

# Who should own water and waterways and what should that mean?

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**Abstract:** Water and waterways are the subjects of growing conflict. The Crown is adamant about upholding the position that nobody should own water and similarly doesn't want to grant ownership of waterways to anyone. But it is required to remedy past breaches of the Treaty of Waitangi, often by recognising Maori rights in rivers and lakes.

By the common law, the Crown holds all land within its sovereign territory and can grant an interest or estate in land as a fee simple title. A fee simple title usually includes all the rights and privileges that we normally associate with ownership: rights to buy and sell, to use and enjoy, to occupy, to hold exclusively. But when the Crown vests a fee simple title in a lake or river to an iwi, it withholds all those rights. What, then, is the value to Maori? Perhaps a new form of title could more appropriately recognise Maori customary relationship with water and waterways.