

# Deeds, half-truths, water rights

Thursday, November 29, 2012

## **Mike Butler: Deeds, half-truths, water rights**



[Mike Butler](#), [NZ Maori Council](#), [water rights](#)

Waters, rivers, lakes, and streams were included in the sale and purchase of the Upper Waikato on September 15, 1864, as well as trees, minerals, and all appertaining to the land or beneath the surface, according to the deed that is freely available on a Victoria University of Wellington website. Ownership of water is the latest “gimme” demanded by the New Zealand Maori Council and was at the root of the Maori legal challenge to the government’s partial asset sale that was heard at the High Court in Wellington this week.

Justice Ronald Young reserved his decision, on Wednesday, on the challenge by the New Zealand Maori Council and Waikato River tribes at the end of a three-day hearing in the High Court in Wellington, saying he would have a ruling by Christmas. The Maori Council and river tribes argued partial privatisation of energy companies Mighty River Power, Meridian, Genesis Energy and Solid Energy would compromise Maori water interests and could affect Treaty of Waitangi claims.

His comment that “I’m a bus stop on the way to the ultimate destination” would indicate his decision would be appealed, which implies his decision would not necessarily be in favour of the Maori Council challenge.

In all the column centimetres devoted to the spurious water rights claim, I am astounded that no highly paid individual involved in the issue has looked at the sale and purchase deeds related to the areas where water is under claim.

Numerous volumes of these deeds are available in electronic form on a Victoria University of Wellington website, all painstakingly compiled by New Plymouth missionary Henry Hansen Turton, who was involved in numerous land transactions. These deeds show that government land purchase officers used the same basic agreement format and the only differences between contracts would be the date of the contract, the vendors’ names, the sale/purchase price, and the description of the land to be sold/bought.

The Upper Waikato district sold for £1000 (\$106,838 in today’s money according to the Reserve Bank inflation calculator) on September 15, 1864, by the chiefs and people of the tribes Ngatimahanga, Ngatitamainu and Ngatihourua. (1)

The boundaries of the land started “at Ngaruawahia, situated at the junction of the Rivers Horotiu (Waikato) and Waipa: starting thence it goes along the Horotiu River, until you reach its source. This

is one Boundary Then returning to Ngaruawahia it passes up the River Waipa until its source be reached—This is the second boundary”.

But the main point is that the sale included the piece of land as described, “with its trees minerals waters rivers lakes streams and all appertaining to the said Land or beneath the surface of the said Land”. Yes, all these contracts included waters, rivers, lakes, streams, as well as trees, minerals and all appertaining to the said Land or beneath the surface. The contract was clear that the water as well as the rivers, lakes, and streams, were sold.

The current challenge is proceeding down a well-worn path. Many would have lived through earlier such Maori claims like NZ Maori Council v Attorney-General in 1987 over State-owned enterprises, the Muriwhenua claim in 1987 over fishing quota, and so on.

The Maori Council has just one strategy. They will take a claim to the Waitangi Tribunal in the knowledge that they will get an extensive document that will report in their favour. Next step is the High Court where they will either succeed or go to the Appeal Court, and if unsuccessful there, on to the Supreme Court.

In every sound bite, press release or tribal meeting, the claim will be repeated, using the basic principle of the Nazi propaganda machine, that a lie repeated often enough becomes the new truth.

In the case of the current spurious claim to water rights, what is repeated is the Waitangi Tribunal “finding” that Maori retain residual proprietary rights and, that the government would breach treaty principles if they proceed without recognising Maori rights.

While it is true that the Waitangi Tribunal “found” that Maori retain residual proprietary rights and, that the government would breach treaty principles if they proceed without recognising Maori rights, the Waitangi Tribunal “finding” is not necessarily true, and neither is the view that the government would breach treaty principles if they proceed without recognising Maori rights.

Therefore, that current often-repeated half truth is already getting a result because the naive, white-guilt-ridden Key government has already offered, yes offered, shares in part-privatised electricity generators in future treaty settlements. While that in itself is not recognition of water rights, it shows that pressure does get some sort of financial gain.

This week’s Maori Council-led High Court challenge aimed to delay the partial sale of state-owned electricity generators. It was not about whether Maori have rights to water. The Waitangi Tribunal “finding” that Maori retain residual proprietary rights ignored the fact that 19th century land-sale agreements between chiefs and the government included the water.

The Maori Council assertion that the government would breach treaty principles if they proceed without recognising Maori rights raises another point that shows the double standards of the Maori Council position. By this I mean the Maori Council acts as if the treaty principles bind only the Crown, while the Maori Council can do whatever it wants.

This tribal double standard is not something that is new. Tribes started breaching the treaty almost before the ink was dry. The long list of treaty breaches by tribes starts at the Wairau massacre in 1843, and proceeds through harassment of settlers in Wanganui and New Plymouth in 1843, the

Flagstaff War in 1845, harassment of Hutt Valley settlers in 1846, the Taranaki land leaguers in 1854, the Puketapu feud and Taranaki War 1860, the Maori king resistance in 1863, Hauhau insurgents from 1864, Te Kooti from 1868, and through until the sovereignty wars ended in the Ureweras in 1872.

The peculiar thing is that the Waitangi Tribunal has declared the Crown to be the treaty breaker in all these instances, and the Crown has been required to pay compensation for all these incidents where the blame has been shifted on to the Crown.

At each one of those breaches, the government could have declared that the treaty has been breached therefore it was null and void and the legitimacy of government would be based on occupation and control. In fact, that was pretty much how it was until the early 1970s, when Maori sovereignty specialists resurrected the treaty and a few white-guilt ridden politicians took them at their word.

Since the treaty principles did not exist until Appeal Court president Robin Cooke created them in 1987, and since they have no merit, they cannot exist as a standard of right and wrong. But if they did, I would note that by taking injunctions out against the government, the Maori Council is always in breach of treaty principle (c), which says “the principles of the treaty do not authorise unreasonable restrictions on the right of a duly elected government to follow its chosen policy.”

The brouhaha over water rights shows government at its dysfunctional worst. This farce is all about a government-created and funded body (NZ Maori Council) getting help from a government body (Waitangi Tribunal), to get a favourable ruling from another government body (the court system) to extract favours from — the government.

If you think the whole issue has become a bit overwrought, you are not alone. At one stage Justice Young told the apparently breathless Felix Geiringer, one counsel for the Maori challenge, to stop and take a breath ... and count to 10.

## Sources

Turton's Deeds, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-Tur01Nort-t1-g1-g1-g13-t20-g1-t2.html>

## DEED OF SALE OF THE HOROTIU AND WAIPA BLOCK

(Upper Waikato Distict)

Below is the Deed of Sale of the Horotiu and Waipa Block in the Upper Waikato Distict. The river that flows from Lake Taupo originally flowed out at the Firth of Thames on the East Coast but with the eruption at Taupo 1800 years ago it changed its course and joined up with the Waipa River at Ngaruawahia and now flows out on the West Coast. It seems at the time this Deed was made this part of the Waikato River was called the Horotiu River. I believe this Deed has been overlooked as it

states, "These are the boundaries of the Land commencing at Ngaruawahia, situated at the junction of the Rivers Horotiu and Waipa: starting thence it goes along the Horotiu River, until you reach its source. This is one Boundary, then returning to Ngaruawahia it passes up the River Waipa until its source be reached—This is the second boundary All our pieces of land within these two Boundaries, that is, the Land of Ngatimahanga, of Ngatitamainu, of Ngatihourua are surrendered to the Queen within the terms of this sale".

The Deed also states, "all that piece of our Land situated between the Rivers Horotiu and Waipa the boundaries whereof are set forth at the foot of this Deed and a plan of which Land is annexed thereto with its trees, minerals, waters, rivers, lakes, streams and all appertaining to the said Land or beneath the surface of the said Land".

Wikipedia

The present course of the river was largely formed by the large volcanic eruption from the Lake Taupo volcanic complex 1800 years ago. The large outflow of volcanic debris blocked the old channel to the Firth of Thames at Lake Karapiro and forced the river to turn west and then north. The remains of the old river path can be clearly seen at Hinuera where the cliffs mark the ancient river edges. The river's main tributary is the Waipa River, which has its confluence with the Waikato at Ngaruawahia.

Prepared by the One New Zealand Foundation Inc. (c) [www.onenzfoundation.co.nz](http://www.onenzfoundation.co.nz)

Deed 420. Horotiu and Waipa Block, Upper Waikato District.

Translation.

1864. 15 September. Upper Waikato District. This Deed written on this fifteenth day of September in the Year of our Lord 1864 is a full and final sale conveyance and surrender by us the Chiefs and People of the Tribes Ngatimahanga, Ngatitamainu and Ngatihourua whose names are hereunto subscribed And Witnesseth that on behalf of ourselves our relatives and descendants we have by signing this Deed under the shining sun of this day parted with and for ever transferred unto Victoria Queen of England Her Heirs the Kings and Queens who may succeed Her and Her and their Assigns for ever in consideration of the Sum of One Thousand Pounds (£1000 . 0 . 0) to us paid by Henry Hanson Turton Special Commissioner on behalf of the Queen Victoria (and we hereby acknowledge the receipt of the said monies) all that piece of our Land situated between the Rivers Horotiu and Waipa the boundaries whereof are set forth at the foot of this Deed and a plan of which Land is annexed thereto with its trees minerals waters rivers lakes streams and all appertaining to the said Land or beneath the surface of the said Land and all our right title page 584 claim and interest whatsoever thereon To hold to Queen Victoria Her Heirs and Assigns as a lasting possession absolutely for ever and ever. And in testimony of our consent to all the conditions of this Deed we have hereunto subscribed our names and marks. And in testimony of the consent of the Queen of England on her part to all the conditions of this Deed the name of Henry Hanson Turton Special Commissioner is Boun hereunto subscribed. These are the boundaries of the Land commencing at Ngaruawahia, situated at the junction of the Rivers Horotiu and Waipa: starting thence it goes along the Horotiu River, until you reach its source. This is one Boundary Then returning to Ngaruawahia it passes up the River Waipa until its source be reached—This is the second boundary All our pieces of land within these two Boundaries, that is, the Land of Ngatimahanga, of Ngatitamainu, of Ngatihourua are surrendered to the Queen within the terms of this sale.

Wiremu Nero te Awaitaia.

Hetaraka Otene.

Hakopa Kotuku.

Hemi Matini.

Mohi Te Rongomau.

Hone Pirihi.

Te Waaka te Ruki x his mark.

Rikimona Otene.

Wiremu Patene.

Hamiora Ngaropi.

Wiremu Nga Weke.

Hone Kingi.

Kiriona Putoitoix his mark.

Ropata te Wairoax his mark.

Hariata Tatai x her mark.

Te Waapu x his mark.

Erueni Matetaetua x his mark

Inoka Wetea x his mark.

Matutaera Kani Whaniwha x his mark.

Ritipete Whakairo x her mark.

Hemine te Awhio x his mark.

Rihia Pokepoke.

Iraia te whiwhi.

hape tawaka.

Hone Ihaka.

Hokopa Te Wharengori x his mark.

Rota Tihi x his mark.

Te Rehutai x his mark.

Aihe te Moki x his mark.

Reihana Takiwhitu x his mark.

Tamati Kapua (na Wiremu Patene i Tuhi).

Ekana Kaiapa x his mark.

Pihopa Wharenikau x his mark.

Kamareira Whakamarurangi x his mark.

Hemi Keera.

Miriama Toea x her mark.

Arireire Nero x her mark.

Ngati x her mark.

Ihaka Hororure.

Mere Rangiaata x her mark.

Hera Parekawa x her mark.

Turia Tahe x her mark.

Rawiri hikaka.

Karena te Himo x his mark.

Wiremu Otene.

Hone pihama.

Mahi Pane.

Paratene Tarahina x his mark.

Hori Pikitia.

Witnesses to the payment and signatures—

Wm. Harsant, J.P., Raglan.

Richard Todd, Dist. Govt. Surveyor.

Hy. J. Falwasser, Govt. Interpreter (Raglan).

H. Hanson Turton, J.P., Special Native Titles Commissioner.

Receipt for £1,000. Received this fifteenth day of September in the Year of Our Lord One thousand eight hundred and sixty four (1864) the Sum of One Thousand Pounds sterling (£1000 . 0 . 0) being the whole consideration money expressed in the above-written Deed to be paid by H. Hanson Turton, Special Commissioner on behalf of Her Majesty the Queen to us.

[Chiefs signatures]

Witnesses—

Wm. Harsant, J.P., Raglan.

Richard Todd, Dist. Govt. Surveyor.

Hy. J. Falwasser, Govt. Interpreter. H. Hanson Turton, J.P., Special Native Titles Commissioner.

A True Copy of Original Deed and Translation.

H. Hanson Turton.

Wellington, March 5th, 1875.