OFFICIAL

Wai 898, #1.1.50
Wai 933, # 1.1

IN THE WAITANGI TRIBUNAL

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of claims to the Waitangi Tribunal by Margaret Makariti Poinga on behalf of herself and the members of Ngati Hikairo.

STATEMENT OF CLAIM

RECEIVED
Waitangi Tribunal
20 Aug 2000
Ministry of Justice
WELLINGTON

KPMG Legal
SOLICITORS
WELLINGTON & AUCKLAND
Person acting:
D A Edmunds

Contact details:
Ph 04 472 7877
Fax 04 472 2291
PO Box 10 246
DX SP26517 WELLINGTON

1 THE CLAIMANTS

1.1 **THIS** claim is lodged by Margaret Makariti Poinga on behalf of the members of Ngati Hikairo.

1.2 **THE** Claimants represent the descendants and rightful successors of the rangatira and those people who were the tangata whenua and exercised rangatiratanga over the land and waters that includes Lake Rotoaira ("the Lake") and the Wairehu Stream.

2 THE CLAIM

2.1 **THE** Claim relates to the Lake and its tributaries, including in particular the Wairehu Stream.

2.2 **THE** Claimants say that they are and have been prejudicially affected by the introduction of non-indigenous trout and other non-indigenous fish into the Lake and its tributaries by the Crown.

2.3 **THE** Claimants further claim that the introduction of trout into the Lake and its tributaries without their permission was inconsistent with the principles of the Treaty of Waitangi.

2.4 **THE** Claimants also claim that they are, have been and are likely to be prejudicially affected by ordinances, Acts, regulations, proclamations, notices and other statutory instruments, and the policies, practices, acts or omissions of the Crown relating to the ownership and management of the Lake and its tributaries and in particular to the fishing of trout and other non-indigenous fish, as set out further in this Statement of Claim.

2.5 **THE** Claimants further claim that all of the Acts, regulations, orders, policies, practices and actions taken, omitted or adopted by or on behalf of the Crown referred to in this Statement of Claim are and remain inconsistent with the terms and principles of the Treaty of Waitangi.

3 THE WATERS

3.1 **THE** Lake is Maori owned. The Lake and its tributaries, including the Wairehu Stream, have been the life sustainer of their people for approximately 600 years. During this time the claimants and their tipuna have relied on the lake and stream as a customary food source.

3.2 **THE** Wairehu Stream is the only natural feed into the Lake. On both sides of the Wairehu Stream, the land is Maori owned. Historically Maori pa were situated along the banks of the stream. Ngati Hikairo's dead and their parents' pito are also buried along its banks. For these reasons the Wairehu Stream and the Lake are of enormous cultural and spiritual importance to Ngati Hikairo.

3.3 **BOTH** the Lake and the Wairehu Stream are taonga of Ngati Hikairo and these taonga include not only the fish and the waters, but the activity of fishing and the right to take the fish according to Ngati Hikairo's local kawa.

3.4 **IN** the 1900s the Crown proposed to introduce non-indigenous trout into various New Zealand waters, including the Lake. Large numbers of the Claimants' tipuna petitioned the Crown against the introduction of trout into the Lake in 1905, however the trout were introduced nevertheless.

3.5 **IN** 1926 a settlement over the ownership of Lake Taupo was signed between the Tuwharetoa Maori Trust Board and the Crown. This Agreement preserved rights to catch non-indigenous fish in a settlement with the Crown over the ownership of Lake Taupo. The 1926 agreement covered only Lake Taupo and its tributaries. It did not cover the Lake and its tributaries.

3.6 **NGATI** Hikairo's wish to preserve their customary rights to the Lake was recognised to a degree in 1938 when Parliament passed Section 22 of the Native Purposes Act. This provision gave members of Ngati Tuwharetoa (including Ngati Hikairo) exclusive rights to both

indigenous fish and trout from the Lake without the need to take out a license or pay any fee.

3.7 **HOWEVER** by 1959 these rights had been significantly eroded. In 1956 a trust called the Rotoaira Trust was created by the Maori Land Court to manage the Lake. The 1959 Maori Purposes Act provided that no person could fish for or take any fish from the Lake unless he was the holder of an entry permit granted by the trustees of the Rotoaira Trust authorising him to enter onto the lake for the purpose of fishing. In addition, in order to fish for trout a person was required to hold a trout fishing licence issued in respect of the Taupo trout fishing district.

3.8 **THESE** provisions have continued in slightly amended form to the present day Rotoaira Trout Fishing Regulations 1979 ("the Regulations"). The Regulations relate to the lake and immediate waters forming part of the Wairehu Canal (approximately 685 metres from the Lake to the first hurdle). They give the Trust the power to issue an entry permit to the lake. However it is only the holder of an entry permit and a trout fishing licence who is entitled to fish for trout. The Regulations also provide that no person may take any fish that is indigenous to New Zealand from the Lake (except under certain limited circumstances).

3.9 **THE** current position is unclear, however it appears that where waters running from the Lake do not form part of it for the purposes of the Regulations, then they will be governed by only the Taupo Fishing Regulations 1984 and the Conservation Act 1987. Both of these Acts also place restrictions and conditions upon the fishing of non-indigenous fish and in particular trout. Where the various Regulations and Acts overlap over the Lake however it is unclear which provisions prevail.

3.10 **AS** a result of the introduction of non-indigenous fish, the indigenous fish population in the Lake and its tributaries has seriously diminished, lessening the amount of indigenous fish available for Ngati Hikairo's

traditional use. This has meant that the Claimants have been forced to catch introduced species (including trout) for their food. The legislation introduced by the Crown in placing restrictions on the taking of introduced species of fish (as well as indigenous fish) as set out above therefore seriously impinges upon Ngati Hikairo's customary fishing rights.

3.11 **FURTHER** to this, Crown legislation in relation to management and fishing rights in the Lake and its tributaries is confusing, ambiguous and appears contradictory at times. Both the legislation and its application by Crown officials seriously impinges on Ngati Hikairo's rights of rangatiratanga over their taonga katoa.

4 BREACHES OF THE TREATY

4.1 **THE** various enactments by the Crown in relation to the Lake and its tributaries are of prejudicial effect to Ngati Hikairo in that they diminish or extinguish Ngati Hikairo's rights of customary ownership and use. In particular, the Crown has breached Ngati Hikairo's rights of rangatiratanga over the Lake and its tributaries and the taonga contained within them in the following ways:

(a) the statutory establishment of the Rotoaira Trust and regulations governing the powers of the Trust with respect to the management of the Lake and its tributaries, which fails to have regard to Ngati Hikairo's traditional management structures and tikanga;

(b) a failure to sufficiently protect Ngati Hikairo's rights of rangatiratanga over the Lake and its tributaries in the composition and establishment of the Trust with the result that Ngati Hikairo has been marginalised;

(c) enacting legislation and regulations which impinge on and have the effect of extinguishing Maori customary fishing rights in relation to both indigenous and non-indigenous fish in the

Lake and tributaries without permission from the tangata whenua or any form of consideration;

(d) enacting legislation and regulations in relation to the management of the Lake and adjacent waterways and in relation to the fishing of indigenous and non-indigenous fish which contain conflicting provisions or which is otherwise contradictory and confusing.

5 THE CLAIMANTS' PROSECUTION

5.1 **ON** 9 August 1998 two of the claimants - Bon Turner and Richard Isherwood, ("the Defendants") with a third person, had been gathering trout from the Wairehu Stream sufficient for food. The trout were gathered in accordance with customary protocol in regard to such matters as the area they were gathered, the quantity taken and the size, and the Defendants had been given authority to fish by Ngati Hikairo.

5.2 **WHILE** travelling away from the stream, the defendant's vehicle was stopped by a Conservation officer and an Honorary Warranted Officer. The Defendants told the officers that they had taken the trout for food.

5.3 **THE** officer seized the five trout and a landing net and the two Defendants were subsequently charged with offences under the Taupo Fishing Regulations 1984 and the Conservation Act 1987, including taking sports fish from prohibited water and taking sports fish where they were congregated for spawning.

5.4 **AT** a hearing in the District Court at Taupo the Defendants raised the defence that the trout were taken in accordance with their customary fishing rights and customary protocol and accordingly were exempt from the prohibitions in the Regulations and the Conservation Act.

5.5 **THE** Defendants were convicted and fined $750 each.

5.6 **THE** Defendants have subsequently appealed against the decision of the District Court at Taupo. Their appeal is yet to be heard.

6 BREACHES OF TREATY OF WAITANGI

6.1 **THE** Defendants' convictions on fisheries offences were as a result of the Crown's breach of its obligations under the Treaty of Waitangi to recognise and protect Maori customary fishing rights.

6.2 **BOTH** the Conservation Act and the Taupo Fishing Regulations are of prejudicial effect to Ngati Hikairo in terms of their rights of rangatiratanga over their fisheries, lakes and rivers, guaranteed under Article II of the Treaty.

6.3 **IF** it is found that either or both of the Conservation Act and the Taupo Fishing Regulations (or any other legislation) do not extinguish Maori customary fishing rights, then the Crown has failed in its duty to actively protect those rights against the Crown's own officers.

Particulars

(a) The Crown charged and secured the conviction of the Defendants in the District Court on Fisheries charges for the reason that they did not comply with the licence system in circumstances where the Defendants were exercising customary fishing rights.

(b) Ngati Hikairo did not consent to the introduction of trout into the Wairehu Stream.

(c) Ngati Hikairo have never consented to the extinguishment of their customary fishing rights over the Wairehu Stream.

(d) Ngati Hikairo were prejudiced by the release of non-indigenous fish into Lake Rotoaira and its streams, as it depleted their food source of indigenous fish species. Ngati Hikairo therefore has the right to fish for non-indigenous fish as a component of their customary fishing rights.

(e) The Crown has imposed upon local Maori a licence system which breaches Maori customary fishing rights and rights of rangatiratanga over taonga as guaranteed by the Treaty.

7 **RELIEF**

8 **AS** a consequence of the abovementioned breaches by the Crown, the claimants have been prejudicially affected by charges and convictions for criminal offences put in place by Officers of the Crown as a result of exercising their customary rights. In particular, the claimants have suffered injury to their mana, distress, humiliation and financial penalty through the imposition of criminal charges and the following process through the Courts.

9 **IN** these circumstances the claimants claim:

(a) An apology from the Crown for the injuries they have suffered;

(b) An extinguishment of the convictions against their names for the fisheries offences.

(c) Compensation for the costs and penalties associated with the convictions.

(d) That the tino rangatiratanga of the claimants associated with this taonga be fully recognised and protected, and in particular, that the Crown recognise that Maori from hapu or iwi having customary fishing rights in a river or lake have the right to fish for trout without a licence, provided:

(i) They do so according to the terms and conditions of local kawa and are able to prove they are properly authorised to do so;

(ii) The fishing is for personal/family consumption or for hui/tangi and the like; and

(iii) That the fishing does not impinge upon the conservation and sustainability of the trout reserve.

(e) That this recognition is explicitly recognised and provided for in the Statutes.

(f) Monetary compensation for the costs of bringing this claim.

(g) Any other recommendations the Tribunal thinks fit.

10 **AND FURTHER**

10.1 **THE** Claimants reserve the right to amend or add further to the claim as appropriate.

DATED 20 August 2000

Deborah Anne Edmunds

This statement of claim is filed by **DEBORAH ANNE EDMUNDS** , on behalf of the Claimants, whose address for service is at the offices of KPMG Legal, Solicitors, 89 The Terrace, Wellington, (PO Box 10 246, DX SP26517) and whose telephone number is 04 472 7877 and whose fax number is 04 472 2291.