua) and were therefore not appropriate (Buck, 1949, p.450). In his searching Tane mated with several female personifications, none of which were human, and produced many species of trees, birds, insects, rocks, reefs, etc., but failed to produce the ira takata. Finally he asked Papa for guidance and she advised him to go to the beach at Kurawaka and mould the fertile red clay there into a figure. He did this with the help of his brothers, who each added to various parts of the body. Then Tane breathed life (hau ora) into this figure which came to life with a sneeze (tihe mauri ora). This first woman was named Hineahuone and all the offspring of Tane and Hine were female. It is interesting to note that Tane means man and Hine means woman (Buck, 1949; Grey, 1988).

All of earth is part of, or originated from, Raki and Papa and, just as all humans can trace their ancestry back to them, so too can all other natural beings, animate and inanimate. Humans are not separate from nature, but are kinsfolk. For Maori, both spiritual and physical aspects of nature are so interwoven that they are not separable. Of Raki and Papa's 70 or so sons, some of the better known include: Tane, god of the forests; Takaroa, god of the sea; Tumataueka, god of war; Rokomatane, god of agriculture and peace; Haumia, god of uncultivated foods; Tawhirimatea, god of the winds, rains and weather who resides with Raki; Ruaumoko, god of earthquakes; and Whiro, god of darkness and evil (Buck, 1949).

Tipene O'Regan (in Douglas, 1984b, p.9) sums it up:

"It is my view that Maori belief (their religion) was a product of their relationship with the physical environment. Our atua, whom I don't call gods because I think that is a misconception, are the atua who provided earlier Maori with a science that was fashionable before science... It was through these atua that our old people related to the physical world. The physical world was those atua. Tane was a tree, also Tane was a person, likewise, water was Tangaroa. They were not silly, they knew water was wet and all that, but they also knew it as Tangaroa... As I understand Catholic theology, bread and wine is bread and wine, but when they are sanctified, they are the body and blood of Christ... In respect of our Maori tupuna, and their knowledge of the natural world, I'm not talking about some crazy piece of myth. When our old people say, "that is Tangaroa," it is still water, but it is also Tangaroa".

Raki and Papa, along with all their sons are ira atua and therefore immortal. While Papa, Raki, and their offspring are well known throughout New Zealand, these were not the only atua. There are also tribal gods (exclusive only to a particular iwi) and even family gods or spirits that come from miscarriages and ghosts of the dead (Metge, 1976, p.23).

A number of aspects in the Maori worldview relate to resources and water. Each of these must be viewed in terms of the others, since all are interrelated and cannot stand alone. For a start, mana, tapu/noa, and mauri, as well as the characteristics of wahi tapu, or sacred places, will be discussed.

1.2 Mana

Mana can be described as a power or potency of a supernatural nature, originating with the atua. Because of mana, people and things become tapu (see Section 1.3) and it is mana itself that punishes breaches of tapu (Metge, 1976, p.63). This spiritual power both possesses and is possessed by individuals, groups and things. The amount of mana an individual possesses at birth varies with the seniority of descent, sex, and birth order within the family. Mana can then be increased or decreased by later actions, affecting a person's social status (Metge, 1976, p.8).

People have mana by virtue of their success and status and conversely success and status is achieved by virtue of a person's mana. The amount of mana a person has at any one time is judged by their performance and relations with others. Today, 'mana' is often translated as 'prestige' and is usually understood by Pakeha only in terms of its social implications (Metge, 1976, pp.63-64). The effects and importance of mana are further illustrated in Section 1.3 on tapu/noa and Section 1.4 on mauri.

1.3 Tapu and noa

It is difficult to explain what is meant when something is designated as being tapu. Many examples and definitions will be given to help suggest its full meaning. Metge (1976, p.58) refers to the Williams *Dictionary of the Maori Language* which defines tapu as (adjective) "under religious restriction," and (noun) as a "ceremonial restriction; quality or condition of being subject to such restrictions." These restrictions, which may pertain to persons, places, or objects, may occur because of close contact with a god (atua), in which case its translation may be seen as similar to the Christian concept of sacred or holy. On the other hand, however, the restriction may be the result of some type of pollution resulting from contact with blood, death, etc. in which case it may bring forth

notions of contamination or danger. Tapu as a concept of behavioural control is rather more 'judicial' than 'religious.'

There are also variations in the degrees of tapu. Some things may be very tapu while others only slightly tapu: some tapu are permanent, as on a graveyard, and other tapu temporary, as in a tapu on fishing because of a drowning.

Failure to respect a tapu (intentionally or unintentionally) results in trouble, sickness, or even death, and the help of a priestly tohukā, or ritual expert, is then required. Complementary to the concept of tapu is the concept of noa. Noa has been defined as common, ordinary, free from tapu or any other restrictions. It is important to note that these concepts are relational; the degree of tapu or noa can only be determined within specific contexts in relation to other tapu and noa entities. A man may be considered noa in relation to a raktira (chief), but tapu when compared to a slave. Something considered very tapu may be tapu compared with almost everything else, and it may have more restrictions involved with it than something considered only slightly tapu (Metge, 1976, p.59).

Tapu may involve supernatural power and attract respect and attention whereas noa is an absence of such power and attracts neither attention nor respect. Conversely, tapu may signify danger or restrictive behaviour, in which case noa may be seen as safety or freedom from restriction (Metge, 1976, p.60). In terms of resource use, that safety or freedom has a positive value.

Something may become tapu in four ways, by:

- accident, for instance, a tapu person touching something noa will render it tapu.
- ritual, which usually involves the recitation of karakia.
- a person of mana (i.e. raktira/tohukā) declaring a tapu by putting threads of a garment, human hair, or red colour on an object or a marked post.
- a person of mana simply announcing a tapu (Best, 1982, pp.18-19).

Conversely, a tapu can be removed and there are four basic ways in which this whakanoa (to make noa) rite can be accomplished, by:

- karakia (chanting traditional formulae),
- washing or sprinkling with water,
- the ritual action of a woman,
- the ritual consumption of cooked food (Metge, 1976, pp.58-59).

Sometimes a combination of the above methods are used. Certain tasks, such as making fish nets or building a canoe, are considered tapu. When such a task is undertaken, it becomes necessary to secure the help of the atua. Since work proceeds under the mana of the atua, the site and the workers become tapu (Best, 1982, p.117).

The building of a carved meeting house is surrounded by much tapu. While the work is in progress many restrictions apply: only authorised persons are allowed to enter the work area, no food can be taken into the area, subsequent wood chips cannot be used for cooking or for an ordinary fire (Firth, 1959, p.252). Once the building is completed it then needs to come into every day use. Anne Salmond (1978) believes that tapu and noa are transitional states and that ritual mediates between them. Thus, the whakanoa rite on a completed building sweeps aside all the tapu and tapu infringements from construction, thereby securing the mana of the building and establishing its tapu. The tapu of the building is then derived from the tapu of its name, ancestry, the tohuka who opened it, and the tribal mana it rests under.

The early Europeans were often confused, annoyed or angered by Maori behaviour since they did not understand tapu and its implications. For instance, when a tapu person drank out of a vessel, no other person could consequently use it. The tapu person would then either take the container with them or break it to prevent anyone else from using the vessel and thereby unknowingly breaching a tapu, and possibly becoming ill. Once European settlers caught on to this "strange Maori behaviour" they manipulated it to their wants. For instance, they realised that no Maori would walk under food (as the head is the most tapu part of the body and food is noa) so they would hang a dead pigeon or piece of pork from their roof, to ensure that no Maori would enter their home (Best, 1982, p.21).

1.4 Mauri

Mauri is most usually defined as “active life principle” or “physical life principle” (Best, 1954, p.29). Firth (1959, pp.254-255) described it as “a spiritual essence, a non-material core or life principle”. Without a mauri, life is not possible. As Maori Marsden pointed out (in Metge, 1986, p.73):

“Mauri is that life principle which is latent in all things...an energy behind all things...the elemental force that binds things together and gives them their being...There are certain gradations, depending on the being of the thing concerned, for example, the mauri of an individual or of a people, the mauri of trees and other animate things, then the mauri of the inanimate.”

Everything possesses a mauri: the sky, sun, moon, stars, seasons, wind, rain, mist, night, day, and all other things (Best 1954, p.34). Qualities of ‘life’ or ‘spiritualness’ are therefore given to things Europeans have classed as non-living. It is not surprising, then, that Maori have respect and reverence for things viewed as non-living by Europeans.

All people have a mauri. As a person’s mauri waxes or wanes so does their health and capacity for effective action (Pere, 1982, p.28). If a person’s mauri is destroyed, the person dies. Mauri is related to mana. Persons with a strong mauri are sure to acquire mana through their success in life (Metge, 1986, p.74). If a person’s mauri is affected, so too is their mana and vice versa. Forests, streams, lakes and fisheries have their own mauri, their well-being is reflected in the productivity and abundance of birds, fish, and other life. According to Irwin (1984, p.63) the forest’s mauri guards its fertility and serves as a voice to the atua. If the correct karakia is invoked, atua will recognise that they are being treated with respect and will grant the request. At the same time, the mauri protects and represents the mana of the forest. The mana of the forest is related to its tapu and in turn to its mauri. The mauri, tapu and mana of a forest (as well as a person, river, reef, etc.) are thus so intertwined that any change in the status of one affects the others.

Mauri can be affected or destroyed by external sources, including sorcery. Once destroyed, “the object itself, its vitality gone, must inevitably perish and decay. Though the physical form remains, its virtue has departed” (Firth, 1959, p.255). In traditional times, to help safeguard the mauri, a tohuka might localise the mauri of a person, place or thing into an object that could then be hidden and protected. This material mauri was extremely tapu and could only be handled by those with sufficient mana. For example, the mauri of a pa (fortress) protected the welfare of the whole village. It was endowed

with the mana of an atua who then acted as the guardian of the pa, enhancing its mana. The material mauri was kept well hidden for were an enemy to destroy or damage it, the pa would lose both its mana and its luck (Best, 1954, pp.35-36). These days a designated stone is often placed at the entrance to a building as a repository of the mauri of the whenua (land) on which the building stands. Such a stone is sometimes touched on entry to make connection with the whenua. For example the mauri stone at the entrance to the “Te Maori” exhibition was frequently touched as visitors entered the galleries. Today, that stone is the material mauri link with the ancestors, history, and the past that requires respect.

The wairua is relate to the mauri. Wairua has often been translated as ‘spirituality’ but to do so is only an approximation since Pakeha meanings of spirituality carry many connotations that do not apply to the Maori concept. Best (1924a, pp.299-300) describes it as the “spiritual life principle” as opposed to the “physical life principle” of mauri. It is the wairua that survives humans at death to pass on to the spirit world, or to stay in the area of its home on earth. During life, the wairua can temporarily leave the body as it does during dreams. All things possess wairua and, in humans, wairua becomes implanted in the embryo from the time it begins to assume form. Wairua is a concept often used in relation to water resources.

1.5 Wahi tapu

The above discussion of mana, tapu and noa, and mauri can be integrated through a consideration of wahi tapu (tapu places or sacred places). Places can become tapu both because of godly influences and incidences as well as through human use. Wahi tapu include burial grounds, areas of sacred activities, location of tapu resources, and places where significant people lived or important events occurred. Respect and appropriate behaviour is necessary in relation to these special places because of the tapu associated with them.

As explained above, Maori view the world in a holistic manner. This is illustrated by the ‘genealogical’ understanding of the world and its creation; all features of the world are related and can be traced back to Papa, Raki, and the activities of their children. When seeing to their daily activities of planting and gathering food, taking water, building, fishing and hunting, respect for the atua is shown through appropriate etiquette, ritual, and karakia.

We have seen that when someone’s tapu is affected, their mauri is also affected. Many rituals are performed not only to show respect to the gods, but also to avoid violating the

tapu and thereby the mauri. If the mauri of a fishing reef or forest is harmed then the care and help of the atua might be withdrawn. As a result of this, wildlife would abandon the area and fertility would decline. This is the reason for transferring the mauri of a place, a river, a forest, a pa, etc. to an object, such as a stone, where it could be hidden and protected.

The transgression of tapu could affect the wellbeing of the whole tribe and therefore severe penalties were imposed. For some breaches of tapu, however, no penalties were necessary since the transgressions themselves would bring illness or death to the offenders. Often ill people were questioned to find out if their illness resulted from tapu violation.

Besides the general tapu of nature, certain places have a special or more intense tapu. These wahi tapu can be split into two categories: spiritual, resulting from association with highly tapu things, and 'socially-regulative', occurring when a person of high mana declares a tapu. Some examples of the former type of wahi tapu are:

- places where dead have lain, especially urupa (burial grounds)
- the place where a person of mana spills blood, even after many generations (Best, 1982, p.25)
- the place where the material mauri is hidden
- the site where canoe construction or any other tapu activity is taking place
- places associated with intense manifestations of wairua or where an ancestor had an intense personal experience
- the abode of a taniwha (see Section 3.4).

Examples of 'socially-regulative' tapu are given in Section 2.5 where kaitiaki and rahui are discussed.

2 The basis of ownership

2.1 Migration

Many Maori today trace their origins in Aotearoa to ancestors who arrived in waka (canoes) from Hawaiki. There are eight major waka - Aotea, Te Arawa, Horouta, Kurahaupo, Matatua, Tainui, Takitimu, Tokomaru. Other waka Maori proceeded these, bringing along their own waka traditions. For instance, the South Island takata whenua trace their descent from Maui who fished up the North Island from his waka, the South Island. Ancestry is generally traced from a passenger of one of these or other waka or back to earlier eponymous ancestors.

Pakeha, needing to know details meaningful to them, have tried to verify the accuracy and truth of these migrations. There is general agreement that the waka migrations may have taken place between 1200 and 1400 AD, that Hawaiki may have been in east-central Polynesia, that the voyagers actually may have had prior knowledge of Aotearoa and purposefully came here, but many of these 'facts' are still under debate by scholars.

The essential point is that these migrations, when and how they took place, form the valid basis for present Maori group membership. When territorial boundaries are determined they are often derived from the ancestral waka journey: the actual waka route often forms the basis of coastal boundaries; the naming of features (such as mountains or rivers) by the canoe passengers gives them claim to those areas; and, incidents occurring along the way are interpreted as signs from the gods that certain locations were meant to be avoided or settled. The sites of waka landings are still tapu areas.

2.2 Social organisation

In social terms, all descendants of passengers who came to Aotearoa in the same canoe form a waka, a 'loose association' of related tribes or iwi. These iwi recognise a relationship with other groups within their waka, even though they occasionally fought each other. The iwi form a tighter unit and are all descendants of a tribal 'founder'. The iwi can be seen as the territorial unit and the basis of group ideology (Kawharu, 1977, p.36), each iwi functioning independently of others within the waka.

In turn, each iwi is composed of a number of sub-tribes or hapu. The hapu function as a group more frequently than the iwi, and have been described as the major autonomous military and resource-holding unit, each with its own definite boundaries within the iwi

territory (Kawharu, 1977, p.38). Once a hapu grew very large, some of the members could break off and form their own separate hapu. A hapu that was very independent and militarily strong might go on to form their own iwi. Conversely, iwi that were weak, possibly because of war or famine, might become absorbed by other iwi. In this way the number of hapu and iwi was in a state of flux, and the actual status (whether iwi or hapu) was in some instances under debate.

The whanau consisted of an extended family group within the hapu which included a kaumatua (elder), his wife or wives, their unmarried children, as well as some of their married children with their spouses and their children. The whanau was represented in the village and hapu debates by the kaumatua.

These designations (iwi, hapu, whanau) are not set in stone. There is variation; even today some groups are designated as iwi for some purposes but as hapu for others.

2.3 Territorial rights

Maori identification with their territories was strong. It is no wonder that 'ownership' was an important concept and boundaries were clearly defined and well-known, especially for centrally located sites and essential resources. As Firth (1959, p.372) summarises:

"... appreciation of the landscape, association of names of natural features with the memories of bygone years, with home and family, the linkage with tribal fights, sacred places, the burial of ancestors - in fact all the interest generated by the play of the aesthetic emotions and social sympathies as well as the weight of traditional teaching combine to create the sentiments for the land".

Since all topographical features were valued just as much for their ancestral associations as for their economic value, there was little that was not owned even if it was what many term 'waste areas.'

There has often been a Pakeha bias in the study of Maori tenure towards the rules and principles of land ownership, but iwi and hapu also maintained a proprietary interest in waterways, lakes, harbours, and fishing spots. This is illustrated by the various tribal sayings that identify an illustrious ancestor, a mountain, and a body of water as important symbols that unify feelings of love and allegiance.

Waterways were the early highways of the Maori. They provided an interconnected system of waka transportation throughout most of the country. To the Maori, the waters of the sea and river are as much roads and gardens as are the roads and gardens on land (Wai, 8, p.48). Further, wahi tapu are as likely to be on water as on land, and sometimes, at death, the last request was for a drink from special waters. Therefore, the principles that apply to land ownership should also be taken as applicable to water.

Many boundaries were first formed with the arrival of the waka, and many boundaries are still traced back to this time. This does not mean, however, that boundaries are static. Within each territory derived from a waka, the land was divided between the iwi, and, within the iwi, between the hapu and, within the hapu, to different whanau. Harbours, rivers, streams, and coastal areas were divided in the same manner. Often a tribal boundary is a river that separates iwi on the right and left banks. Sometimes a waterfall or tributary entry marks a boundary. However, headwaters are often areas of dispute because many tributaries may arise from a common mountain.

Although land and water may have been under tribal ownership, each hapu had rights over specific areas that were “jealously and exclusively maintained” (Firth, 1959, p.378), disputes arising over these boundaries often resulted in inter-tribal warfare. Whanau and individuals had rights to certain sections, although they could not make any changes that would radically affect the section’s constitution or ownership without the approval of the entire hapu. In some cases the hapu needed to consult with the iwi. Firth (1959, p.375) sums it up by saying there was “...an individual right of occupation, but only a communal right of alienation”.

Rakātira (chiefs), the spokespeople, often made decisions about resources, but it would be a fool-hardy rakātira who would do so without the consent of his people. The ability to speak on behalf of the tribe is often termed ‘mana whenua’ - someone with mana over the lands. Others who may wish to represent a tribe can only do so with the approval of the tribe, kaumatua, kuia, or tohuka (Minhinnick, 1989, pp.1-2). As Kawharu (1977, p.58) wrote, failure of the rakātira to represent properly his people would mean a loss of his influence (power) and therefore mana. On the other hand, if his trusteeship met with general approval then it was ‘tika’ (correct) and his mana increased. A rakātira with much acknowledged mana could often sway the tribe’s opinion to his own.

There were different ways in which rights could be held or acquired. The five most common ways were through occupation, discovery, ancestral right, conquest, and cessation. Usually more than one of these was necessary and the more that applied, the

stronger the case. Occupation, which includes use, was the strongest single case, the longer the occupation the better. Even areas that were not actually lived on were visited, cultivated, hunted, or fished periodically to maintain rights of occupation. “I ka tonu taku ahi, i ruā i toku whenua.” “My fire has always been kept alight upon my (people’s) land” (Kawharu, 1977, p.41).

If the fire was allowed to die out (i.e. land was abandoned) for three generations or more the claim would cease, although rights could still be claimed after an absence of one or two generations (Kawharu 1977, p.41). Discovery could strengthen a claim to rights but, after discovery, use or occupation was necessary to validate the claim.

Ancestral right was another way to substantiate claims. The details of inheritance varied among the tribes, but generally rights could be inherited through either parent. When controversies arose about boundaries, evidence was often offered to prove occupancy over several generations. The strongest way this could be done was by reciting genealogies; identifying areas where ancestral activities or incidences had taken place; and having knowledge of important or tapu places, such as the spots where iho (umbilical cords) were kept, certain marked trees or rocks, etc. These genealogies and stories recounting initial discovery and occupation and other important historical incidences have sometimes been seen by Pakeha as merging into the ‘mythological’ past. The important feature of these accounts is not whether they are mythological or not but that they substantiate a long-standing history of occupation and use, and are of utmost importance to the Maori and can be termed tapu knowledge.

All this information was passed down from generation to generation, often from grandparent to grandchild. There was usually an administering body of elders who had an intimate knowledge of the boundaries, especially where they abutted boundaries of neighbouring tribes. Knowledge of the boundaries and the natural features that marked them such as mountains, streams, and trees as well as ‘placed’ markers such as posts, stones, or holes, formed a large part of the education of youth from senior families.

Conquest was a way a hapu or iwi could expand its holdings. Because of the importance of land, land disputes were a major cause of warfare, both inter-tribal and intra-tribal. Following the pattern for land that was discovered or inherited, land won in war had to be occupied to substantiate the claim. If the defeated tribe managed to “keep their fires lit” and re-occupy, they still retained their rights. If they did not re-occupy they lost their rights, unless they intermarried or won them back through further warfare.

The designation 'takata whenua' is used to refer to the 'people of the land': the people who have the rights and mana over the area in question.

An uncommon way to obtain rights was through land transfer. It was seen as the ultimate gift, there was nothing of greater value. Some occasions that warranted such an action were peace-making between tribes, 'utu' (compensation, payment) for a breach of tapu or murder, marriage, and to help relatives who suffered a disaster.

2.4 Resource rights

Resource rights were just as jealously guarded as land rights and boundaries, although having rights to a resource did not necessarily mean having rights to the surrounding land or water itself. For instance, Firth (1959, p.378) gives the example of the Ngai Tauraka hapu of the Urewera who had rights to a section of the Tauraka river, but no claims to the banks on either side. Resource rights were divided into iwi, hapu, whanau and individual rights just as were land rights, although most economic resources were controlled at the hapu level (Firth 1959, p.378). Kaumatua of each whanau held rights to several resources including plots for cultivation, and rights to specific resources such as ochre deposits, flax clumps, fishing stands, sections of rat runs, birding trees, and fishing reefs (Firth, 1959, p.381). Kaumatua then distributed these rights among the other members of their whanau. As with territorial rights, trespass was reason enough to start warfare or kill the offender(s).

Resource rights were subject to the general interest of the community and could be revoked by the authority of the elders (Kawharu, 1977, p.61). Just as one specific whanau was given rights to many different resources, many resources were broken up into several resource-specific rights. There could be many claims to a single tree, one for fowling, one for berries, one for a certain number of snares, one for the fern roots growing at the base of the tree, and so on (Kawharu, 1977, p.61). To make such rights clear a rahui (warning mark against trespass) would be set up to indicate which resource was under claim (Kawharu, 1977, p.59).

The hapu held common lands that were worked by all for the communal benefit of all. Rakatira too had rights to resources and could be found cultivating, hunting, and fishing alongside the other members of the community. Having expertise and skill in fishing or cultivation would serve to increase the mana of the rakatira, although he also had many other areas of specialisation to focus on. Because of this, and the fact that rakatira would receive informal tribute from the members of the community in recognition of

their leadership role, rakātira often held only small personal claims to resources (Kawharu, 1977, p.59), but because of their mana whenua symbolically held all lands.

2.5 Kaitiaki

Maori had intimate knowledge of their surroundings as well as the natural histories of the plant and animal species they used. They not only saw themselves as beneficiaries of these resources, they saw themselves as kaitiaki (guardians, stewards, or caretakers). This position was not adopted in the Judeo-Christian sense of 'being in charge' or as guiding and assisting the 'lower forms of life', rather it acknowledged the tapu nature of their surroundings. Maori were careful not to trespass any tapu, and offend the gods, which affected not only the trespasser but the welfare of the entire hapu.

A tribe, personified by the rakātira, held the responsibilities of kaitiaki over their tribal lands. In addition a person could be chosen to be kaitiaki for a specific taōka (special or valued thing or activity), such as a meeting house (Minhinnick, 1989, p.4).

Since all resources had some degree of tapu, all aspects of fishing, hunting, gathering, and cultivating were done under the auspices of a tohuka. A tohuka was an expert in a specialised field, ranging from carving expert to priest. These tohuka were men of mana, and thereby were tapu. Because of their mana, the 'priestly' tohuka could communicate with the gods through ritual and 'karakia' (depending on the context this term may be translated as a formula of words, prayers, incantations, charms, or chants (Buck, 1949, pp.489-490)). Working under the direction and care of the tohuka helped to ensure immediate success and, more importantly, future success, because conservation and the assurance of the wellbeing of future generations is of paramount importance. If a tapu was somehow broken, only the tohuka could prescribe what action must be taken to remedy the situation. Often the remedy took the form of utu or koha (payment, satisfaction of accord) to restore the mana of the offended atua. Again, one must be aware of tribal variation as waimate is sometimes used to denote neutral or safe water (Maori Marsden, 1990, pers. comm.).

In addition to this spiritual approach to kaitiaki or guardianship, a practical approach was also followed. Maori had substantial knowledge of the species they depended on, and therefore acted in a way that would ensure future abundance of all their resources. One way this was done was through a type of prohibition or 'rahui.' Firth (1959, pp.258-259) has divided rahui into two types:

- a post set up, often marked with a lock of hair, invested with magical spells so that anyone who meddled with the post, the forest, or its productivity would be slain by these spells, or would be afflicted with a wasting disease.
- a ban on taking products from a certain area, such as a forest, stream, or fishing ground, but with none of the deadly “spells” of the above rahui.

Whereas punishment for breaking the first type of rahui would come from the magic, the second type was punished by the person who called for the ban, usually the rakātira or a person of high mana. The punishment was often death. If the rahui was broken by another hapu, it would often lead to warfare.

Firth (1959, pp.259-261) divided the impetus for declaring rahui into social and economic categories. Some **social** rahui are declared to:

- ban fishing and gathering of kaimoana after a drowning has occurred, out of respect for the dead. As well as an insult, eating kaimoana during such a rahui is considered by some as tantamount to cannibalism.
- reserve a resource for the owner’s use, thereby acknowledging the prestige of the rakātira or person setting up the rahui. A rahui that is obeyed reflects the mana of that person.

Some **economic** rahui are declared to:

- save an area from depletion, i.e. a patch of forest or fishing ground.
- conserve a specific resource such as a certain species of bird or fish.
- make sure a resource is only taken ‘in-season’, as in a rahui on wild fowl during the breeding season until the young are fledged.

Whereas anyone with enough mana could set up a rahui of Firth’s ‘social’ type, the economic rahui were often determined by the tohuka. The tohuka were vital in determining the correct procedures to be followed and in ensuring that every step was completed correctly. For example, fish and shellfish would be collected in conjunction with seasonal migratory, spawning, and feeding habits. The tohuka would interpret signs, such as wave patterns, fish breaking the surface, shellfish digging deeper into the sands,

bird movements, and the growth/bloom of trees, to decide when and where harvesting should be conducted (Wai, 8, p.55).

3 Water concepts and values

3.1 Tane and Takaroa

To understand the conflicts between land and sea, Tane and Takaroa, it is necessary to go back to the time when Tane separated his parents Raki and Papa. Tane's brother, Tawhirimatea, god of the winds and hurricanes, had been against the separation, and in his anger waged war against his brothers. First he attacked Tane by smashing the forests. Next he attacked Takaroa who lived on the seashore. Takaroa fled to the seas, but his children and grandchildren did not know which way to flee. Ika-tere, father of the fish, decided to escape into the sea, while Tu-te-wanawana, father of the reptiles, fled inland. Takaroa, angered that some of his offspring took shelter with Tane, has waged war against him ever since, swallowing up Tane's offspring. His waves eat at the land, devouring trees and plants as well as forest dwellers and consumes canoes and their passengers as well as sea birds flying over his waters. In turn Tane supplies the fibers, plants and trees with which spears, hooks and nets can be made to destroy the offspring of Takaroa.

Although it is clear that the realms of Tane and Takaroa are quite separate - the oceans and all salt water are under Takaroa and the forests under Tane - differences in the detail about the two realms exist between tribes. Some hold that all water, fresh and salt, comes under Takaroa, while others hold that fresh water is actually under the auspices of Tane. Those who give Tane authority over fresh water recognise the conflict present at the mixing of fresh and salt water, especially at tidal areas. Others hold that Tawhirimatea has dominion over fresh water originating from Raki (rain and snow) whilst fresh water originating from Papa is under the control of Tane (springs, wells).

3.2 Classification of water

Douglas (1984b) has distinguished five categories of water, each based on water's spiritual and geographical features. Since tribes vary in their accounts of these features a full ethnographic coverage of terms used to describe water is needed; this is yet to be researched. The following classification of water is offered:

Waiora: This is the purest form of water that is used in rituals to purify and sanctify and has the power to give life, sustain well-being and counteract evil. The rain is waiora and originates from Raki in his longings for Papa. To remain waiora, the water must be protected from human contact by ritual prayer. Some believe that the head waters of rivers have a latent mauri of special purity and sanctity that becomes waiora as the waters tumble over waterfalls and through vigorous rapids. The mauri is thus made

available for human vital use (Ritchie, 1990). It is interesting to note that waiora also refers to the total well-being and health of a person or other forms of life, which includes their intellectual, physical, emotional, and psychic well-being (Pere, 1982, p.54).

Waimaori: If the waiora comes into unprotected contact with humans, it becomes waimaori and no longer has sacred associations. It is normal, usual or ordinary. Geographically this term describes water that is clear or that runs free or unrestrained. Its mauri is generally benevolent and can be controlled by ritual. Waimaori is also used as a general term for fresh water.

Waikino: In waikino the mauri has been altered through pollution or corruption and has the potential to cause harm to humans. Waikino can be used in a geographical sense, although only some tribes do so, to describe water such as rapids where there is possible danger to humans.

Waimate: This class of water has lost its mauri and is 'dead'. It is dangerous to humans and can cause illness or misfortune. Geographically it refers to sluggish water or back water, but the water retains its mauri. Stagnant water is also referred to as waikawa by some tribes.

Waitai: This term refers to 'rough or angry' water as in the surf, waves, or tides. It is also used to distinguish salt water from fresh water.

Just as all things can be termed tapu or noa in relation to other things, water too can be tapu or noa in relation to other water or other objects. Water can be termed tapu because of its close origins with the gods or with its association with a very tapu place and conversely water can become tapu because it has become polluted or defiled. Caution must be maintained around these waters. Other waters are noa and can be readily used. Each body of water contains its own mauri as well as its own wairua. As seen earlier, if the tapu is violated, then the mauri is also damaged and vice versa. Because of the individuality of each body of water, separate waters cannot be mixed together, to do so would violate the mauri of the waters. Once water has been used, be it for cooking, cleaning, or other activity, it needs to be purified. This can be done by returning it to Papa, who has this ability, or by a tohuka who can ritually purify it. A body of water may become contaminated or its mauri damaged if waste water is disposed of in it.

3.3 Ritual uses of water

Water is a cleansing element in religious ceremonies and tapu waters are a vital part of many of these events. Traditionally, tapu waters could be a stream, pond, or pool located near the village. Because these waters were tapu, the area was avoided and the waters could not be used for domestic purposes (Best, 1924a, p.267).

Baptism: The tohi, or baptismal rite, which consisted of sprinkling or immersion, was performed at wai tapu (sacred waters). Wai tapu is water made tapu by association with an atua or taniwha, because of a declaration by a person of great mana, or because of an important event that occurred in relation to it. The whole birthing process and the new born child was surrounded in tapu. The tohi rite served ritually to cleanse the baby (removing the tapu) thereby preparing it to be dedicated to a god (Metge, 1976, p.22). Smith (1974) includes the naming of the child in this rite. According to Best (1924b, p.13) the waters in which the baptism took place were called 'wai matua' which denoted "the pure virgin waters coming untainted from the body of mother earth". He also mentions that the Maori considered the baptismal practices of the early missionaries to be incorrect because they used vessels fashioned by human hands.

One of the earliest examples of the tohi rite took place after Tane formed Hine from red clays, and breathed life into her. She was taken to the waters set aside for ceremonial purposes (waihau paroa), where the tohi rite was performed and she received her name Hineahuone (Best, 1924c, p.76).

War: Before war a tohi ritual put a tapu on the warriors and placed them in the service of Tu (deity of war). This separated them from evil influences and gave them courage (Smith, 1974, p.11). This rite was different from the above tohi rite of a child, although it also took place at the wai tapu and involved sprinkling with water.

After war the warriors' tapu needed to be removed so that they could return to village life. The first part of this ceremony termed whaka-horo was performed at the wai tapu and was similar to the tohi ritual before battle (Smith, 1974, p.13).

Burial: After a funeral the burial party had to have the tapu lifted before they could return to the village. This was done by another form of the tohi rite, which involved immersion in water (Smith, 1974, p.14). The mourners' tapu was also removed at the wai tapu, which helped dispel their grief (Smith, 1974, p.15). Salmond (1987, p.43, p.184, p.193) gives recent examples where the sprinkling of water is used to remove the tapu of burial, showing that the practice is still in use today.

In some areas, the bones of the dead were exhumed after a specified number of years, cleansed, painted with red ochre, decorated, put on display and then reburied. This process would last several days and at the end of each day the workers had to have their tapu removed by immersion (Smith, 1974, p.18).

Illness: Water also played an important role in determining the causes of an illness and in its treatment. Most illnesses were seen as the result of committing 'hara' (breaking a tapu) or as the result of sorcery. According to Best (1924b, p.40) a tohuka often took a patient to a stream, where karakia were recited and water was sprinkled over the patient. After this, names of tapu places were spoken. If the patient gasped or shivered (or even died) at the mention of one, then the cause of the illness would be revealed. If it were found that the breaking of tapu was the cause then "the ritual washing away of the hara" by immersion in water was necessary (Buck, 1949, p.500). In severe illness, the patient was immersed and a fern stalk placed in contact with the body to provide a conveyance whereby the contaminating influence and disease demons might leave the body (Buck, 1949, pp.500-501). If it were found that mate maori, an illness due to a breach of tapu or sorcery, was the cause then the tohuka went to the waters before dawn and immersed himself. He would then gather 'reto reto' (a water plant) and bring it to the patient. The patient would be touched with the plant and karakia would be performed (Best, 1924b, p.45). According to Metge (1976, p.92) mate maori still occurs today, the afflicted only responding to Maori methods of treatment, which often incorporate Christian methods and include karakia, confession, exorcism and sprinkling with water.

3.4 Daily uses of water

Water was valued for its spiritual uses (its ritual and healing properites), but its practical qualities were just as valued. Drinking water (wai maori) came from several sources, including rain water, springs, and wells. Even in drought, wai tapu could not be used for drinking.

Transportation was another use of waterways, both coastal and inland. It was said of some rivers that you could put your ear to the water and hear the messages of relatives, so quick did news usually travel by waterway (Ritchie, 1988a, p.5).

One of the most prized resources obtained from water was (and is) kai moana, or seafood, thought of as the most highly valued food by many tribes. Food in general was of great importance and according to Firth "food was a species of wealth" (1959, p.291) and "...food represented potential hospitality, economic control, reputation, and social

power” (1959, p.322). Still today, generosity and hospitality are very important and reflect the host’s mana. When hui are held with neighbouring hapu or iwi, more than enough food is supplied so that each person can eat their fill without running out. The more lavish the spread and finer the selection, the more mana associated with it. Insufficient provision even for unexpected visitors would lay the host open to sneer and innuendo, and severely damage their reputation (Firth, 1959, p.333). As Firth stated (1959, p.293) “great pride was taken in having plenty of food, irrespective of actual or potential requirements, and the abundance of resources was eagerly displayed before guests”. Each tribal group had its own specialities that it was known for; often these foods were not available in other areas. Along coastal areas the kai moana often represented tribal mana, while in inland areas, with rivers or lakes, freshwater species were the tribe’s speciality.

Water is the dwelling place of taniwha, the protective atua or guardian spirit. The taniwha are the kaitiaki of water and parts of land. Traditionally, iwi, hapu, and sometimes even whanau had their own taniwha. As the taniwha are tapu creatures, so is the water around their dwellings and no fishing or collecting is allowed at these sites. Each body of water generally has a taniwha, although some, like the Waikato river, have many. The taniwha has the character of the water, or vice versa: a taniwha of a puna (spring) is very different from that of an ocean harbour or a white water rapid.

The taniwha often warned its people about impending misfortune threatening the tribe, such as a war or disaster, by communicating through certain members of the tribe, such as a tohuka. Taniwha are characteristically benevolent kaitiaki of their takatata whenua, but are actively malevolent to others who impose on the locality or resource that they protect.

Since the taniwha were tapu, they were treated carefully and with respect. To transgress their tapu, would cause the taniwha to kill the offender or a close relative, or even lash out at the entire tribe with an epidemic or other misfortune. The taniwha took this revenge regardless of whether the offender was the takatata whenua or from an outside group. Once a taniwha was angered, the tohuka would try to placate it with the appropriate offerings and karakia. Graham (1946, pp.36-37) relates an incident in 1885 in which the taniwha left its people since they were continually belittling his mana by collecting eels and shellfish from his tapu waters. With his leaving the people were beset by an epidemic that caused much suffering. If one hapu violated or killed a taniwha (Graham, 1946) belonging to another hapu, this would be enough cause for warfare.

Best gives a few different genealogies for the origins of taniwha, possibly reflecting tribal variations, but they originate from Tane. According to Schwimmer (1963, p.405), after death a person may reappear as a taniwha and assist its people. Instances are related of taniwha helping people who are lost at sea or at risk of drowning.

Maori people continue to believe actively in taniwha. For example, there are Maori who will not cross Cook Strait by ferry because of the taniwha at Barret's Reef in the Wellington Harbour. It is thus necessary to know where taniwha live in rivers or harbours and to treat these waterbodies accordingly.

Part Two - Maori values and the move toward biculturalism

4 The Treaty of Waitangi in historical perspective

Maori claims to resources are on the rise because they find themselves in a society that, it is generally accepted, does not do enough to recognise their needs, beliefs, or spiritual values. Social statistics indicate that Maori are at the bottom of the economic ladder, and their place in society seems to be largely in unemployment lines, prisons, and mental institutions or entertaining tourists with waiata and haka. Maori are now calling for a bicultural society in which their values also have an important place in society. They are calling for past wrongs to be put right. Many of these wrongs have continued into the present: land confiscations in the 1860s to more recent 'compulsory acquisitions,' the denial of access to waterways, and the desecration of wahi tapu, to name a few.

In considering the role that the Treaty has played in New Zealand history, Orange (1988, p.2) has divided the last 150 years into three eras. First, from 1840 to 1870, the Treaty served a European need for peaceful settlement and a Maori need for reassurance that certain rights would be honoured. Then, from 1870 to 1930, European New Zealanders suffered a loss of memory over the Treaty, whereas for Maori New Zealanders the Treaty assumed an increasing relevance. Finally, from 1930 to the present, there has been a rediscovery of the Treaty by Pakeha New Zealanders and a continuing and more articulate assertion of their Treaty rights by Maori New Zealanders.

Because the Treaty was written in two languages and was interpreted by two cultures - the British relying on the English and Maori relying on the Maori - "It was clear in the 1840's ... that there was potential for considerable disagreement on what the Treaty promised; and from that time to the present there has been debate" (Orange, 1988, p.3).

There are significant differences between the two versions. For example in Article One, did the Maori cede sovereignty (English language) or administrative governorship (Maori language)? There is also the difficulty of balancing the Article One rights ceded with the Article Two guarantees and protections of tino rakatirataka (full chieftainship) of lands, forests, fisheries, and other treasures that were not given up.

In the years following the signing, Pakeha acknowledged Maori rights and continually reassured Maori chiefs that their rakatirataka was not being challenged. This was especially emphasised at times when the government was trying to gain support for its policies. For instance, Orange (1988, p.3) mentions the 1860 Kohimarama conference,

organised by Governor Gore-Brown, in which Maori were assured that their mana and rakatirataka were guaranteed, and had further extended the guarantee to include “sandy coastal lands, land in general, forests, fishing places, and taoka (prized possessions)”.

The 1860s land wars ended with extensive confiscations. It is clear from recent re-examinations of that time that these were not justified (Belich, 1988; Orange, 1987). These confiscations, together with later legislation and policy, contributed to the erosion of the Maori economy.

In 1877 Attorney General James Prendergast, in the Wi Parata case, declared the Treaty a legal “nullity”. This set the tone for the future as the Treaty increasingly became irrelevant to the design of government policy (Orange, 1988, p.4). Once the government had conveniently denied the Treaty’s validity, it was free to pass legislation that did not take Maori rights and values into account. The Maori, however, still based their understanding on the Treaty and therefore did not understand government actions. For example, at the 1879 Orakei hui many Maori expressed confusion and puzzlement as to the status of their possessions, especially the sea and their kai moana. “I was not aware of the Government taking all my large pipi-banks and shoals in the Manukau. Those large banks have all gone to the Government. I was not told why these were taken. I wish to know now whether they belong to the Queen or remain my property” (Hiwi Tauroa 1987, in Wai, 8, p.92). This is only one of many such statements recorded of Maori concern. Throughout the years Maori have become increasingly frustrated and angered as their rights have slowly slipped away.

In terms of Article One, contemporary interpretations of the Treaty see it as giving the Crown the right to make laws; this law-making is qualified by the Article Two guarantees and protections (Wai, 6, NZ Maori Council v. Attorney General, 1987). Recent legislation has therefore stipulated that the principles of the Treaty be taken into account. This requirement has been upheld by the Courts and there is reason to believe that the Courts will further recognise the Crown’s fiduciary responsibilities to Maori under the Treaty (McHugh, 1990).

In terms of Article Two, a contemporary interpretation of its meaning is:

“Te tino rangatiratanga’ guaranteed in Article II of the Maori text of the Treaty implies tribal control of tribal resources. At present the Crown seeks to control these resources. Two Treaty principles defined by the [Waitangi] Tribunal are particularly relevant here:

- a) *'Tino rangatiratanga' included management of resources and other taonga according to Maori cultural preferences; and*
- b) *The courtesy of early Crown consultation with Maori people and the need for the Crown to assist in establishing a legally recognisable form of rangatiratanga" (Report of the Parliamentary Commissioner for the Environment (PCE), 1988, p.18).*

This interpretation adopts the traditional function of rakātiratāka which was to control resources, call rahui, and otherwise make decisions in consultation with the hapu.

In addition, Maori rights to resources, which pre-existed colonisation and that have not been specifically extinguished, i.e. their aboriginal rights, can also be judicially recognised. So far, this has happened for Maori fishing rights (*Te Weehi v. Regional Fisheries Officer*, 1986; *Wai*, 22), but we can expect that aboriginal rights cases will also be made for lands and waters.

5 Maori values as articulated in recent cases and hearings

5.1 Ownership and kaitiaki

Traditionally, all bodies of water were owned by specific hapu, with some of the larger ones being divided among several groups. Boundaries were just as strict and well-defined as those set up on land. In adjudicating disputes between hapu, the rule that New Zealand courts have used is to maintain the boundaries as they existed in 1840. Since in most instances Maori groups did not sell or gift their water resources, they still consider themselves to be the owners. Maori were traditionally able to enjoy not only the economic and spiritual benefits of ownership, but also had the responsibility of safeguarding their resources. Further, even in cases where the resources have passed from ownership the takata whenua still feel this kaitiaki, or guardianship responsibility. Hence, Maori groups often are concerned and take an interest in the resources within their boundary, beyond that which a Pakeha might expect.

The legal system in New Zealand combines Parliamentary legislation with English Common Law. According to the Common Law system, issues that are not specifically addressed in legislation are determined by the courts by referring to the history of prior judgments, or legal precedents, which comprise the Common Law tradition. Early New Zealand legislators assumed that since all navigable waterways and all areas below the high water mark in England belonged to the Crown that the same applied in New Zealand. However, the Common Law doctrine of aboriginal rights restricts Crown ownership where a group or community can demonstrate that they have a prior claim due to long standing historical use. Maori demonstrate these rights by providing evidence concerning their spiritual ties and needs to the water in question, their traditional use of the waters in question, and the skill with which they formerly managed the resource. Mythological, genealogical, and/or written accounts can be provided.

The Article Two guarantees and protections of the Treaty, along with Maori aboriginal title claims, have formed the basis for Maori claims to resources, such as the claim to ownership of a portion of the off-shore fishing quota (Wai, 22). The ownership debate is very complex; who owns water, and further can the ownership of a river's waters be separated from the ownership of the river bed? While these issues have yet to be resolved, the Appeal Court in a decision about Waikato coal found that the ownership of the coal resource could not be separated from the ownership of the land (*Tainui Maori Trust Board v. Attorney-General*, 1990), suggesting that a similar logic might be used in water resource claims.

There are a number of historical and contemporary Maori claims to ownership of lakes, rivers, and harbours. In the early 1900s the Court of Appeal held that the nature and extent of the ownership of Lake Rotorua should be decided by the Maori Land Court, unless a Maori customary title had been explicitly extinguished. The Maori Land Court proceedings were never completed but in this case, and similarly in the case of Lake Taupo, the Crown has made arrangements with local Maori groups for the title to go to the Crown and Maori are compensated by an annual grant or by sharing in licensing proceeds (Haughey, 1966, pp.30-32).

Litigation over the Whanganui River bed began in 1938 and has continued to the present. The Maori Land Court and the Maori Appellate Court found merit in the Maori claim but the Crown stopped a final determination by removing the issue to the Supreme Court. That Court supported the Crown based on provisions in Acts about coal mining, which vested the ownership of navigable rivers in the Crown. Given the principle of *ad medium filum*, whereby the owner of the land on the banks takes the bed of the river to the middle, the Maori claimants contended that they had been deprived of their rights by legislation that functioned in a confiscatory manner. A Royal Commission next studied the issue, resulting in a Crown referral to the Court of Appeal for review. In a mixed decision the Court of Appeal found against the Crown's claim based on the coal mining legislation but returned the issue to the Maori Appellate Court for further investigation before making a final judgement. The Maori Appellate Court found that before 1840 the Whanganui Maori did have exclusive ownership of the river and controlled its use. Following this, the Court of Appeal confirmed Maori ownership of the river bed where they owned the riparian lands (Haughey, 1966, pp.33-39). At the time this issue was being heard (1938-1962) New Zealand courts did not recognise the doctrine of aboriginal title but were instead relying on the notion that Maori rights did not have to be protected except where the provisions of the Treaty were specifically included in legislation. With the recognition of the doctrine of aboriginal title we can expect that this type of issue will continue to be heard.

The extreme perseverance necessary to see these issues through, the cost, and the fact that the way to a decision must be traced through a maze of legal interpretation, often results in Maori feelings of bewilderment, frustration, and anger. Along with the loss of resource use and economic benefit there is a corresponding negative impact on tribal mana. This is often felt and symbolised by the loss of access to kai moana and the inability to host guests in the required manner. Not to be forgotten are the intense spiritual and physical implications for Maori of any loss of land or water.

There are different opinions among Maori as to what is needed to rectify the situation. Some call for the return of total ownership of the resources, be it a harbour, river, or a particular fishing reef. Others may not argue for ownership but want kaitiaki of their water resources. Others may be content with revenue from the development of the resource.

Kaitiaki has been defined as “guardian; protector; caretaker; one who watches out for or looks after. With regard to environmental management, it embodies the concept of ‘stewardship’ as opposed to ownership” (PCE, 1988, p.35). Some Maori groups are arguing for kaitiaki status in the settlement of their resource claims, and they sometimes find themselves allied with environmentalists and the Department of Conservation, who agree that all too often in the past these resources have not been adequately protected.

Nganeko Minhinnick (1989) has suggested a ‘kaitiaki’ structure and uses the Auckland area to illustrate two organisational alternatives. In the first option a regional resource management authority would be created, consisting of five tribal kaitiaki elected by the tribal groups, one from each of the five main waterways in the Auckland area, and of five regional council members, each with full voting rights. A tribal kaitiaki would be chair and would cast the tie-breaking vote. In the second option, which she prefers, all the positions would be filled by the takata whenua. While having complete control, the kaitiaki could achieve their main goals, these being to restore Maori mana, make long term plans for the taonga, protect the aquatic environment, provide kai moana for future generations, and arrange commercial developments within tribal structures.

Her suggestions were the result of her experiences with Maori issues arising over the Manukau Harbour claim. In the Manukau claim (Wai, 8) there was a wide range of issues raised, including resource ownership, despoilation of the harbour, loss of access to traditional fishing sites, and the mixing of waters. The Waitangi Tribunal (Wai, 8, pp.103-104) did not find that ownership of the Manukau Harbour should pass to the Manukau tribes. They believed that the Crown should have ownership by statute, which would regain its obligations to the tribes as stated in the Treaty, and would divest the Harbour Board of its powers. The Crown should then seek the statutory expression of its fiduciary responsibility to local tribes and the general public. According to the Tribunal, use and not ownership was the real issue.

In terms of kaitiaki it was the Waitangi Tribunal’s view that there was a need for Guardians to advise and assist in the formulation of management policy and an affirmative action ‘clean up’ plan to restore tribal mana and protect tribal interests, and

to speak with authority on matters affecting the harbour. The Tribunal recognised that the public and private sectors may feel reluctant to give any measure of ownership, kaitiaki, or other status to any Maori hapu or iwi over a body of water for fear of losing their own rights and privileges. Although the Maori have rather strict notions for water management and use, it was the belief of the Waitangi Tribunal that industrial development and Maori interests need not always conflict. Although some Maori values and traditions are not negotiable there is still room for compromise or finding alternative ways to reach common goals. What Maori would gain from an arrangement giving them kaitiaki would be consultations when their resources are being affected, and possible economic benefit from the use of their resources (Wai, 8, pp.119-120). In short, it would help them regain their mana.

In the case brought to the Waitangi Tribunal by Te Atiawa of Taranaki (Wai, 6), the claimants wanted to reserve reefs and Maori fishing grounds in a manner similar to that provided by earlier legislation, such as Maori Councils Act 1900. That Act created District Maori Councils and empowered them to make regulations and by-laws for the control and regulation of fishing grounds used by Maori. The 1903 Amendment made provision for the gazetting of fishing grounds “exclusively for the use of the Maori of the locality or of such hapu or tribes as may be recommended”. These provisions were repealed in 1962. Although the Treaty guaranteed exclusive user rights, the Tribunal noted that significantly this was, on the whole, not sought. Instead, the claimants asked for “control of the reefs so that ‘mana Maori’ or authority in respect of them might be seen to vest in the local hapu” (Wai, 6, p.17). As it stands now, many feel that present day “legislation has made thieves of us Maori, of our own food” (Wai, 6, p.17). The Tribunal pointed out that “several large tracts of Maori land have been set apart as Maori reservations for scenic and other purposes, but save to the extent that it has become necessary to control an abuse, the general public has not been denied access by the Maori persons appointed as trustees for the control of them” (Wai, 6, p.18).

There have also been Maori claims for kaitiaki status made before local authorities. One example is the 1982 Tainui Maori Trust Board proposal to the Ministry of Fisheries to be appointed the local authority for the Kawhia, Aotea, and Whaikāroa (Raglan) harbours. This local Maori Trust Board argued that these harbours have been successfully managed and cared for by Maori for most of the last 600 years, have traditionally been in Tainui hands and were never alienated, and that since 80-85% of the foreshore at Kawhia and Aotea are currently in Maori hands and Maori own about

50% of the foreshore at Whaikarua, that a Maori body could best represent local needs (Douglas, 1984a; Harris, 1984). Their request was denied but these harbours are presently under a claim submitted to the Waitangi Tribunal.

At hearings to set water levels for Lake Waahi the Tainui Maaori Trust Board made recommendations for minimum lake level settings. During these hearings the Tainui Maaori Trust Board voiced its concern over the lack of Maori representation in the guardianship of the lake. Given the notion of partnership contained in the Treaty, they suggested that at least 50% of the guardians appointed be Maori. The need for Maori guardians was supported by the fact that they were the traditional lake users, the cultural significance of the kai they derive from the lake, and the spiritual significance and use of water (WVA, 1986).

5.2 Kai Moana

The importance of tribal mana for Maoridom cannot be understated. With the cessation of inter-tribal warfare, tribal displays and the generous provision of hospitality to guests are one of the most important traditional sources of tribal mana. Sea and fresh water food, or kai moana and kai awa (river food), is greatly prized throughout New Zealand, with each hapu having its own regional specialty. The loss of ownership and kaitiaki have put resources important to Maori culture at risk. Some of the major ways in which this is happening are:

- through 'spiritual' and/or 'physical' pollution, which Maori believe can lessen the productivity of an area, render the resources inedible, or even make an area tapu and therefore 'off-limits'. 'Physical' forms of pollution are also seen as 'spiritual' pollution by Maori.
- through lack of access. Though some waterways seem to be held as Maori reserves, if Maori are not allowed access to the waters they cannot use the resources. Examples of this are Otamatearoa Lagoon and Lake Whatihua south of Auckland, which were expressly excluded from the sale of surrounding land to the Crown and were to remain as Maori reserves. The lakes are now surrounded by European-owned farms and access to the lakes is no longer possible (Wai, 8, p.45).
- through the necessity of permits. Although this allows Maori some access to resources, it is felt inadequate. For instance, Te Atiawa may only collect paua exceeding 125 mm, but they claim that on the reefs, paua rarely exceed 75 mm.

The permits also impose daily quotas, which may be exceeded for purposes of hui or taki, although there is a lot of red tape to go through. A Maori Community Officer, on behalf of a Maori committee or District Maori Council, must consult with an Inspector of Sea Fisheries for permission to exceed harvest limits. Problems arise in this system, when deaths occur at times (weekends, holidays) when the Community Officer and/or Fisheries Inspector are not available, or when licences are issued for times when tides/weather are not suitable (Wai, 6, pp.16-17).

- through commercialisation kai moana is sold off or leased, but Maori only have restricted rights since they have been classified as amateur or recreational users (Patrick, 1987, p.26). In the Manukau claim (Wai, 8) it was reported by a witness for the Ministry of Agriculture and Fisheries that it was necessary to catch a minimum amount to be able to obtain a licence, thus excluding all part-time fishers. It has also been claimed that commercial fishing techniques have led to 'overfishing' or a depletion of the resources. When the Tainui Maaori Trust Board made a request for control of the Kawhia, Aotea, and Whaingaroa (Raglan) Harbours they made a concurrent request to the Minister of Fisheries for the rejection of five applications for marine farming licences, their main fear being the commercialisation of the harbours (Harris, 1984; Douglas, 1984a).

In an effort to maintain tribal mana, many marae now have to buy the seafood for their hui, their access to kai moana no longer exists or has been legislated "out of their reach". Even when water resources are set aside as Maori reserves, it must be understood that traditionally and practically those resources belong to the takata whenua, not to "Maori" in general.

5.3 Mixing waters

In most of the grievances raised by Maori about water, the mixing of various types of waters is an issue. There are three ways in which the mixing of waters has been discussed in the course of Tribunal claims: first, the mixing of waters from two different bodies of water, i.e. two different rivers; second, mixing water that contains or has contained human or animal wastes with another body of water; and third, the mixing of toxic or industrial wastes into a body of water. Examples of each of these will be given, followed by some positive suggestions offered by Maori.

5.3.1 From two different sources

The mixing of water from two different sources was one of the grievances brought to the Waitangi Tribunal by the Manukau tribes (Wai, 8). This grievance involved the intake of waters from the Waikato River, by a slurry pipe operated by New Zealand Steel Mill Works, and the discharge of this water into the Manukau Harbour.

Maori see the mixing of waters from two different sources as being dangerous. Although Pakeha may consider it an affront to Maori only on spiritual terms, the Maori may see both spiritual and physical ramifications. Each body of water, be it pond, lake, river, stream, harbour, open water or any other has its own mauri, wairua, taniwha, mana, tapu. These are intertwined and together form the individuality of each body of water rendering it incompatible with water from another source. In this case, the waters of the Waikato fall under the jurisdiction of Tane or Tawhirimatea while the Manukau waters are under Takaroa. They cannot mix without there being consequences to the wellbeing of the waters concerned. Damaging the water's mauri will have an effect on its productivity, and the kai moana will be affected. Any tapu breached by mixing could cause misfortune to the entire hapu or iwi involved. Even in everyday use, separate streams of water were used for different activities, i.e. cooking, cleaning, drinking (Wai, 8, p.78).

Another example concerns the Whanganui river in a case of two appeals before the Planning Tribunal between Electricity Corporation of New Zealand (Appeal 781/88), Whanganui River Maori Trust Board (Appeal 840/88), and the Rangitikei-Whanganui Catchment Board (respondent). The appeals concerned the Tongariro Power Development Scheme which collects water from the Upper Rangitikei, Whangaehu, Waikato, and Whanganui catchments, processes them through the Tokanu Power Station, and discharges them into Lake Taupo. In this process it is the headwaters of the Whanganui that are being diverted.

According to the Department of Conservation (Habib 1989), some of the physical changes that have been caused by these diversions include increased temperatures, greatly decreased water flows, increased faecal coliform concentration, and increased fine sedimentation, just to name a few. The many Maori testimonies made during the Tribunal hearings all included mention of the decrease in numbers and species of fish, and refer to the abundance that was once characteristic of the Whanganui River. According to Maori belief, this is the predictable result of spiritually unsound acts. Many felt that to cut off the headwaters of the Whanganui is just as debilitating as to cut the head off a person, in either case death results. Hikaia Amohia (1989) explained that the

interference with the headwaters (or any type of unnatural interference) disturbs the spiritual workings and is an attack on nature, causing breaches of tapu and disrespect for the river's taniwha, mana, and wairua. He noted that development is possible, but must be done in accordance with the proper rituals and observances.

This mixing of waters from different sources is damaging to the mauri of the water, but is also seen as an insult to the tribes involved, tribes who carefully guard their resources from violations by others. According to the testimony of Mike Potaka (1989), "To direct waters that feed our river over to Taupo for Tuwharetoa down the Waikato is very demeaning". According to testimony given by George Habib (1989), Electricorp and the Department of Conservation both fail to see Whanganui Maori's main concern. He said it is not as if the indigenous fisheries have been reduced, the water quality has been reduced, or the water levels are too low, the real issue is whether or not there should be a diversion at all. The diversion interferes with the mana of the River and this is the cause of the lack of fish and other degradation.

5.3.2 With wastes

The second way in which the mixing of waters has been an issue concerns mixing waters containing human or animal wastes with other waters. This complaint is a common one considering that in New Zealand many sewage treatment plants discharge into lakes, rivers, harbours or open waters. The claim that will be referred to here is the Kaituna claim (Wai, 4).

This case concerned a pipeline to be built from the Rotorua Waste Water Treatment Plant to discharge into the Kaituna River. Previously the waters were discharged into Lake Rotorua, but because of its deteriorating water quality and the Lake's importance as a part of a large tourist industry, it was decided to pump the effluent 20 km to the Kaituna River. The Kaituna River is part of the traditional fishing grounds of the Ngati Pikiao people, a sub-tribe of Te Arawa.

It has already been seen that waters are separated according to their use and are not mixed. Traditionally, human wastes did not go into water, but went straight onto the land. Maori believe that waters containing human wastes must be discharged onto the land for proper purification by Papa who has purifying and healing abilities. Maori have many rules and customs about the procurement, processing, serving and consuming of foods, all of which are taken very seriously. The discharge of waste water, including washing water, into the River would violate the mauri of the river and render the River food source unusable. In this case, the Ngati Pikiao felt if the pipeline were built, a tapu

would have to be declared on the River. This would result in the loss of food as well as a great loss of mana, since these people have no other source of kai awa or kai moana. The plants growing on the banks of the river, many of which are used for craft and medicinal purposes, would also be affected. To suggest that kai awa could still be taken from the River after the introduction of waste water is as offensive to a Maori as it would be for a European to have to use one vessel as both a chamber pot and soup bowl, or to be required to take drinking water from the toilet.

Ngati Pikiao also objected to the pipeline on medical and social grounds. For medical evidence Mr D.W. Till, Chief Bacteriologist from the Department of Health, reported on the possibility of entero-viruses infecting their food. On social grounds they objected for psychological reasons that they are unwilling to boat or bathe in waters containing sewage effluent.

In another Waitaki Tribunal claim (Wai, 6) a claimant noted that “no remnants from the human body, from washing to excreta, should pass into waters associated with food - to eat food that possibly has particles of waste from people we know is an insult”. So strong is this feeling that some consider the eating of fish following a drowning and placing of a rahui tantamount to cannibalism (Wai, 6, pp.13-14).

5.3.3 With industrial effluents

The third way that the issue of mixing waters has been raised is in relation to the discharge of industrial effluents. This was one of the grievances brought before the Waitangi Tribunal by various hapu of Te Atiawa (Wai, 6). In addition to their concern about the discharge of sewage, Te Atiawa were also concerned about effluent from industrial sources, including Petralgas Chemical Ltd and New Zealand Synthetic Fuels Corporation.

Again, there were concerns about the connection of the physical and the spiritual. One claimant spoke of “the spiritual pollution of water which affects the life force of all living things and eventually man” (Wai, 6, p.13). For this reason it was emphasised that “no degree of contamination can be contemplated” (Wai, 6, p.13). In the case of the disposal of industrial wastes to water, there are health risks, and the possible deleterious effects on human or marine life are still unknown.

Shearer (1987), in a summary of a report by the Manukau takata whenua, noted that toxic wastes should not come into contact with water or land. In the case of the Te

Atiawa reefs, the results can already be seen. Some of the mussels are so fragile that their shells crumble in people's hands (Wai, 6, p.29).

For Pakeha the answer may be simple, pollute these reefs and then find others to exploit. But for the Maori each reef is "managed" by a specific hapu, and one hapu is not able to collect from another hapu's reefs. But more important is the spiritual value a hapu obtains from its land, its waterway or, in this case, its reef. Each hapu has developed an intimate relationship with its fishing reefs, resulting from generations of tending, harvesting, and conservation. Songs and legends referring to the reefs abound. The reefs provide the hapu with their kai moana, which is a source of their mana. To have insufficient supplies of kai moana for a hui (gathering), feast, or taki (funeral) would mean a considerable loss of tribal mana.

5.3.4 Maori suggestions for handling wastes

Although Maori have quite strict rules concerning water use, like all humans they generate waste and waste waters, and have developed culturally acceptable ways of dealing with these. Traditionally, these methods included returning waste water to Papa for purification, ritual purification by a tohuka, and adding small amounts of waste waters (without animal wastes) to large quantities of pure water. In *Local authority engineering* (Shearer, 1987) there appeared an extract summary of a report written by the takata whenua entitled "Auckland Waste Water Treatment", in which a number of sewage treatment alternatives were listed that the authors thought had potential as possible "modern" Maori solutions to sewage disposal. These included the development of efficient septic tanks, the development of community sewage systems (10-20 homes) that would consist of a "common area" septic tank system, and the use of biological and chemical toilets. In addition, it was suggested that the amount of water taken into the sewage system be reduced (99.9% of the Mangere sewage is water mostly originating from the water supply system). This would reduce pressures on the treatment plant. Another suggestion was that recycled waste water could be used for industrial, commercial, or agricultural purposes. Also noted was the importance of separating storm water systems from sewage flow systems to prevent raw sewage from being discharged into waterways during peak flow times. All alternatives were based on some form of land disposal.

These are solutions that the takata whenua of Tamaki Makaurau (Auckland) consider to be possible "beginnings" to help resolve the issues of mixing sewage effluent with the waters of the Manukau. These suggestions, as well as others, have to be discussed; some

concessions may have to be made but an acceptable solution to both parties may be found from the range of those available.

5.4 Water purity maintenance

Maori are becoming increasingly involved in local issues concerning water. Since any unnatural intervention in their waters can only have detrimental effects, Maori are anxious to keep water quality as high as possible and to keep human interference of natural water conditions to a minimum.

In the matter of the classification of the Hawke's Bay Coastal Waters, the Minister of Conservation challenged the decisions of the Hawke's Bay Catchment Board (DOC, 1988). The Department of Conservation contended that the Hawke's Bay Catchment Board classified areas at levels lower than:

- the actual existing water quality,
- than required for present and past uses,
- than should or could be imposed to promote the best water use,
- would be possible for the best public interest.

Ngati Kahungunu supported the Minister of Conservation. They cited the guarantee of the protection of rakātirataka and their resources, which they considered implied the right to the maintenance of "healthy" as opposed to polluted waters. They also cited their spiritual reasons for objecting to a lower classification, reasons that have been touched upon throughout this report. In addition, Ngati Kahukunu endorsed the creation of artificial wetlands to further filter treated waters.

In 1985, the National Water and Soil Conservation Authority directed the Waikato Valley Authority (WVA) to recommend maximum and minimum lake levels for Lake Wahi. Submissions were accepted in 1986 for proposed lake levels. The Tainui Maori Trust Board recommended that since low lake levels are the result of human intervention, a minimum acceptable level based on natural water levels should be set and all lake functions should be left as natural as possible. No maximum level was recommended since high levels are the result of natural occurrences.

In all of the cases discussed above it seems fundamental that water resources be maintained in as pure and untainted a state as possible.

6 Maori values and recent legislation

Until recently the Courts have not recognised Maori rights as guaranteed under the Treaty of Waitangi because the Treaty had not been incorporated into legislation. The few bits of legislation that did try to take Maori rights into consideration did so in an ineffectual manner. A ‘quick’ history of fishing laws demonstrates this point (from Wai, 8, pp.109-110):

- 1877-1894 fishing laws recognised customary fishing claims under the Treaty, but did not provide a way to convert the claims to defined rights.
- 1894 the law stated it would not affect any existing Maori fishing rights, while the courts were concurrently ruling that there were no existing Maori fishing rights.
- 1903-1962 provisions were made for Maori to reserve tribal fishing grounds, although approval was dependent on Ministerial discretion, the Minister denied all requests.

The present Fisheries Act allows “special rights” to be given to “special communities” at the discretion of the Director-General of the Fisheries. The Waitangi Tribunal noted a reluctance “to refer to Maori fishing grounds or the Treaty of Waitangi, or to confer any priority on the Maori community in terms of the Treaty” (Wai, 8, p.110).

Planners and resource managers have sometimes complained that it is not practical or possible to take Maori cultural and/or spiritual values into account. Maori have pointed to the 1981 amendment of the Water and Soil Conservation Act 1967 that calls for the “preservation and protection of the wild, scenic, and other natural characteristics of rivers, streams, and lakes”. “Wild” and “scenic” can only be described as “metaphysical” or “spiritual” values, and are clearly Pakeha values. Thus, it is clear that values, spiritual and physical, are incorporated into legislation, so there is no case for excluding Maori values. Excluding Maori values is a slight to their mana, a message that they have no important role in society.

As the result of Maori protests in the 1970s the situation has begun to change. The establishment of the Waitangi Tribunal, as a venue for hearing Maori claims, is one example. Also, there has been an increased willingness to include provision for Maori values and/or the Treaty in legislation.

In a case that took place between 1985 and 1987, an application was made to the Waikato Valley Authority (WVA) to discharge treated dairy shed water and waste into the Waikato River. The Huakina Development Trust objected to the application on the grounds that the discharge would detrimentally affect a valuable tribal resource, and that it was considered culturally and spiritually offensive. The licence was nevertheless granted. The Trust then appealed to the Planning Tribunal on the basis of water pollution and Article Two of the Treaty. The WVA argued that Treaty issues are not appropriate to be considered under the Water and Soil Conservation Act 1967. The Planning Tribunal dismissed the appeal and it moved into the High Court.

In a landmark decision (*Huakina Development Trust v. Waikato Valley Authority*) Judge Chilwell overturned the Planning Tribunal's decision that the Tribunal is unable to accept matters of the Treaty of Waitangi or Maori spiritual or cultural relationships to the waters of the region. Chilwell J. found that Maori cultural and spiritual values were relevant to planners' benefit-detriment analysis activities. Thus, the High Court ruled that "Maori spiritual and cultural values cannot be excluded from consideration if the evidence establishes the existence of spiritual, cultural and traditional ties held by a particular and significant group of Maori people" (*Huakina Development Trust v. Waikato Valley Authority* 1987). Maori values are of national concern and must be balanced with other matters (Boast, 1989).

The comprehensive Resource Management Bill has recently been considered by government. Provisions of the Resource Management Bill, if it is enacted, will supercede a number of Acts relating to resource management, including: the Town and Country Planning Act 1977, the Water and Soil Conservation Act 1967, the Soil Conservation and Rivers Control Act 1941, the Mining Act 1971, the Coal Mines Act 1979, the Geothermal Energy Act 1953, the Petroleum Act 1937, the Noise Control Act 1982, and the Clear Air Act 1972. Statutory reference to the Treaty is found in the following Acts which will NOT be altered by the Resource Management Bill, if it is enacted (Manatu Maori, 1990):

- Environment Act 1986 - which requires that a "full and balanced" account be taken of the principles of the Treaty of Waitangi.
- State-Owned Enterprise Act 1987 - in which the Crown must not act in a manner inconsistent with the principles of the Treaty of Waitangi.
- Conservation Act 1987 - which says to "give effect" to the principles of the Treaty of Waitangi.

- Treaty of Waitangi Act 1975 (and Amendments) - which saw the establishment of the Waitangi Tribunal to make findings on Maori claims concerning Crown actions that are in alleged violation of the Treaty of Waitangi.

It should be noted that these statutes do not refer to the Treaty, but to the principles of the Treaty. Since there is a Maori text and an English text, and since these texts differ, most agree that administrators should be acting in the spirit of the Treaty. The Treaty is considered by many to be a 'living' document, one that can be interpreted in the context of today's society. Thus, the move has been to identify the 'principles' that the Treaty contains. In the Parliamentary Commissioner for the Environment's report these principles of the Treaty are listed as defined by the Waitangi Tribunal (1983-1988), by the Court of Appeal, by the New Zealand Maori Council, and the Royal Commission on Social Policy. The Crown has also published the principles that it will use when interpreting the Treaty and has instructed government departments to act as if the Treaty were a part of New Zealand law. These various formulations of the principles of the Treaty are given in Appendix 1.

According to Manatu Maori (1989, p.8), under the proposed Resource Management Act decision makers will need to "have regard" to "the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites and other taonga". In addition all decision makers will need to "consider" the Treaty of Waitangi.

Unfortunately, "to have regard to" and "to consider" are not very strong terms in a legal sense. Maori want terminology used that will place stronger legal obligations on decision makers. Despite this, the proposed Resource Management Act would require that resource managers be familiar with the Treaty of Waitangi and with the nature of Maori culture and traditions.

7 Suggestions for resource managers

Having discussed some of the principles of Maori society as they are relevant to resource management in the first part of this publication, and having reviewed some of the history of the Treaty and Maori values as they have been dealt with in legislation and by the Courts in the second part, we now conclude with some suggestions for resource managers.

The Environment Act 1986 and the Conservation Act 1987 legally require that full and balanced account be taken of the principles of the Treaty of Waitangi and that effect be given to the principles of the Treaty of Waitangi, respectively. Under the proposed Resource Management Act it will be necessary to “have regard” to “the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites and other taonga” and to “consider” the Treaty. Consequently, there is an obligation for all decision makers affected by the above to become educated about the Treaty and to identify what the principles are and how they affect their agencies. These principles should be clearly incorporated into agency policies.

It is likely that at some point all public agencies will be required to work with a Maori group. To do so in an effective manner each agency should be aware of all resources within its jurisdiction that are under claim and have a clear policy on how these will be handled. If it is a regional office, the policies of other regional offices should be known and there should be efforts to deal with Maori issues consistently. Staff should be educated about Maori protocol, values, and issues so that a meaningful dialogue can be undertaken.

James Ritchie’s publication *Working in the Maori world* (1988b) gives valuable advice to those non-Maori who want/need to work with a Maori tribe in a meaningful way. To begin with, it is important to have a glimpse of how Maori society works. Earlier in this publication it was shown that Maori have a hierarchical society made up of whanau, hapu, iwi, and waka, and within these structures are rakatira, kaumatua, tohuka, and other leaders. Tribal consensus was described as an important way in which decisions were made, even if it was the rakatira who represented the tribe or had much influence within the tribe. Once this is understood, two important points made in Ritchie’s paper can be understood:

- No single person can make a tribal decision - sometimes there is already consensus within the tribe on a certain issue, other times there is no consensus

and time is needed before a consensus is reached. According to Ritchie, the Maori must solve their own conflicts in their own way, and they will eventually come to an agreement. Time and patience is needed, as each person has the right to be heard and all opinions must be taken into account.

- If you want Maori advice or need the 'official' Maori stance on an issue it is of utmost importance that the 'right' person be asked. According to Ritchie, this may mean a person, a whanau, a hapu or an iwi. If you are getting conflicting opinions you have either asked the wrong people or a consensus is yet to be reached. If in doubt about who to ask, go to the iwi level and let them sort it out for you. It is important to realise that just because a Maori holds a high governmental or other Pakeha position it does not follow that they have the same status within the iwi.

Further, do not expect that just because you are consulting with Maori or have made some concessions you will automatically have a good, solid relationship with them. These things take time and effort to build. Many Maori have the hurt and injustice of several generations on their shoulders. Forming a good relationship may mean listening to their many grievances and working through those before they are willing and ready to listen and talk about the issues you are interested in.

Discussion of Maori issues needs to be undertaken on Maori terms and in Maori territory. When this is done on a marae, Maori protocol and etiquette must be followed (see Tauroa, 1987). Expect issues to be thoroughly discussed at a marae setting, not just your issues. It is important to remember that there is more than one way to reach a desired goal. Maori work with notions of compromise, so must your agency, but it is important to know that there are issues that Maori feel cannot be compromised. It is also important to know that many Maori have already made considerable compromises and feel that they are already working from a compromised position.

When beginning to address Maori issues, seminars, hui and community projects are all ways of starting to build up a working relationship with the tribe in the area.

New Zealand is just beginning to institute a bicultural system. The Department of Conservation (DOC) is one government agency that is attempting to incorporate Maori values into its functions. A look at how this agency is going about this task may assist other agencies (government and private) that are attempting to do the same. But in the

end only Maori can determine if their needs and values have been adequately served and recognised.

In DOC's 1989/1990 corporate plan, one objective stated the need "To raise public awareness of New Zealand's heritage through education and information and to advocate its protection". This was seen to include the need to develop a Maori liaison and advice network, joint projects with the Maori community, the co-ordination of the implementation of Waitangi Tribunal findings, and the raising of staff awareness of tikaka Maori (correct etiquette) and Treaty of Waitangi implications.

A recent article in the DOC newsletter Nga Kaitiaki (Simpson, 1989), featured several staff members offering their interpretation of DOC's responsibility and their advice for incorporating Maori values. They point out that DOC's position as a Crown agent gives them an obligation to recognise the Treaty, and under the Conservation Act 1987 they legally need to "give effect to the principles of the Treaty". Besides looking at how the principles are defined by the Waitangi Tribunal and others, they suggested principles that DOC should incorporate into its own policy, including, "degradation of the environment is a breach of the Treaty". They also suggested that DOC should support the view that "government should be making laws to manage national resources along Treaty principles" (1989, p.5).

The authors of the newsletter agreed DOC needed to do more to teach staff about the Treaty, along with encouraging a change in attitudes concerning Maori culture. They attributed present attitudes to the lack of staff exposure to Maori protocol and worldview. In addition, it was suggested that guidelines should be provided so that central and local staff create "confident, consistent, and effective relationships with Maori people" (1989, p.5). Projects with Maori communities were seen as important and it was mentioned that past activities with takata whenua had been positive and had helped to build good relations. This experience better enabled DOC staff to make suggestions to senior officials when dealing with Treaty issues.

The Department of Conservation has hired a Maori Perspectives Officer to assist in giving the Department a perspective on things Maori. Some responsibilities of that position include setting up a "Maori Perspectives Unit" and increasing staff appreciation of tikaka Maori. Although many may see this as minimal Maori participation within the Department, it is a first step that may facilitate further Maori participation.

A Maori land task group has also been formed by DOC. Its main duty is to prescribe the action to be taken at the receipt of a claim and to clarify the Department's statutory obligations under the Treaty. To perform these tasks properly DOC must be aware of Maori claims (existing and future) for resources over which the department has jurisdiction, have policies for these resources, and a means of ensuring that proper action is taken.

The Department of Conservation is also incorporating Maori values into other policies, such as their marine farming policy. Accordingly, the Minister of Conservation may agree to marine farming taking place in areas where it will not unduly compromise areas of particular spiritual and cultural significance to Maori people. When applying for a licence, applicants must state the views of the local Maori on the proposal, as well as from whom they obtained that information.

Speaking about living in a bicultural society is easy to do, but what would it be like to actually put those ideas into practice? For some, it is easier to live in a monocultural society and not have to worry about 'stepping on someone's toes.' Others would argue that there are many missed benefits. Just as when two people marry, learn to live with each other and to give and take, so too when two cultures 'marry' adjustments have to be made so that the partners learn to understand each other and to live together. Many would argue that there are many rewards for such efforts.

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Appendix One: Principles of the Treaty of Waitangi.

As formulated by the Waitangi Tribunal (1983-1988) (from Parliamentary Commissioner for the Environment, 1988, pp.104-111).

The Exchange of the rights to make laws for the obligation to protect Maori interests.

The Treaty implies a partnership, exercised with utmost good faith.

The Treaty is an agreement that can be adapted to meet new circumstances.

The needs of both Maori and the wider community must both be met, which will require compromises on both sides.

Maori interest should be actively protected by the Crown.

The granting of the rights of pre-emption to the Crown implies a reciprocal duty for the Crown to ensure that the Tangata Whenua (the Maori hapu or tribe which has traditionally inhabited a particular location) retain sufficient endowment for their foreseen needs.

The Crown cannot evade its obligations under the Treaty by conferring authority on some other body.

The Crown obligation to legally recognise tribal rangatiratanga (which includes regard for cultural and spiritual values, Wai, 8, p.95).

The courtesy of early consultation.

Tino rangatiratanga includes the management of resources and other taonga according to Maori cultural preferences. 'Taonga' includes all valued resources and intangible cultural assets (Wai, 8, p.95, taonga include rivers and mauri of rivers).

The principles of choice: Maori, Pakeha and bicultural options.

As given by the Court of Appeal in the NZ Maori Council v. Attorney General case (NZMC case) (from Parliamentary Commissioner for the Environment, 1988, pp.112-116).

The acquisition of sovereignty in exchange for the protection of rangatiratanga.

The Treaty requires a partnership and the duty to act reasonably and in good faith.

Freedom of the Crown to govern.

The Crown duty of active protection.

Crown duty to remedy past breaches.

Maori to retain chieftainship (rangatiratanga) over their resources and taonga and to have all the rights and privileges of citizenship.

Maori duty of reasonable cooperation.

Consultation not required but is a courtesy.

As proposed by the New Zealand Maori Council in the NZMC case (from Parliamentary Commissioner for the Environment, 1988, p.117).

The Crown's duty to actively protect to the fullest extent practicable.

The jurisdiction of the Waitangi Tribunal to investigate omissions.

A relationship analogous to a fiduciary duty.

The duty to consult.

The honour of the Crown.

The duty to return land for land.

That the Maori way of life would be protected.

That the parties would be of equal status.

Where the Maori interest in their taonga is adversely affected, that priority would be given to Maori values.

As Proposed by the Crown in the NZMC case (from Parliamentary Commissioner for the Environment, 1988, p.117).

That a settled form of civil government was desirable and that the British Crown should exercise the power of Government.

That the power of the British Crown to govern included the power to legislate for all matters relating to 'peace and good order'.

That Maori chieftainship over their lands, forests, fisheries and other treasures was not extinguished and would be protected and guaranteed.

That the protection of the Crown should be extended to the Maori both by way of making them British subjects and by prohibition of sale of land to persons other than the Crown.

That the Crown should have the pre-emption right to acquire land from the Maori at agreed prices, should they wish to dispose of it.

As given by the Royal Commission on Social Policy (from Parliamentary Commissioner for the Environment, 1988, p.118).

Partnership - initially between Maori people and British Queen and Crown, later between Maori and Crown based in New Zealand. Relationship of mutual respect between equal partners.

Equality of peoples - Maori and Pakeha equity with mutual respect and integrity.

Guarantee - Queen to ensure Maori treated and protected as British subjects, and to guarantee the retention of Maori fishing grounds, forests, lands and other properties including culture.

Principles for Crown action on the Treaty of Waitangi (Department of Justice. 1989).

The Government has the right to govern and to make laws.

The iwi have the right to organise as iwi, and, under the law, to control their resources as their own.

All New Zealanders are equal before the law.

Both the Government and the iwi are obliged to accord each other reasonable cooperation on major issues of common concern.

The Government is responsible for providing effective process for the resolution of grievances in the expectation that reconciliation can occur.

Appendix Two: Chart of claims and issues considered in this publication (all deal with spiritual/cultural values and the Treaty).

Claims

Issues	1	2	3	4	5	6	7	8	9	10	11	12
Resource ownership				✓	✓		✓	✓	✓	✓	✓	
Kaitiaki							✓	✓		✓		
Kai moana			✓			✓	✓	✓	✓			
Mixing water sources							✓					✓
Human or animal waste		✓	✓				✓	✓				
Industrial waste							✓	✓				
Natural water conditions	✓					✓	✓					

NUMBER CLAIM

1. Hawke's Bay
2. Huakina Development Trust
3. Kaituna (Wai, 4)
4. Lake Rotorua
5. Lake Taupo
6. Lake Waahi
7. Manukau (Wai, 8)
8. Motunui (Wai, 6)
9. Muriwhenua (Wai, 22)
10. Waikato River and East Coast Harbours
11. Whanganui River Bed
12. Whanganui Water Diversion

Other cases not included in this analysis are:

Huntly Power Station: Maori concerns were considered at various times, from the initial opposition to the original water right to the scoping report for the second power station (Centre for Maaori Studies and Research, 1984).

Mohaka River: Considerable Maori evidence was presented by Ngati Puhauwera, who also have a claim before the Waitangi Tribunal, relating to an Acclimatisation Society application for a Conservation Order (presently pending decision).

Motu River: In the successful application for a Wild and Scenic Conservation Order by the Queen Elizabeth II Trust there was some preliminary Maori consultation but Maori concerns were not included in the final order.

Various management plans contain Maori input, e.g. Lake Taupo, Whangamarino, and the Waikato River.