

The Ownership

Ownership of Lakes, Seabed and Foreshore.

Ancient History

The Magna Carta, Queen Victoria, British Law or the Tiriti o Waitangi did not give the ownership of our rivers, lakes, seabed or foreshore to Maori, they are held in “trust” by the Crown for the people of New Zealand. Until it is proved otherwise, the Crown has no right to give our rivers, lakes, seabed or foreshore to one group of New Zealand Citizens who are no longer the “distinct race of people that signed the Tiriti o Waitangi in 1840”.

Law of Ancient Civilizations

Classical Roman law held that “running water” is “common to mankind”. It is held that, “all rivers and ports are public, hence the right of fishing, in a port, or in rivers, is common to all men”. It is held that this is one of the “Laws of Nature” which are “established by divine providence” and which “remains forever fixed and immutable”. It recognizes public rights to the use of the banks as well as the surface of the water, on non-navigable as well as navigable rivers. This was based on the laws of Greece and other ancient civilizations.

These principles continued in the laws of the emerging European Nations. In England, Kings fenced off some rivers and their banks, but the Magna Carta reaffirmed public rights in 1215. Running water is common to all and all rivers and ports are public, hence the right to fishing in a port or river is common. The use of the banks is also public as the rivers. Spanish law at the time also reflected the law of earlier civilizations, holding that “everyman has the right to use the rivers for commerce and fisheries” on navigable and non-navigable rivers, including the riverbanks. French law also held that rivers and riverbanks are public things, the use of which is common to all. Institute of Justinian,

2.1.1; Digest, 43, 12, 1, 1. On the Laws and Customs of England, Henry de Bracton, 1250. Las Siete Partidas, Alfonso X 1226. French Civil Law, Jean Domat, 1694.

In *Martin v Waddell*, the US Supreme Court held that in America, as in England, the public has a “liberty of fishing in the sea or creeks, or arm thereof, in a common of piscary”. It held that state cannot “abdicate its trust over property in which the whole people are interested shall not be disposed of piecemeal to individuals as private property”.

The Law of Nature.

The Law of Nature is the only true foundation of all social rights. The state cannot make a direct and absolute grant of the waters of the state, divesting all the citizens of their common rights. Public access to streams and trails along streams, is further supported by the legal doctrine of custom and prescription. Since Government hold waterways in “trust” for the public, they cannot sell or give them away to private ownership or control. Waterways are natural highways of the world.

Queen Victoria’s Instructions

Queen Victoria’s instructions to Governor Hobson in 1840 asked that places along seacoasts and navigable streams “be reserved for all recreational and amusement of the inhabitants”. The chiefs gave up their territories to Queen Victoria by Treaty in 1840 and New Zealand became a British Colony under British Sovereignty, British Rule/Law.

Tiriti o Waitangi

At a Seabed and Foreshore meeting held in the Otaki Memorial Hall on the 17th of April 2010, the Hon Christopher Finlayson, Minister for Treaty of Waitangi Negotiations, said in his opening speech. “At the signing of the Treaty of Waitangi, Maori ceded sovereignty to Queen Victoria and New Zealand became subject to English law and the Magna Carta”.

In 1840, New Zealand became a British Colony under British Rule/Law. Article two of the Tiriti o

Waitangi stated, “Ko te Kaini o Ingaranui ka wakarite ka wakaae ki nga Rangatira ki hapu ki tangata katoa o nu Tirani te tino rangantiratanga o ratou wenua kainga me o taonga katoa – The Queen confirms and guarantees to the chiefs and the tribes and all the people of New Zealand, the possession of their lands, dwellings and all their property”. There was no mention of rivers, lakes, seabed or foreshore in the Tiriti o Waitangi as once it was signed, these were the property of the Crown held in “trust” for all the people of New Zealand – since Government hold waterways in “trust” for the public, they cannot sell or give them away to private ownership or control.

The Queen’s Chain

Since 1840, Maori and non-Maori alike have known this as the “Queens Chain”. While it may not have been enacted into law, it is common law under the Magna Charta – the law of England – the law the chief’s accepted in 1840. It has been a distinguishing feature of New Zealand society since 1840. It is an unwritten law of New Zealand that must not be changed. Part-Maori still own the rivers, lakes, seabed or foreshore with all their fellow countrymen, they are held in “trust” by the Crown for the benefit of all New Zealanders to enjoy.

Who Owns the Rivers, Lakes, Seabeds and Foreshore?

Over the years, this has been an ongoing dispute between Maori and the Crown, but it has never been legally proved who actually owns our rivers, lakes, seabed or foreshore. Ancient history, the Magna Carta, Queen Victoria, British Law or the Tiriti o Waitangi did not give the ownership of our rivers, lakes, seabed or foreshore to Maori, they are held in “trust” by the Crown for the people of New Zealand. Until it is proved otherwise, the Crown has no right to give our rivers, lakes, seabed or foreshore to one group of New Zealand Citizens who are no longer the “distinct race of people that signed the Tiriti o Waitangi in 1840”.

Distinct Race of People

Maori have intermarried of their own free will with other races and therefore are no longer the “distinct race of people that signed the Tiriti o Waitangi in 1840”. Maori today are New Zealand Citizens that claim varying degrees of Maori ancestry as one sees in the continuing amended legislation since 1865 as their Maori ancestry becomes further and further diluted.

“If you think these things are wrong, then blame your ancestors who gave away their rights when they were strong”. Sir Apirana Ngata, M.A., LL.B.D. M.P. – 1922.

Compiled by Ross Baker, One New Zealand Foundation from New Zealand's Archives.

The 'Queen's Chain'