

IN THE MATTER OF

An application for a customary  
rights order made on behalf of  
NGATI PAHAUWERA by  
W TAYLOR & ORS

AND

IN THE MATTER OF

Section 48(1) of the Foreshore  
and Seabed Act 2004

**BRIEF OF EVIDENCE OF BRENT PARKER**

Dated 12 October 2007

Crown Law Office/Te Tari Ture o Te Karauna (Craig Linkhorn/Libby  
Shaw/Geetha Kumarasingham)  
Telephone: 64-4-472-1719, PO Box 2858, DX SP 20208,  
Facsimile: 64-4-494-5675, Wellington Central.

**MAY IT PLEASE THE COURT:****Introduction**

1. My full name is **JAMES BRENT PARKER**. I am employed as the Senior Historical Researcher at the Crown Law Office, Wellington. I have appeared as an expert witness before the Waitangi Tribunal, the Māori Land Court and the High Court. Prior to the commencement of my employment at Crown Law in 1995, I was employed for 6 years as an archivist by the then National Archives.
2. I have been asked by Crown Counsel in this proceeding to:
  - 2.1 Produce the Agreement for Definition of River Mouths and Landward Boundary of Coastal Marine Area, signed on behalf of the Minister of Conservation and Hawke's Bay local authorities in April 1993 ("**the 1993 Agreement**").
  - 2.2 Provide evidence about the navigability of those portions of rivers within the area of this application that are within the coastal marine area ("**CMA**").
3. The rivers located in the application area are the Mohaka, Waikari and Waihua rivers.

**The 1993 Agreement**

4. This Agreement sets the mouths of rivers in the Hawke's Bay region, including the Mohaka, Waikari and Waihua rivers. The boundary of the CMA where rivers are present is measured from the mouth, and these boundary points are also noted in the Agreement.
5. I attach a copy of the 1993 Agreement ("**Attachment 1**"). The various maps attached to the 1993 Agreement include maps that mark the river mouths and CMA boundaries of the Mohaka, Waikari and Waihua rivers.
6. I attach as "**Attachment 2**" aerial photographs that illustrate the location of these points.

**Navigability of the Mohaka, Waikari and Waihua Rivers within the CMA**

7. I have been asked to obtain evidence on the navigability of the CMA portions of the Mohaka, Waikari and Waihua rivers as at 1903.

8. In approaching the question of whether the CMA portions of the Mohaka, Waikari and Waihua rivers are navigable, I have taken account of the definition of navigability in the Coal Mines Amendment Act 1903 and subsequent versions of that section.
9. I have attempted to research the navigability of the stretches of the three rivers named above from the CMA boundary to sea by seeking information on navigation of them up to and beyond 1903 by any type of watercraft, whether in an upstream or downstream direction.
10. I have looked into the navigation of the relevant portions of the three rivers after 1903, including whether these portions of the rivers have been materially affected by any major works, such as the construction of power stations, or by the 1931 Napier earthquake or flood protection works since 1903. This research leads me to believe that those portions of the rivers that were navigable at 1903 would probably be still navigable now.
11. I have not relied on material showing navigation from one bank to the other (for instance, by ferry) because it is unclear whether cross-river navigation provides satisfactory evidence of navigation over the length of the area in question.
12. I should point out at this juncture that this research has been undertaken at short notice. The Mohaka River below the boundary of the CMA is navigable. To date I have found no definite evidence of navigability for the Waihua and Waikare Rivers within the CMA areas. I will continue to search for further evidence on these rivers.
13. The sources I have examined for this evidence include the Mohaka River (Wai 119) and Mohaka ki Ahuriri (Wai 201) records of inquiry of the Waitangi Tribunal, photographs at the Alexander Turnbull Library, various Internet sites, and files at Archives New Zealand.

#### ***Mohaka River in CMA***

14. I conclude that the section of the Mohaka River from the boundary of the CMA to the sea was navigable at 1903 and remains so today.

#### *Historical evidence*

15. James Hamlin who was a missionary based at Wairoa in the 1840s and 1850s, stated the Mohaka river: “is a river of many rapids, some of which

are dangerous: it extends many miles inland. The rapids commence within a mile of the coast; a canoe can go up as far as Rotokakarungu, two days and [a] half journey up the river, beyond which, I believe, a canoe never advances” [Wai 119 #C4 paragraph 1.1 p.4, “Attachment 3”].

16. I note the boundary of the CMA is located approximately one kilometre from the mouth of the river.
17. In 1851 surveyor Robert Park described the Mohaka River as: “navigable for canoes as far as Ahuriri block but much impeded with rapids and large blocks of stone. There is a whaling station at the mouth, the boats belonging to it passing in and out in almost all weathers. There is irregular traffic between Mohaka and Ahuriri carried on by the natives when they have produce for sale” [Wai 119 #C4 paragraph 4.9 pp.23-24, “Attachment 3”]. That description as to navigability may be optimistic in light of other sources.
18. James Grindell wrote a letter to the Hawke’s Bay Herald that was published on 26 November 1864. It stated that when leaving Mohaka in the company of Donald McLean and others they:

Took passage for Napier in the *Sailor’s Bride*, a small decked boat belonging to the natives. On approaching the bar, the surf appeared somewhat heavier than we had anticipated, but we were carried resolutely by the current which as the ebb tide rushes out at a rate of probably of 8 or 10 knots an hour. The first sea was mounted gaily over: but not the succeeding one. Breaking right over the little vessel, it rushed with irresistible force from stem to stern, drenching everyone on board to the skin: and it was only by seized hold of the rigging and mast that we were enabled to save ourselves from being washed overboard. Gaining at last the open sea, we bowled along at a fair breeze for Napier where we arrived the same evening.

19. A copy of this excerpt is attached as “Attachment 4.”
20. In his evidence of land transactions on the north bank of the Mohaka River, Fergus Sinclair referred to a letter written in 1867 by Charles Weber, who was the Hawkes Bay Province Engineer. That letter stated that the river was considered to be navigable for small craft as far as the point where it was met by the Napier road, a short distance from the mouth [Wai 119 #C5 p.5, “Attachment 5”].

21. I note that this road was located approximately where the current first bridge crosses the river.
22. A watercolour by Alfred John Cooper called "Waiparu-paru Mohaka 1860" shows the mouth of the Mohaka River with Sim's public house in the foreground and Riddle's woolshed and what appears to be a sail craft in the river nearby. [A-235-011, Alexander Turnbull Library, Wellington, copy attached as "**Attachment 6**"].
23. Thomas Lambert's *The Story of Old Wairoa* (Reed 1998) contains an un-sourced photograph of the lower Mohaka River in the 1870s. The photograph shows a number of buildings including the Mohaka blockhouse and, of note, a two masted vessel lying inside the river mouth. Copies of the photograph and excerpts from Lambert, referred to below, are attached as "**Attachment 7.**"
24. Lambert's history includes a number of comments on a harbour at Mohaka. This harbour would have by necessity been located within the river, upstream of the mouth. He states on page 393 that the seaward limit of the Mohaka harbour had been fixed by Order-in-Council as a circle 1.5 miles from the western bluff. Unfortunately Lambert does not date or source this comment and the Order-in-Council has not been located. At the bottom of that page he also refers to Philip Dolbel, the member for Mohaka on the Hawkes Bay Provincial Council, moving a motion for construction of a road from the Tauranga bush to the Mohaka harbour so that settlers could send their produce from there to market (pp393-394). Later in the history he states that arrangements had been made to keep the mouth open for small vessels with a short mole being built out to low water and on the other side of the mouth a retaining wall being constructed (p.799).
25. Lambert also refers to a number of vessels being constructed at Mohaka. These were most likely to have been built upstream of the mouth of the river. The *Gypsy* of ten tons was launched in February 1860 by a Mr Henerici who was trading under local settler John Sim (p.462). The *Mary Ann Hudson* was built for John Sim of Mohaka (p.464). Susan Forbes' report "Mohaka Archaeology" [Wai 201 #A15 paragraph 1.4, "**Attachment 8**"] states that in the 1850s there was a boat building business at 'Carpenters Point' on the east side of the river mouth.

26. On page 466, Lambert makes the comment that “Small vessels were known to have entered the Whakaki lagoon at Wai-horoi-I-tuna, also the Mohaka, Tahaenui, and the Nuhaka Rivers.”
27. The Wairoa-Mohaka Steamship Company was formed in the 1870s. It provided a service between Napier, Mohaka, Waihua and Wairoa. The company had three vessels; the *Tangaroa* of 19 tons, the *Tu Atu* of 42 tons and the *Te Aroha* of 105 tons. A surfboat named the *Haerimai* also operated and was located on the Mohaka and Wairoa Rivers for use when the river mouth bars made them unusable for the larger vessels [*Mohaka School Centenary 1880-1980*, Alexander Turnbull Library, Wellington, excerpts as “Attachment 9.”]
28. A copy of a photograph from the *Mohaka School Centenary 1880-1980* showing the original Mohaka traffic bridge in 1900 and the river downstream from it to the mouth is included with “Attachment 9.”
29. Miriam Macgregor’s *Early Stations of Hawkes Bay* (Reed 1970, excerpts attached as “Attachment 10”) states that the Bees family who had the Mohaka run were standing on the riverbank in around 1866 and “saw a war party sweep past in its canoes and knew relief as the long vessels went on out to sea.” (p.135). Later on Macgregor states that up to 1920 all supplies for the Mohaka station were brought in by sea and all wool was shipped out. She states that: “At times a small boat called the *Tuatu* could enter the river, but generally the boats lay off the beach and surfboats were used to ferry stores and wool between the ships and the beach.” (p.136). This aspect is also referred to in Forbes’ report where she states: “river bars often presented a hazard to shipping and smaller craft had to be used to ferry goods and passengers. In 1887 the ‘Tangaroa’ (19 tons) foundered and in 1890 the ketch ‘Mary Ann Hudson’ was wrecked, both at the Mohaka bar” [Wai 201 #A15 paragraph 1.4, see “Attachment 8”]. This is further evidence indicating that although smaller vessels were able and did operate in the lower reaches of the river, larger vessels were liable to become stuck on the bar when trying to enter the river.
30. *New Zealand Gazette* 1908 page 1527 includes a notification under the Timber Floating Act 1884 stating that the Mohaka River from the junction with the Te Hoe River (located upstream of Willow Flat) to the sea could be

used under license for timber floating. Refer to the copy of this excerpt, **“Attachment 11.”**

31. Macgregor states that for a period of time the Mohaka Station operated a sawmill and that logs were floated down the river from Willowflat to the mill and the sawn timber “was made into small rafts and floated out to ships waiting off the river mouth ...” (p.136, see “Attachment 10”). Toro Waaka refers to the historical floating of timber down the river from Willow Flat (Rotokakarunga) in his Mohaka River report [Wai 119 #B8 p.6, excerpt attached marked **“Attachment 12”**]. Forbes also states that a sawmill operated at the river mouth from the 1880s and it ceased operation after 1916-17 [Wai 201 #A15 paragraph 1.4, see “Attachment 8”].
32. In 1914 an attempt was made to create a Harbour Board at Mohaka. This initiative appears to have never been carried through due to the opposition of a number of residents who did not wish to be burdened with rates to support the new board [copy attached of M1 3/13/57 Archives New Zealand, Wellington].

*Contemporary evidence*

33. The mouth of the Mohaka River is indicated by the yellow dot on the Mohaka River aerial photograph in “Attachment 2”. The boundary of the CMA is indicated by the red dot just downstream of the first bridge over the river. The distance between the two points is approximately one kilometre.
34. I attach as **“Attachment 13”** copies of several photographs showing the river between the boundary of the CMA and the mouth. These images were sourced from the internet during a search to see how widely available contemporary images of the river mouth are. I note that the website NgatiPahauwera.co.nz also contains many images of the river mouth area. The first photograph shows a portion of the river within the CMA [<http://mcwarr.orcon.net.nz/genealogy/reunion/main.html>], the two other photographs show the river looking downstream from the bridge to the sea, and a view looking down toward the mouth of the river [<http://mcwarr.orcon.net.nz/genealogy/mciverreunion/mohakariver.html>].
35. I have been led to believe that the river between the CMA boundary and the mouth is subject to the ebb and flow of the tide. The extent of tidal

reach can be relevant to assessing whether adjoining owners of land have legal interests in the riverbed. The Hawke's Bay Regional Council will hold information on this issue. Others have given evidence that kahawai enter the river and follow whitebait upriver [Wai 201 #A24 p.24, excerpt attached as "**Attachment 14**"].

36. A statement by Peter D. Stanley of the Hawke's Bay Regional Council on the Wai 201 record of inquiry includes comments that the lower reaches of the Mohaka River were used for jet boating and that the section from the river mouth to Willow Flat was predominately flat water and was considered to be easy boating [Wai 201 #B17 paragraph 24 p.11, attached as "**Attachment 15**"].
37. The Water Recreation (Mohaka River) Notice 1980 was published in the New Zealand Gazette 1980 p.1975. It states that all of the Mohaka River downstream from the Willow Flats Bridge to the sea was no longer subject to sections 7(1) (a) and (b) and section 7 (2) of the Water Recreation Regulations 1979. Those sections relate to the speed of small watercraft within certain distances of other vessels or the shore. A copy of this notice is attached as "**Attachment 16.**"
38. A statement by Robin Douglas Black of the Hawke's Bay Regional Council on the Wai 201 record of inquiry includes a comment that he rafted from the confluence of the Mohaka and Taharua Rivers down to the sea [Wai 201 #B15 paragraph 10 p.3, attached as "**Attachment 17**"].
39. In closing submissions for the Wai 119 Inquiry, Crown Counsel referred to Ramon Joe's oral evidence that the river used to have a navigable mouth and that it was used to overnight in or as a port to call into to upload goods for that particular area [Wai 119 #C17 paragraph 10.4 p.55, "**Attachment 18**"].
40. Toro Waaka stated in his report for the Wai 119 inquiry that:

"The original name of Willow Flat area was known as Rotokakarunga... In former times, hunting parties that had walked upriver would build mokihi from manuka and reeds and float downriver with their bounty. In later times, canoes were used to bring down bales of wool from farms upriver to the mouth of the Mohaka. Prior to the earthquake, schooners could enter the mouth of the

river making this area an important distribution and staging post” [Wai 119 #B8 p.6, “Attachment 12”].

41. I note for completeness the Waitangi Tribunal’s statement in the Mohaka River Report (1992) that: “On the evidence, it appears to us that the Mohaka is not a navigable river in terms of the legislation” (Excerpt, at page 53, attached as “**Attachment 19**”).

#### ***Waihua River in CMA***

42. I conclude that the information I have so far collected does not allow me form a view on whether or not the Waihua River is navigable from the mouth of the river to the boundary of the CMA.
43. In the near future, once research at archival repositories has been completed, I hope to reach a clearer view on this issue and provide further evidence to the Court.
44. The mouth of the Waihua River is indicated by the yellow dot on the Waihua River aerial photograph in “Attachment 2”. The boundary of the CMA is indicated by the red dot located a short distance upstream. The distance between the two points is approximately 300 metres.
45. I also attach at this stage, as “**Attachment 20**”, an aerial view of this portion of the river taken from the “Google Earth” website.

#### ***Waikari River in CMA***

46. I conclude that the information I have so far collected does not allow me form a view on whether or not the Waikari River is navigable from the mouth of the river to the boundary of the CMA.
47. In the near future, once research at archival repositories has been completed, I hope to reach a clearer view on this issue and provide further evidence to the Court.
48. The mouth of the Waikari River is indicated by the yellow dot on the Waikari River aerial photograph in “Attachment 2”. The boundary of the CMA is indicated by the red dot located a short distance upstream. The distance between the two points is approximately 450 metres.
49. I also attach at this stage, as “**Attachment 21**”, an aerial view of this portion of the river taken from TUMONZ (a mapping software package).

**DATED** at Wellington this 12<sup>th</sup> day of October 2007.

A handwritten signature in black ink, appearing to read 'James Brent Parker', written over a horizontal line.

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James Brent Parker  
Senior Historical Researcher