REPORT OF THE WAITANGI TRIBUNAL ON
LAKE TAUPO FISHING RIGHTS

WAITANGI TRIBUNAL

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IN THE MATTER   of the Treaty of Waitangi Act 1975

AND

IN THE MATTER   of a claim by H T Karaitiana relating
to Lake Taupo fishing rights

The Minister of Maori Affairs
Parliament Buildings
WELLINGTON

Dear Minister

1. By a letter of 18 December 1984 H T Karaitiana of Waitahanui, Taupo, sought 'the intervention' of the Waitangi Tribunal on 'the proposed law changes in regards to the taking of freshwater whitebait or inanga by the Tuwharetoa Maoris from Lake Taupo'.

It was not clear what proposed law changes Mr Karaitiana had in mind but it seemed he may have intended a reference to the Lake Taupo Fishing Regulations of 1984, assented to on 17 December 1984, to regularise certain earlier regulations held invalid by the District Court in dismissing charges against D Tahau and others for spearing trout.

To assist Mr Karaitiana some preliminary research was undertaken and a report on that research was sent to him, on 30 January 1985. It was hoped that report might help Mr Karaitiana advise his more specific concerns.

2. In brief, the report suggested:
    (a) That the Native Land Agreement and Native Land Claims Adjustment Act 1926 reserved to certain Maori of Tuwharetoa the right to catch 'indigenous fish' in Lake Taupo, following an agreement that the bed of Lake Taupo should rest in the Crown.
    (b) The Lake Taupo Fishing Regulations 1951 restricted to Maoris the taking of whitebait, koura 'or other fish indigenous to New Zealand'. Regulations of 1971 changed

that to enable anyone to take whitebait, lamprey or eel, but to provide that only Maoris could take koura or other fish indigenous to New Zealand.

(c) In 1975 N Wall, a Maori, was charged with taking smelt from Lake Taupo. It was held in the District Court that he was entitled to take smelt *apparently* on the basis that smelt was 'indigenous to New Zealand' even although it may not be indigenous to Lake Taupo. That decision was upheld in the Supreme Court in May 1976.

(d) The Maori Purposes Act 1981 then 'rewrote' the 1926 Act to provide that 'indigenous fish' meant 'indigenous to the Lake'.

(e) The Taupo Fishing Regulations 1983 then provided:
  ▸ anyone can take whitebait, lamprey or eel, and
  ▸ only Tuwharetoa Maori can take koura or other fish indigenous to the lake.

(f) Mr Tahau's prosecution in 1984 related to none of those things and the regulations of December 1984 did no more than validate that which the District Court thought invalid through a particular technicality.

3. Three important questions arising from the research would appear to be:

(a) Whether the Tuwharetoa people should have an exclusive right to whitebait, lamprey and eel, or their particular rights recognised in any general regulation thereon.

(b) Whether the Tuwharetoa fishing rights in respect of fish indigenous to the lake should extend to include fish indigenous to New Zealand though not necessarily indigenous to the lake, on the basis that the right relates to a resource (the lake) and carries with it a right to develop that resource, and

(c) Whether the Tuwharetoa people should have other particular rights where non-indigenous fish have depleted the indigenous resource.

4. Mr Karaitiana has not responded to any of these matters. Nearly two years have now elapsed and he has not replied to the research notes and letters sent to him. In the circumstances I am treating the claim as lapsed. It will not be referred to the full Tribunal unless and until a fresh claim is filed.

5. Copies of the claim and research report were also sent to each [of] the Minister of Internal Affairs, the Secretary for Internal Affairs, the Secretary for Maori Affairs and the Secretary of the Tuwharetoa Maori Trust Board. Copies of this report to you are now being sent to them, Tribunal members and claimant.

Dated at Wellington this 15th day of October 1986

E T J Durie
Chairman
Waitangi Tribunal