

RIVERS AS ANCESTORS AND OTHER REALITIES

Governance of Waterways in Aotearoa / New Zealand

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Te Awa Tupua (Whanganui River Claims Settlement) Act 2017

In March 2017, the Te Awa Tupua (Whanganui River Claims Settlement) Act was passed in the New Zealand Parliament. For the first time in the world, a river was recognised as a living being with its own legal personality, rights and responsibilities. In the Act, the Whanganui River, the longest navigable river in New Zealand, is described as ‘an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements’ (Pt 2/2 cl. 12, cl. 13b).

In this Act, Tupua te Kawa, the values that define the essence of the river, are expressed in te reo Māori, the Māori language. The Whanganui River is described as the source of *ora* (life, health and well-being), a living whole that runs from the mountains to the sea, made up of many tributaries and binding its people together. It is stated that the *iwi* and *hapū* (tribes and sub-tribes) of the Whanganui River have an inalienable connection with, and responsibility to, Te Awa Tupua and its health and well-being. This is expressed in a saying often used by Whanganui people, ‘*Ko au te Awa, ko te Awa ko au*’ (I am the River, the River is me) (Pt. 2/2, cl. 13).

In ancestral Māori understandings, the relationship between people and the earth is defined by *whakapapa* (roughly, genealogy) – an overarching, dynamic set of kin networks that encompass all forms of life, not just human beings. In Māori cosmological accounts, fresh water – lakes, rivers, streams and springs – are the tears of Ranginui, the sky father, mourning for his wife Papatūānuku, the earth mother, after their sons forced them apart to let light into the world. Although Tū, the ancestor of humankind, defeats his brothers in the great battle that follows, earning the right to take

their offspring as food (birds, fish, berries and root crops), people remain fundamentally linked with all other life forms as kin, through their shared descent from earth and sky.¹

In this relational schema, ancestors are literally planted in the earth (take or 'root' ancestors whose bones or umbilical cords rest in the land). For this reason, they are known as *tāngata whenua* (land people). Like plants, their offspring might flourish and multiply, or wither and die. When an orator stands to speak on a marae (ceremonial centre), they recite the names of their ancestral mountain and river. When one person asks another in Māori to identify themselves, they ask '*Ko wai koe?*' (lit. which water are you?)² The tears of Rangi flow across Papa-tuānuku, bringing fertility and abundance – the lifeblood of the land. In Māori, your birthplace is known as *te ū kai pō*, the place where you drank your mother's milk at night.

Sometimes, river currents are spoken of as *whakapapa*, lines of ancestry tied to a post representing a great *rangatira* or chief. In 1894, for instance, Kerehona, a Whanganui elder lamented, 'Our land is nearly all gone, and we, too, are a vanishing people, and will soon be like the moa, extinct (*ka ngaro ā moa te iwi nei*).' Hailing his ancestor Tutairoa as 'the stone pillar from whom descended all the chiefs of Whanganui, even to the Rangitāne tribe,' he expressed a hope that this man's *mana* might save the people: 'All the *taniwha* (great chiefs) of this river of Whanganui come from this chief – all the great chiefs who have been heard of in this island, commencing at the source, even to the mouth of the river... Hence the saying, 'A spliced rope, if broken, is made whole again.'³

A century later, in their claim to the Waitangi Tribunal, Whanganui elders described their river as a 'three stranded rope,' binding together the upper, middle and lower river iwi (tribes) – a motif expressed in carvings in Whanganui meeting-houses,⁴ helping the different kin-groups to join forces in advancing their claims about the river. Standing before the Tribunal, Whanganui elders lamented the current state of their ancestral waterway, saying what it meant for Te Atiahaunui (the Whanganui people):

It was with huge sadness that we observed dead *tuna* [eels] and trout along the banks of our *awa tupua* [ancestral river]. The only thing that is in a state of growth is the algae and slime. Our river is stagnant and dying. The great river

flows from the gathering of mountains to the sea. I am the river, the river is me. If I am the river and the river is me – then emphatically, I am dying.⁵

Whakapapa and Waterways

When Te Awa Tupua Act was passed by Parliament in March 2017, it seemed that this existential interlock between Whanganui people and their ancestral river had finally been recognised in law in New Zealand. Certainly, the Act was greeted with international acclaim. The *Huffington Post*,⁶ the *New York Times*,⁷ the *Washington Post*⁸ and the *Guardian* all reported its passage:

In a world-first, a New Zealand river has been granted the same legal rights as a human being. On Wednesday, hundreds of tribal representatives wept with joy when their bid to have their kin awarded legal status as a living entity was passed into law. “The reason we have taken this approach is because we consider the river an ancestor and always have,” said Gerrard Albert, the lead negotiator for the Whanganui iwi [tribe].⁹

Although Te Awa Tupua Act declared the Whanganui river to be a legal person, however, this only roughly approximates ancestral realities. A *tupua* is precisely not a person but a being from Te Po, the ancestral realm; and an *awa* (river) is not an individual, but a living community of fish, plants, people, ancestors and water, linked by *whakapapa*. As the indigenous lawyer Carwyn Jones has argued, making the Whanganui a legal person with its own rights is still essentially a modernist device.¹⁰ Except for the statements of value in Māori in the Act, an underlying cosmic model in which Man stands apart from and above Nature is not challenged.¹¹

In Te Awa Tupua Act, furthermore, while the Crown makes formal apologies to Whanganui iwi for its failure to uphold the promises made in the Treaty of Waitangi, it also makes clear that the Act does not create or transfer proprietary interests in water or life forms in the river. According to the Crown’s lawyers, waterways in New Zealand cannot be owned as private property. In making this argument, they cite ancient precedents. In Roman law, for instance, according to the Code of Justinian, ‘By the law of nature these things are common to mankind – the air, running water, the sea.’¹²

In his *Commentaries on the Laws of England*, Sir William Blackstone followed the Roman precedent.¹³ Although he quoted the Genesis creation story as the source of all property rights, when Adam and Eve were given ‘dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth,’¹⁴ Blackstone specifically excluded waterways from this framework:

A man can have no absolute permanent property in these, as he may in the earth and land; since they are of a vague and fugitive nature, and therefore can admit only of a precarious and qualified ownership, which lasts so long as they are in actual use and occupation, but no longer.

At the same time, these use rights were balanced by responsibilities. Under the common law, according to Blackstone, fresh water users must act with due consideration for the rights of others:

It is a nuisance to stop or divert water that used to run to another’s meadow or mill; to corrupt or poison a water course.., or in short to do any act therein, that in its consequences must necessarily tend to the prejudice of one’s neighbour. So closely does the law of England enforce that excellent rule of gospel morality, of ‘doing to others, as we would they shall do unto themselves.’¹⁵

Indeed, such an expectation still underpins popular understandings of how fresh water should be managed in New Zealand, informing many contemporary critiques of fresh water management regimes that allow various parties such as farmers, corporates (including water bottling and forestry companies, and municipal authorities) to pollute, drain and divert rivers, lakes, streams, springs and aquifers with relative impunity. There is widespread indignation that the law has failed to protect other citizens by treating these practices as injuries against their entitlement to the ‘lawful enjoyment’ (and care) of waterways across the country.

Somehow, it seems, when British common law was transplanted to New Zealand in the wake of the signing of the Treaty of Waitangi, while waterways were held in common, the requirement that water users should respect the interests of others was largely lost in translation, certainly in relation to Māori kin groups, but also in general. Over many generations, as successive reports to the Waitangi Tribunal have shown,¹⁶ sheep dip, effluent and other farm waste, sewage, waste water, sediment and industrial pollutants have been allowed to flow into New Zealand waterways, and their large-

scale drainage and diversion (including the practice of piping waterways underground) became commonplace. In a new country, old conventions about respecting the rights of others to enjoy fresh water and waterways were often set aside as a tiresome inconvenience.

As is clear from the evidence presented in claim after claim to the Waitangi Tribunal, Māori have struggled to uphold their relationship with ancestral waterways – through fighting, petitions, pleas to Royalty and other Crown authorities, and legal action.¹⁷ In their 1990 claim to the Waitangi Tribunal, for instance, Whanganui people appealed to the Treaty of Waitangi, signed with the British Crown in 1840. In Article 2 of the English draft of the Treaty, Queen Victoria guaranteed ‘to the Chiefs and Tribes of New Zealand.. the full exclusive and undisturbed possession of the Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess.’ In terms of the Treaty of Waitangi, their counsel argued, the river was one of their properties, a fishery as well as a highway and an ancestral being.

In reply, Crown counsel (quoting William Blackstone) asserted that no-one can own fresh water. While the Crown did not claim to own the Whanganui river, under Article 1 of Te Tiriti, the *rangatira* had absolutely given (*tuku rawa atu*) to Queen Victoria the *kāwanatanga* (variously translated as sovereignty, government, governance, or the right to have a Governor) of their lands, and the Crown had the right to manage fresh water for the nation.¹⁸

In their report on the Whanganui River claim, issued in 1999, the Waitangi Tribunal focused almost entirely upon this matter of rights in waterways – of the Whanganui kin groups on the one hand, and the Crown on the other. From the evidence that they had heard, the Tribunal concluded that

Control, not ownership, is the key element in managing natural resources. Perhaps this points to a prospective merger of the two laws, for if we look to Māori history from the time of colonisation, as we do in the next chapter, it is not ownership but control that was central to their thinking, and respect for the mana of different peoples.¹⁹

Nevertheless, they found that Māori kin groups could legally claim a property interest in ancestral rivers:

The conceptual understanding of the river as a *tupuna* or ancestor emphasises the Māori thought that the river exists as a single and undivided entity or essence. It does not matter that Māori did not think in terms of ownership in the same way as Europeans. What they possessed is equated with ownership for the purposes of English or New Zealand law.

Unusually for the Tribunal, a dissenting view on this finding was included in its report. Written by John Kneebone, this upheld a view of waterways as ‘moveable, wandering’ things that cannot be owned by people:

To suggest that a river as an entity should be alienated and legally transferred to a particular and specific descent group is not in my view a viable option. Such an action could not escape the interpretation that naturally occurring, free-flowing water, and access to it, will become subject to private control, which must then lead to the potential for private exploitation of an essential natural resource.²⁰

For these reasons, Kneebone dissented from the Tribunal’s recommendation that Atihaunui should be granted proprietary rights in the river.

Although Whanganui people who spoke to the Tribunal often expressed their anger about the state of their ancestral river, the Tribunal report barely mentions the duty of the Crown to protect users of the river (including iwi) against the ‘fouling’ and ‘diversion’ that might deprive them of their ‘lawful enjoyment’ of the waterway. In Article III of Te Tiriti, the Queen had promised to care for (*tiaki*) all the Māori (ordinary) people of New Zealand and give (*tuku*) them *tikanga* (customary rights and responsibilities) exactly equal to (*rite tahi*) those of her people of England; while in Article III of the English draft of the Treaty, the Queen confirmed and guaranteed to the ‘Natives of New Zealand’ her royal protection and ‘all the rights and duties of British subjects.’

This presumably included the rights of Whanganui kin groups to be protected against common law injuries including the fouling and diversion of waterways, as well as a duty of care for their ancestral river – matters repeatedly raised before the Tribunal.

The clause in Article III of Te Tiriti about the Queen giving Māori '*ngā tikanga rite tahi*' (rights and responsibilities, laws or customs exactly equal) to those of English people, however, also opens the way for a 'prospective merger of the two laws' which was hinted at in the Tribunal's Report. In fact, in the subsequent negotiation of the Whanganui River claim between kin groups and the Crown, something like this seems to have happened.

At the same time, in the heated public debates that followed the release of the Whanganui River Report and other freshwater claims by *iwi*, the Government has continued to assert that rivers and other waterways cannot be owned by people.²¹ This explains why in Te Awa Tupua Act, it is made clear that the Act does not create or transfer any proprietary interests in water or life forms in the river; while existing public uses, private property rights and resource consents are specifically excluded. At the same time, the Iwi Leaders Forum has advanced a legal claim for proprietary rights to ancestral waterways across New Zealand.²²

Property Rights, Trusteeship and Fresh Water

While the Waitangi Tribunal has discussed property rights as the only way of legally recognising Māori relationships with ancestral rivers, many of those who participated in the Whanganui claim found this difficult to deal with. As Whanganui elder Toni Waho exclaimed, 'Its not an ownership issue... it's kaitiakitanga [guardianship], its mana. My Māori heart says let it cease; but my Western mind says perhaps we can find a solution.' He added, 'But here's the problem. There is no place where things can be graded with proper legal form in our world [Te Ao Māori], here in our land [New Zealand], which is able to resolve the conflict of the two worlds [Te Ao Māori, Te Ao Pākeha – the Māori and Western 'worlds'].'²³

Although in New Zealand, ownership has been phrased as the only way for Māori kin groups to achieve legal recognition of relationships with ancestral waterways, it is interesting that in Hawai'i, another way has emerged of recognising the relationship between indigenous Hawai'ians and their ancestral streams and rivers, in the face of

those who would deplete or degrade them. In the United States, the right of all citizens to enjoy and take care of those ‘things [that] by the law of nature are common to all’ (as framed by the Code of Justinian) has been recognised in a ‘public trust doctrine’, based on a US Supreme Court decision in 1892 which declared that each state holds certain natural resources (including water) in trust for its citizens and must protect these resources from the ‘obstruction or interference of private parties.’²⁴

In 1973, the Supreme Court of Hawaii – which until then had consistently ruled that a party that owned land also owned the surplus water of any stream that ran over it – ruled that all freshwater in the State was ‘held in trust by the state for the common good of its citizens.’²⁵ In the Waiāhole Ditch case in 2000, native Hawaiians and local farmers fought to restore water to streams diverted by powerful former sugar plantation companies, whose predecessors had participated in the 1893 overthrow of the Hawaiian monarchy.

In their judgement, the Hawaiian Supreme Court declared that the public trust doctrine is ‘a fundamental principle of constitutional law in Hawaii that applies to all water resources without exception,’ and stated that it

demands adequate provision for traditional and customary Hawaiian rights, wildlife, maintenance of ecological balance and scenic beauty, and the preservation and enhancement of the waters for various uses in the public interest.²⁶

In 2012 in the Four Great Waters case, the Hawaiian Supreme Court further expanded the ‘public trust’ doctrine. By granting water permits to two powerful companies that set instream flows insufficient to sustain four major waterways on Maui, the Supreme Court ruled that the Commission had failed to ‘display a level of openness, diligence, and foresight commensurate with the high priority these [public trust] rights command under the laws of our state,’ or to consider their impact on ‘traditional and customary native Hawaiian practices.’ The water permits were overturned, and the rights of ordinary citizens to defend their ‘public trust’ interests in freshwater were strengthened.²⁷

The public trust doctrine has been extended further still in other countries, including Ecuador and India.²⁸ In Ecuador, for instance, the rights of nature itself (Pacha Mama) are enshrined in the constitution.²⁹ In India, the Supreme Court derives the public trust doctrine from law ‘imposed on us by the natural world [that] must inform all of our social institutions,’³⁰ along with Indian ‘society’s respect for plants, trees, earth, sky, air, water and every form of life.’³¹ Here, the courts have recently followed the New Zealand precedent by recognising the Ganges and Yamuna rivers as living entities with their own legal rights and responsibilities.

In New Zealand, while Te Awa Tupua Act has gone some way in recognising Māori notions of kinship, this could be taken much further. In the spirit of bringing ‘two laws’ together, for instance, a local version of the public trust doctrine might recognise **both** the common-law entitlement of all citizens to the ‘lawful enjoyment’ of waterways **and** whakapapa relationships between particular Māori kin networks and ancestral springs and rivers. Rather than ‘rights’, one might speak about relationships between people and springs, aquifers, rivers and lakes that aim to ensure the ongoing well-being (*ora*) of people and waterways alike, and draw on notions of reciprocal *kai-tiakitanga* (guardianship).

While the idea of kinship with the Whanganui is already reflected in the Māori language sections of Te Awa Tupua Act, kin relations between people and waterways could be recognised for other ancestral water bodies in New Zealand. Injuries such as ‘fouling,’ ‘corrupting,’ ‘poisoning,’ ‘stopping’ and ‘diverting’ waterways might be recognised as injuries to the waterways themselves, as well as to their human users,³² and damages might be paid to the water bodies themselves, and devoted to their care and restoration.

These possibilities are under active discussion in New Zealand at present, for instance in ‘Te Mana o te Wai’ section of the National Policy Statement on Freshwater, that requires regional councils in their decision-making about freshwater to consider ‘the innate relationship between *te hauora o te wai* (the health and *mauri* [roughly, life force] of water) and *te hauora o te taiao* (the health and *mauri* of the environment), and

their ability to support each other, while sustaining *te hauora o te tāngata* (the health and *mauri* of the people).³³

It is quite possible that over time, all waterways across New Zealand will be seen as living entities whose *hau ora* must be protected, so that they and their communities of plants, animals and people can prosper together. Such ideas are in keeping with Māori ideas about binding together different lines of people, opening up new kinds of futures. As my mentor Eruera Stirling used to chant:

<i>Whakarongo! Whakarongo! Whakarongo!</i>	<i>Listen! Listen! Listen!</i>
<i>Ki te tangi a te manu e karanga nei</i>	<i>To the cry of the bird calling</i>
<i>Tui, tui, tuituiā!</i>	<i>Bind, join, be one!</i>
<i>Tuia i runga, tuia i raro,</i>	<i>Bind above, bind below</i>
<i>Tuia i roto, tuia i waho,</i>	<i>Bind within, bind without</i>
<i>Tuia i te here tangata</i>	<i>Tie the knot of humankind</i>
<i>Ka rongo te pō, ka rongo te pō</i>	<i>The night hears, the night hears</i>
<i>Tuia i te kāwai tangata i heke mai</i>	<i>Bind the lines of people coming down</i>
<i>I Hawaiki nui, i Hawaiki roa,</i>	<i>From great Hawaiki, from long Hawaiki</i>
<i>I Hawaiki pāmamao</i>	<i>From Hawaiki far away</i>
<i>I hono ki te wairua, ki te whai ao</i>	<i>Bind to the spirit, to the day light</i>
<i>Ki te Ao Mārama!</i>	<i>To the World of Light!</i>

NOTES

¹ For a more detailed account of Māori understandings of fresh water and contemporary debates, see Salmond, Anne, 2014. Tears of Rangi: People, Water and Power in New Zealand. *Hau: Journal of Ethnographic Theory* 4/3, 285–309. For a wider discussion of freshwater issues in New Zealand, see Salmond, A., Tadaki, M., Gregory, T., 2014. Enacting new freshwater geographies: Te Awaroa and the transformative imagination. *New Zealand Geographer* 70/1, 47-55.

² Its interesting to note that by analysing the isotopes in the teeth of a dead person, forensic scientists can trace the main sources of water they drank as a child.

³ Waitangi Tribunal 1999. *The Whanganui River Report*, Wellington, Waitangi Tribunal, 189.

⁴ Ibid, 32.

⁵ Turama Thomas Hawira, brief of evidence for the Whanganui District Inquiry (do B28), 11.

⁶ http://www.huffingtonpost.co.uk/entry/whanganui-river-new-zealand-human-rights_uk_58ca51afe4b0ec9d29d8c161

⁷ https://www.nytimes.com/2016/07/14/world/what-in-the-world/in-new-zealand-lands-and-rivers-can-be-people-legally-speaking.html?_r=0

⁸ https://www.washingtonpost.com/news/morning-mix/wp/2017/03/16/this-new-zealand-river-now-has-the-same-legal-rights-as-a-human-being/?utm_term=.6e4a9ea80e35

⁹ <https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being>

¹⁰ Jones, Carwyn, 2016. *New Treaty New Tradition: Reconciling New Zealand and Law*. Wellington, Victoria University Press, 98.

¹¹ This is also the case with many contemporary anthropological discussions of Polynesian realities, even those that address ontological issues – see for instance Sahlins, Marshall, 1985. Hierarchy and humanity in Polynesia, in Hooper, A and J. Huntsman eds., *Transformations of Polynesian Culture*. Auckland, The Polynesian Society.

¹² Code of Justinian Book II 1.1.

¹³ For an authoritative account of how freshwater rights evolved in the English common law, with an extensive commentary on Blackstone's ideas, see Getzler, Joshua, 2006. *A History of Water Rights at Common Law* (Oxford, Oxford University Press). Many thanks to Mark Hickford for alerting me to this source, and for invaluable feedback on an earlier draft of this chapter. Note that Blackstone, like John Locke, traced the origins of property back to the Genesis story: 'In the beginning of the world, we are informed by holy writ, the all-bountiful creator gave to man 'dominion over all the earth.' This is the only true and solid foundation of man's dominion over external things' (Blackstone, William 1765-1769, *Commentaries on the Laws of England*. Oxford, Clarendon Press, Book II, Chapter 2, 3). As Getzler notes, Blackstone also drew on 'the conventional four-stage social theory of the Enlightenment evoked by Henry Kames and Adam Smith, whereby hunting societies were followed by pastoral, agricultural and finally commercial societies with organised States, governments and laws' (Getzler 2006, 162).

¹⁴ King James Bible, Genesis 1:28.

¹⁵ Ibid Book III, Chapter 8, 1.

¹⁶ See for instance Brad Coombes's excellent report on the environmental history of Turanga-nui / Gisborne, which documents successive planning and policy decisions and their impacts on local waterways (Coombes, Brad, 2000. Ecological impacts and planning history: An Environmental History of the Turanganui Casebook Area" Waitangi Tribunal Wai 814 #A20).

¹⁷ As documented in various Waitangi Tribunal reports on particular waterways and fresh water (eg. Waitangi Tribunal, 1992. *Mohaka River Report*. Wellington, NZ, The Waitangi Tribunal; 1993. *Ika Whenua Report*. Wellington, NZ, The Waitangi Tribunal; 1999. *Whanganui River Report*. Wellington, NZ, The Waitangi Tribunal; 2012. *The Stage I Report on the National Freshwater and Geothermal Resources Claim*. Wellington, NZ, The Waitangi Tribunal.

¹⁸ Ibid, 20-21.

¹⁹ Ibid, 102.

²⁰ Ibid, 346.

²¹ For articles that discuss these debates in some detail, see Ruru, Jacinta, 2013. Indigenous Restitution in Settling Water Claims: The Developing Cultural and Commercial Redress Opportunities in Aotearoa, New Zealand. *Pacific Rim Law & Policy Journal* 22/2, 311-352; and Salmond, Anne, 2014. Tears of Rangi: Water, power, and people in New Zealand. *Hau: Journal of Ethnographic Theory* 4/3, 285 - 308.

²² Durie, Taihakurei, Law Responsibility and Māori Proprietary Interests in Water; see also Durie, Taihakurei, Joseph, Robert, Erueti, Andrew and Toki, Valmaine, 2017. Ngā Wai o te Māori: Ngā Tikanga me Ngā Ture Roia. The Waters of the Māori: Māori Law and State Law. A paper prepared for the New Zealand Māori Council.

²³ Toni Waho, oral evidence, quoted by Crown counsel, closing submissions, Waitangi Tribunal 2012: 88.

²⁴ Illinois Central Railway Co. vs Illinois, see Kyle, Marie, 2013, The 'Four Great Waters' Case: An important expansion of Waiahole Ditch and the Public Trust Doctrine, *U. Denver Water Law Review*, 17:1-27. Many thanks to Betsan Martin for alerting me to the significance of the 'public trust doctrine' relating to waterways in the US, and particularly in the state of Hawaii.

²⁵ Ibid, 4-5.

²⁶ Paul, James, Park, Paul Johnson, 2001. The August 2000 Hawaii Supreme Court Waiahole Ditch Decision: Comments and Excerpts regarding the Public Trust Doctrine. Honolulu, Hawaii, Hawaii's Thousand Friends, 3. For a fine account of the Waiahole Ditch case and its background, see Sproat, D. Kaupua'al and Moriwake, Isaac H. 2007. Ke Kalo Pa'a o Waiāhole: Use of the Public Trust as a Tool for Environmental Advocacy, in eds. Clifford Rechtschaffen and Denise Antouni, *Creative Common Law Strategies for Protecting the Environment*. Washington, Environmental Law Institute, 247-284.

²⁷ Kyle 2013.

²⁸ Blum, Michael and Guthrie, Rachel 2012. Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision. *U.C.D.L. Review* 741. Many thanks to Mathew Smith and Mike Joy for locating and sharing this source.

²⁹ Ibid 791-801.

³⁰ Ibid 761.

³¹ Ibid 762.

³² In 2009, for instance, the Idaho Supreme Court stated that the ‘public interest doctrine’ in relation to waterways included a declaration that ‘the streams [of Idaho] and their environments be protected against loss of water supply to preserve the minimum stream flows required for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation and navigation values, and water quality.’ Centre for Progressive Reform, 2009. *Restoring the Trust: Water Resources and the Public Trust Doctrine, a Manual for Advocates*. USA, Centre for Progressive Reform.

³³ National Policy Statement for Freshwater Management, <http://www.mfe.govt.nz/sites/default/files/media/Fresh%20water/nps-freshwater-amended-2017.pdf>, 11.