

GEOGRAPHIES OF SETTLER COLONIAL DISPOSSESSION:
REJECTING GOLD AND PROSPERITY ON TSILHQOT'IN TERRITORY

by

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Abstract

My objective in this thesis is to trace how mining laws politically inscribe Indigenous space and territory. In doing so I situate gold mining regulations as central to Canadian settler colonialism and the legal dispossession of Indigenous land. I examine the origins of British Columbia's mineral staking regulations and juxtapose historical regulations with those today in order to outline two distinct, but comparatively relevant moments. The first moment is the writing of mining laws in 1858 and 1859, during the formation of the region as a settler colony. I illustrate how the British Crown enacted a system of free entry mineral staking that negated Indigenous sovereignty over resources. The dispossession of land was central to the functioning of colonial mining regulations, and reveals this regulation was and continues to be complicit in reproducing uneven geographies. The second moment is in the contemporary era, and focuses specifically on a mining company's New Prosperity copper-gold mine proposal on Tsilhqot'in territory at Teztan Biny (Fish Lake). I outline how the environmental assessment process for this mine gave limited but significant space to Indigenous people as participants and decision makers. The mine was rejected based on a panel report written through the guidelines established in the Canadian Environmental Assessment Act. This rejection represents a major victory for the Tsilhqot'in, who remain adamantly opposed to mining at Fish Lake. This decision, though, still rests within the colonial legal framework, and is not a sovereign decision by the Tsilhqot'in. Ultimately, I argue that the dispossession of land is a central tenet of how mineral regulations function through an examination of the everyday enactments of resource regulation, and the resultant resistance, rejection, and refusal of Indigenous people to accept settler colonial terms of engagement. In contemporary Canada these terms of engagement, including environmental assessment, are couched in the politics of recognition and reconciliation that fail to address the fundamental property relation mechanized through Western legal structures.

Preface

A version of Chapter 5 is forthcoming *Environment and Planning D: Society and Space* and the rest of this dissertation is unpublished. It is an independent work by the author, Dawn Hoogeveen. Research was approved by the UBC Behavioral Research Ethics Board: Certificate number H13-00399; Principal Investigator: Dr. Juanita Sundberg.

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Chapter 1: Introduction

In December 2013, a delegation of Tsilhqot'in people travelled from their lands in British Columbia's interior to Vancouver, to participate in what they termed a "mass dance ceremony." At that point, the Tsilhqot'in had spent years defending Fish Lake from the threat of an open-pit copper-gold mine proposed by Taseko Mines Limited (TML). In downtown Vancouver on a rainy, bustling Friday before Christmas, two hundred Tsilhqot'in people, friends, and allies marched from the Vancouver Art Gallery to Taseko Mines Limited's head office on West Georgia Street. There, a dance ceremony was performed that blended the Tsilhqot'in hip-hop talents of Vancouver-based Rebecca Solomon with traditional Tsilhqot'in singing. Dancers wore blue blankets that represented water and performed on the mining company's doorstep. This was just one of the many demonstrations held in support of the fight to save Fish Lake from mining development and particularly Taseko's Prosperity copper-gold mine. This ceremony can be read as an assertion of Indigenous Tsilhqot'in sovereignty over their lands, resources, and particularly the sacred lake known as *Teztan Biny* (Fish Lake). The ceremony was in many ways about rejecting a mine and resisting a mining company. The representation of water also illustrated that the Tsilhqot'in continue to govern their resource and that it is not for a mining company to decide how to manage Tsilhqot'in waters.

The New Prosperity mine proposal was rejected on February 26, 2014, marking the second formal rejection of the open-pit copper-gold mine proposal by both the Tsilhqot'in and the Minister of Environment and Cabinet that was based on an assessment of findings by a federally appointed panel through Canada's environmental assessment process. Though the Fish Lake mine proposal dates back to the 1990s, mineral rights were legally alienated from the Tsilhqot'in well before then, as I detail further in this work. This alienation took place through

the province's mineral staking system, which builds on colonial-era legislation authorizing the claiming of minerals without the consent of groups with competing claims to land use. This legislation is based on the free entry principle, which allows miners to stake claims and functions under the assumption that resource extraction is the highest and best use of land. Mineral staking is at the very root of conflicts over territory between mining companies and municipalities as well as First Nations, and it represents a pressing current public interest (Stano & Lehrer, 2013).

This dissertation situates gold mining regulations as central to Canadian settler colonialism and the legal dispossession of Indigenous land. Dispossession is the removal of ownership—possession—from one individual person or collective by another. The *Oxford English Dictionary* defines the verb *to dispossess* as to “deprive someone of something that they own, typically land or property.” The origins of the word are traceable to Old French, in which *des* expresses reversal of *possessor*—to ‘possess.’ Dispossession therefore presupposes a prior Lockean possession of something, such as land, labour, water, or another natural resource, like gold. Dispossession is a concept I use to determine what, in stark terms, may be referred to as the theft of land (and sub-soil assets) from Indigenous people through both the law and state governance. Despite this stark definition, the spaces in between liberal understandings of possession on the one hand and dispossession on the other are often blurred. The Tsilhqot'in peoples' tactics may be understood as ones that resist assimilating into the polarizing dispossession framework, in that though their lands, and particularly the mineral rights at Fish Lake may have been alienated long ago, the Tsilhqot'in, like many other Indigenous nations, continue to reject the terms of this attempted dispossession. It is the violence of primitive accumulation that *creates* possession in the form of private property, or a mineral right to be claimed from mineral exploration interests in the first place. Although I use the language of

dispossession (since Indigenous communities do and this is the language used in Indigenous and settler colonial studies) it is imperative to note that the counter to dispossession is not usually articulated as a mere re-possession, in the form of a property right. The counterpoint to dispossession is more often to reinstate the relational forms of authority and jurisdiction that structure Indigenous people's relationship with land, their citizens, neighbours, and more-than-human relations.

My objective in this work is to trace how mining laws politically and legally inscribe Indigenous space and land. I do so by examining the history of mining regulations in the period of British colonialism and in the present. I outline two parallel but distinct moments in British Columbia's regulatory history that involved threats to Indigenous claims to land. The first moment is the writing of mining laws in 1858 and 1859, during the formation of the region as a settler colony under British authority. The era British Columbian settler historians technically call the "colonial era" ended when British Columbia joined Confederation in 1871. As I illustrate, the British Crown enacted a system of mineral tenure that negated Indigenous sovereignty over land. Both mining law and the process of staking mineral claims authorized the legal dispossession of lands by allowing properties to be transferred through or by the Crown to mining companies. The dispossession of land was central to the functioning of colonial mining regulations, and it reveals how mineral regulation was and continues to be complicit in reproducing uneven geographies.

The second moment moves my research into the contemporary era, and focuses specifically on Taseko's New Prosperity copper-gold mine proposal. I outline the regulatory environment including the system of mineral tenure, including the Mineral Tenure Act as well as the environmental assessment process, which gives limited space to Indigenous people as

participants and decision makers. As noted above, the Canadian Minister of the Environment and Cabinet rejected the New Prosperity mine on February 26, 2014. The decision was based on a panel report written through the guidelines established in the Canadian Environmental Assessment Act. This rejection represents a major victory for the Tsilhqot'in, who remain adamantly opposed to mining at Fish Lake. This decision, though, is still limited as it rests within the colonial legal framework, and is not a sovereign decision by the Tsilhqot'in. Further, the decision did not result in the redrafting of the mineral rights policies themselves.

There are significant differences between the temporal moments I address from British Columbia's colonial era to the recent past. In the 1860s, environmental assessment was unheard-of. Though mining environments, in both a physical and regulatory sense, have changed dramatically, I argue the regulatory principles in contemporary Canada remain steeped in the same ideologies that were present in pre-Confederation British Columbia. In analyzing these two distinct time periods, my goal is to demonstrate that attempts to dispossess Indigenous lands remain ongoing through resource extraction and, more specifically, the regulatory regime. Despite the rejection of the New Prosperity mine proposal, the regulatory system lacks meaningful mechanisms for obtaining consent *prior* to the mineral staking stage.

This dissertation frames settler colonial dispossession as a useful lens of analysis for explaining conflicts over territory instigated by the extractive industries' capital-based economic priorities. I trace dispossession to the foundational period in British Columbia's history when mineral staking legislation was first written in 1858 and 1859. Regionally, this is when land materially became commodified and was turned into a thing to be traded and leased by the Crown for mineral staking purposes. For theorists like Patrick Wolfe, "settler colonies were not primarily established to extract surplus value from indigenous labor" but were "premised on

displacing indigenes from (or replacing them on) the land” (Wolfe, 1999, p. 1). In settler colonies, Wolfe writes, “the colonizer comes to stay—invasion is a structure not an event” (Wolfe, 1999, p. 2). The structural elements of the colonial relationship have created struggle for Indigenous people in Canada, who continue to fight for their lands, like the case at Fish Lake. For Glen Coulthard, “the settler-colonial relationship is one characterized by a particular form of *domination*; that is, it is a relationship where power ... has been structured into a relatively secure or sedimented set of hierarchical social relations that continue to facilitate the *dispossession* of Indigenous people of their lands and self-determining authority” (Coulthard, 2014b, pp. 6, 7). Hence, the structural displacement of Indigenous people has become a defining tenet of settler colonialism. In what follows, I outline how this structural displacement works in mining regulations and how regulations are based on the thingification of land in the past and present.

The commodification of land is embedded in settler colonial ideologies that continue to underwrite contemporary mineral regulations, including the federal environmental assessment process in Canada. Yet within and outside state-sanctioned environmental assessment, Indigenous people like the Tsilhqot’in individually and as a nation push back, resist, and reject development on other people’s terms and the assumed legal authority of British Columbia and the Canadian state. The rejected mining proposal at Fish Lake, for instance, highlights that settler colonial dispossession is necessarily an incomplete process because it is continually resisted. This argument follows anthropologist Audra Simpson’s work, which rejects or refuses the notion that settler colonialism is totalizing as presented in literature concerning both settler colonialism and dispossession (see also Brown, 2014, on rejecting settler colonial dispossession). I demonstrate how the Tsilhqot’in may be understood to refuse settler colonialism through their

declarations of sovereignty and actions both inside and outside state-sanctioned processes, like the dance ceremony at the Taseko Mines Limited head office, or their participation in lengthy environmental review procedures.

The idea that settler colonialism can be simultaneously a successful project and an ultimate failure underpins, in part, the theoretical trajectory of my thesis. At Fish Lake in Tsilhqot'in territory, dispossession is unrealized. Throughout this dissertation, mining laws are presented as an incomplete project in that they fail to *eliminate* or *address* Indigenous claims to resource sovereignty. Today's environmental assessment may allow for or stop resource extraction projects, but it fails to address the question of Indigenous resource sovereignty. Instead, Indigenous people are included as so-called stakeholders within environmental assessment, which in some ways serves to legitimize the state's power to establish the terms for recognition. In other words, though Indigenous people are 'recognized' as claimants to the land this does little to transform the power imbalances that fundamentally structure the relationship. Recognition diverges attention from what is actually at stake, which is the right to land, governance, and jurisdiction. Though environmental assessment may not be put into place in order to address sovereignty over resources, because sovereign tensions exist from earlier in the regulatory process, they are exacerbated during the environmental assessment process.

Recognition and reconciliation are two concepts that have been used to frame the contemporary political relationship between the Canadian state and First Nations. This is the case in the Truth and Reconciliation Commission that addressed residential schools, for example, and is also discussed in light of environmental assessment. Discourses of recognition have been analyzed including by Joanne Barker (2011) and Glen Coulthard (2007, 2014b). As Coulthard argues, violence is reproduced through the maintenance of reconciliatory politics that do not

address the fundamental asymmetrical power relations that structure Canada as a settler colony. Coulthard points out that recognition and decolonization are necessarily in tension, since in order to be recognized by the state or institutional apparatuses more generally, it is first necessary to play by the rules of the colonizer. Though notions of recognition and reconciliation do not form the centre of my analysis in this thesis, they are somewhat inescapable within the political climate in Canada as the federal government moves to mend relationships with First Nations people using these concepts.

The problem at the heart of this dissertation is that gold mining regulations, including those that have guided the process for the New Prosperity mine proposal, continue to authorize the alienation of minerals; these attempts at dispossession are actively resisted and rejected, and they remain *de facto* unrealized at Fish Lake on Tsilhqot'in territory. This un-realization implies that despite settler colonialism as a structural apparatus, settler colonialism is rejected in a variety of forms, including through state based mechanisms such as environmental assessment. The theoretical frame I use in this dissertation lies at an intersection between understandings settler colonialism dispossession and reading claims to Indigenous resource sovereignty. Thus, the objects of critique are the mining sector's legal governance structures and a specific geography of unrealized dispossession at Fish Lake, where the Tsilhqot'in claim they have never ceded or surrendered their territory. I highlight that the property relation and transfer of subsurface land rights at the mineral staking stage dispossesses, or legally alienates (often Indigenous) lands well before any environmental assessment or mine project is proposed. This hinges upon the bottom line that Indigenous resource sovereignty is negated through regulatory procedures that govern mining. In this thesis, I detail how mineral regulations functioned historically in order to illuminate one of the fundamental problem that faces the mining and

minerals industry today, which is that of First Nation opposition to resource projects, rooted in territorial conflict.

Understandings of property (and thus possession) are deeply rooted in the liberal tradition (Hoogeveen, 2008; Hoogeveen, 2014b) and liberal ideologies of property make apparent the dispossession of Indigenous lands. Despite deconstructive or post-structural critiques of property and possession (Blomley, 2013; Rose, 1994; Singer, 2000), the problem remains that the Crown enacts a system of mineral tenure (known as the Mineral Tenure Act in British Columbia) that continues to manifest in ways that delegitimize Indigenous claims to land. I suggest that the dispossession of land is a central tenet of how mineral regulations function, and reveal how mineral regulations are complicit in reproducing uneven geographies. It is the meta-problem of the dispossession of Indigenous land that motivates this work, the everyday enactments of this dispossession, and the resultant resistance, rejection, and refusal of Indigenous people to accept colonial terms of engagement. In contemporary Canada these terms of engagement, including environmental assessment, are couched in the politics of recognition and reconciliation that fail to address the fundamental uneven geographies produced through legal structures.

1.1 Approaching Research in Tsilhqot'in Lands: Methods of Engagement

My approach to understanding mining regulatory regimes and environmental assessment includes an attempt to place Indigenous resource sovereignty, particularly over Teztan Biny (Fish Lake) and the Nabas area in Tsilhqot'in territory, at the centre of analysis.

Methodologically, I reached the theoretical end that informs this dissertation through two main methods of data collection: archival research and work with the Tsilhqot'in Nation during and after the Canadian environmental assessment hearings regarding Taseko's New Prosperity

copper-gold mine. This research included the establishment of a volunteer agreement with the Tsilhqot'in National Government. A volunteer or community agreement exists outside of the tropes of participatory research or ethics review boards, and is quite different than performing interviews or doing ethnography.¹

By approaching the Tsilhqot'in Nation as a researcher, a space emerged where I was invited to sit as an observer of the Canadian environmental assessment community hearings for the New Prosperity mine proposal in the community of Xenigwet'in. I also attended hearings in Williams Lake. The official transcripts of the Canadian environmental assessment hearings provide a primary source of data that I draw on throughout this thesis, particularly in the latter chapters on Fish Lake and the New Prosperity mine proposal.

My experience working within the realm of mining justice movements also informs this work; unlike communities that become divided over resource development, the fight to assert sovereignty at Teztan Biny and to reject Taseko Mines Limited's New Prosperity proposal remains unanimous within the Tsilhqot'in National Government and leadership. Rather than drawing on interviews with Tsilhqot'in people, my methods have at least partially sought to address the material products of social change in an attempt to give back through volunteer work, like writing media articles. By performing volunteer work sought to support the struggle to save Teztan Biny. I built relationships during the duration of the research, which might have been impossible had I relied on more traditional modes of research, like formal interviews.²

Throughout the research, I have questioned my use of settler colonialism as a framework in a desire that my work not be read as merely ideological. Alfred and Cornthassel write, "there is

¹ This research was approved by the UBC Behavioral Research Ethics Board: Certificate number H13-00399

² This decision was based on discussions with the mining manager at the Tsilhqot'in Nation and a committee member, and on my previous experience performing interviews in a resource town in the Northwest Territories.

a danger in allowing colonization to be the only story of Indigenous lives” (Alfred & Corntassel, 2005). They warn against overdetermining Indigenous lives through the lens of colonialism. Colonialism or settler colonialism, when called on to explain the past or the present ought to be drawn on carefully, so as not to appear as a universalizing claim. Tuck and Yang (2012) make the powerful statement that “decolonization is not a metaphor,” which compliments Alfred and Corntassel’s warning against deterministic references to colonialism. In Tuck and Yang’s paper, they illuminate a series of “moves,” arguing against “settler moves to innocence” and the domestication of decolonization: “When metaphor invades decolonization, it kills the very possibility of decolonization: it re-centres whiteness, it resettles theory, it extends innocence to the settler, it entertains a settler future” (Tuck & Yang, 2012, p. 3). They point to moves to “reconcile settler guilt” by, for example, locating or inventing a long-lost Indigenous relative.

In calling on decolonization my intent is not to use this framework as a potential “settler move to innocence.” As Andrea Smith acknowledges people (radical scholars, activists, etc.) should be thinking about how to do work within systems, or a world in which we are complicit in white supremacy, settler colonialism and heteropatriarchy (2013). Despite problems with autobiographical and positionality statements and the potential for settlers to draw on decolonization as a theoretical framework or otherwise, to extend innocence upon themselves, I wish to situate myself within this work. I do this not to become innocent, nor to re-centre whiteness, but so readers have an understanding of where I come from and how I came to study a rejected mine on Tsilhqot’in lands.

1.2 Querying Reflection and Positionality in Anti-Colonial Research

Feminist geographers have provided useful tools for enacting reflexive research strategies particularly in terms of praxis and positionality (Rose, 1997; Kobayashi, 2003; Nagar & Geiger, 2007). Nonetheless, reflexivity remains on the margins of human geography more broadly.³ Reflexivity involves recognizing that all knowledge is situated and partial. Gillian Rose has written about reflexivity as an ideal (2007) and is provocative in her acknowledgement that reflexivity necessitates acknowledging failure. This failure is based in a paradoxical recognition that the role of an academic is already one of privilege. Despite the privilege inherent to an academic position, Rose urges feminist geographers to continue to address power and knowledge production. Recognizing the partiality of knowledge is particularly significant when approaching research with, for, or ‘on’ Indigenous people.

Perhaps the most well-known book on Indigenous methodologies, which was written by Linda Tuhiwai Smith, begins by suggesting that research is necessarily tied to imperialism and colonialism (1999). With this in mind, I approach to reflexivity with the intention of tracing my role and methods as a researcher within this dissertation research. Reflexivity can be defined as a “practice of being self-aware,” as all knowledge is situated (Haraway, 1988). Reflexivity implies that knowledge is contextual and relational, based on the social identity of the researcher and their positionality. Positionality also involves the acknowledgment not only that knowledge is partial but that individuals (particularly researchers) construct their own geographies (Rose, 1997). Therefore, outlining the approach I took to my research topic is one important way to situate myself in my research. I have chosen to position my journey as a way of introducing the methods and the subject matter for this study.

³ Many thanks to Jessica Dempsey for discussions on this topic.

Feminist geographers suggest reflections on positionality are a mode of analyzing axes of social difference like sexuality, gender, race, and class (Nagar & Geiger, 2007). Nagar, with Geiger, has written about exercises in self-reflexivity and has problematized positionality statements. They argue that positionality and identity have reached an impasse because of how they recenter the identity of the privileged researcher.⁴ Nagar & Geiger (2007, p. 267) ask “how the *production* of knowledges can be tied explicitly to a material politics of social change favoring less privileged communities and places.” In asking this question, they criticize how reflexivity has focused on researcher identities as opposed to how these identities intersect with the “institutional, geopolitical and material aspects of their positionality.” They question the place of the production of knowledge and the material politics of change. Knowledge production is complicated as identities are embedded in academic and institutional frameworks. Despite these complications, drawing on Helen Callaway, Nagar and Geiger suggest that reflexivity (closely related to positionality) is a radical consciousness of self in the politics of knowledge and fieldwork (2007). Nagar and Geiger call for a model of “speaking with.” In this way, they attempt to unravel the power relations inherent in academic researchers approaching people and communities.

Feminists like Richa Nagar have done much work to transform geography through interventions that re-inscribe and question the location of academics, and particularly geographers, within their research. Nagar’s collective book, *Playing with Fire: Feminist thought and activism through seven lives in India*, for example, was written collaboratively with the Sangtin Writers (2006). This book speaks to the role of academics in research and questions the

⁴ Andrea Smith, like Nagar and Geiger, has been critical of re-centring white privilege within self-reflexive exercises (A. Smith, 2013).

single-author mode of reporting by using a non-traditional method of dissemination that draws on a collective voice based on diaries, conversations, and interviews.

1.3 Archives, Activism, Expert Interviews

My approach involved two primary methods of data collection: archival work and work with the Tsilhqot'in Nation during and after the Canadian environmental assessment hearings. The empirical origins of my research on Fish Lake began at the *Shout it Out* Council for Canadians conference on June 1 and 2, 2012. This was the beginning of the research design for this thesis. The historical and archival elements are important to my approach and in January 2013, I spent a short week at the British Columbia archives and the legislative library in Victoria. Though a week is not a long time, my goal was not to locate the entire project historically. Rather, because of the significance of mining regulation in mid-nineteenth century British Columbia and the impact of historical colonial governance regimes on regulatory regimes today, I sought to better understand the time period and find the original pieces of legislation that led to the formation of British Columbia that continues to be largely premised on resource extraction.

I was able to see the primary documents that were used to record mining licenses in colonial British Columbia. Pictured here, for example, are the cover of a Free Miner's Certificate book, which held some of the first mining licenses issued from the colony, and the stub from a "Free Miner's License" to mine, issued by the gold commissioner H. Ball on October 30, 1859 (B.C. Archives, GR 0252 Box 12).

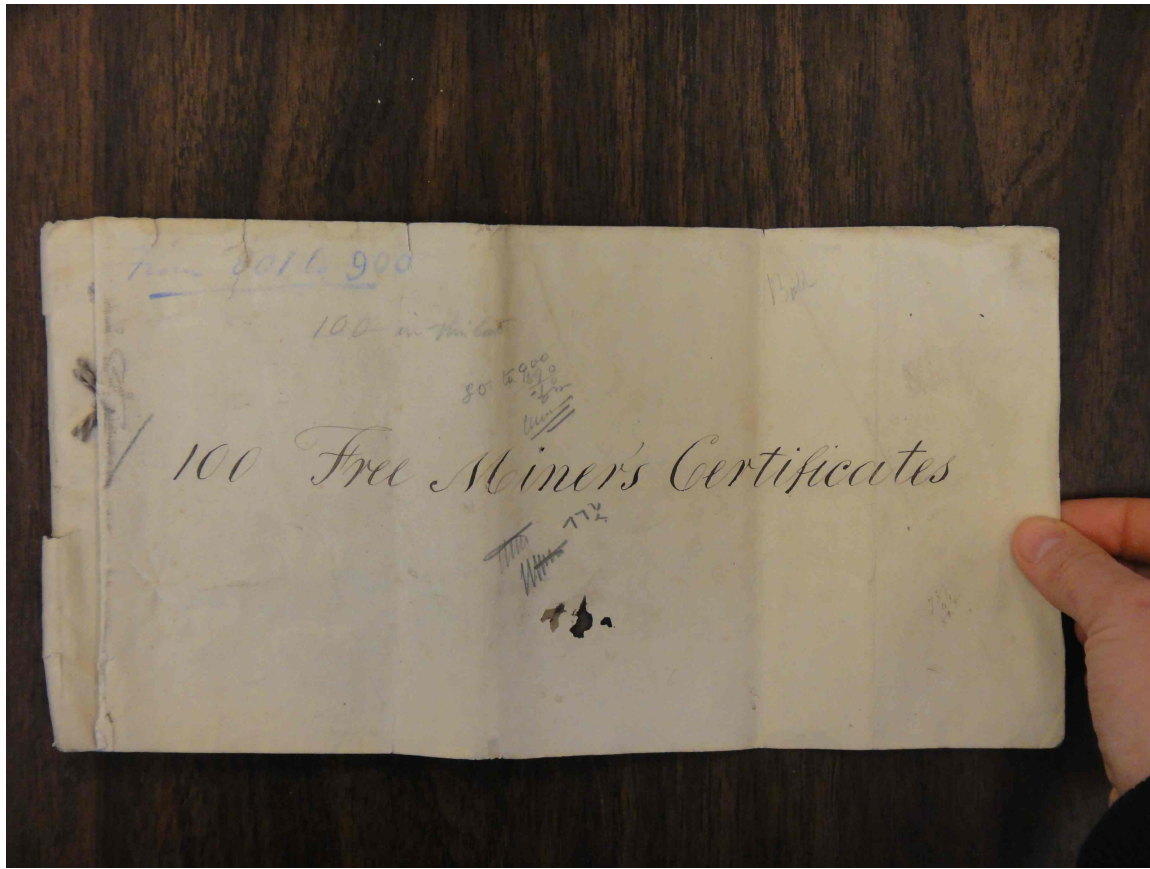


Photo 1: 100 Free Miner's Certificates

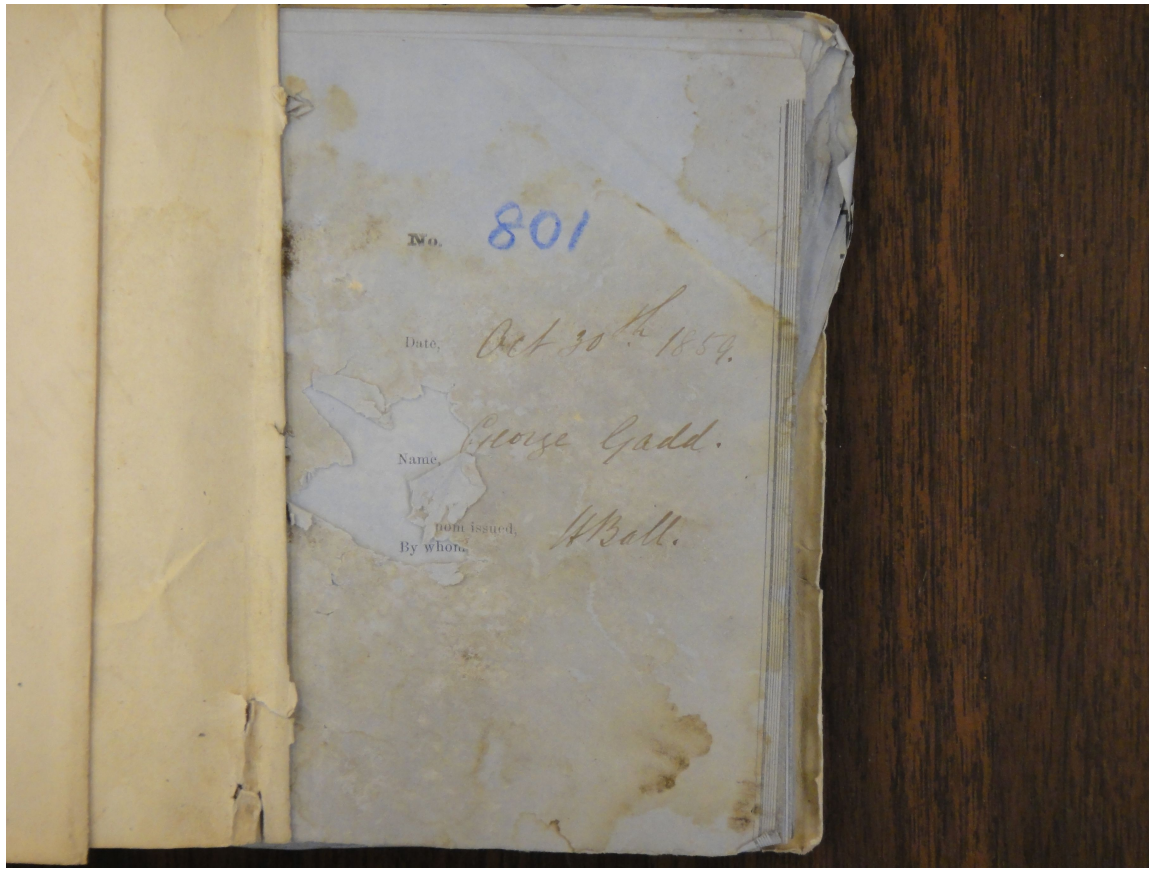


Photo 2: License no. 801, Signed by gold commissioner H. Ball

The materiality of these colonial records deepened my understanding of how legislation progressed during the colonial era that began in 1858. Not only did I research and find the first written records of mining laws in British Columbia, I was also privy to the scope of colonial contact at the time. To me, contact seemed like a small number of men, arriving in a very short period of time, making very large claims to ownership over Indigenous lands. Seeing these records provided a sense of how colonialism functioned administratively (with paper and pens) through the everyday forging of sovereign power. Actually holding the papers that enabled and substantiated the legitimacy to colonial governance aided my understanding of mining laws and how colonial power continues to function in the present.

The second phase of my research included establishing a volunteer agreement with the Tsilhqot'in National Government.⁵ I wrote a letter to the Tsilhqot'in Nation with the assistance of the Tsilhqot'in Nations mining manager (Appendix A). This included work via writing for the media—taking part in the active struggle to assert sovereignty over Teztan Biny. It is, I think, important for academic researchers, including geographers, to think about shifting from to collaborative approaches to doing research, as a mode of operating within the communities they research. This is not new or novel in geography. Feminist geographer Gerry Pratt's multi-year collaboration with the Filipino women's centre, for example, is testament of a very committed collaboration (Pratt, 2004, 2012).

I volunteered for the Tsilhqot'in National Government, and my agreement put terms around the work, like the number of hours I would dedicate to research and writing. I discussed drawing up a formal research protocol agreement, but since I was not doing interviews with Tsilhqot'in people, my work did not require a formal permit. My project relies on data available on the public record, and I chose a collaborative research strategy as opposed to relying on what Spivak refers to as “native informants” (Spivak, 1999). I did get appropriate ethics clearance to do interviews around the environmental assessment process, the New Prosperity Mine proposal, and mining regulations (see Appendix B). My volunteer offer led to a commitment to disseminate the Tsilhqot'in's fight to defend their territory through mainstream writing.

I was involved in organizing actions as well as academic events that brought Tsilhqot'in people to speak at UBC through the Liu Institute Settler Colonial Studies Group. In the year that followed my volunteer agreement, I published articles on the Tsilhqot'in struggle to assert

resource sovereignty and decision making over the mine at Fish Lake for Canadian publications including *Rabble* (2013a, 2013b), *Canadian Dimension* (2014), and *Briarpatch* (2014b).⁶ A short letter of mine in response to an op-ed was also published in the *Vancouver Sun*. The letter clearly states my position on the mine proposal:

Prosperity mine problems can't be fixed

Re: Vancouver Sun Editorial, Nov. 14, 2013

Taseko's new plan to prevent the draining of Fish Lake does not save the lake, the fish, or the surrounding area. The plan does not and cannot account for the cultural integrity and significance of Fish Lake to the Tsilhqot'in. The recent federal panel report clearly states the impacts on fish and culture cannot be mitigated. The New Prosperity proposal isn't about jobs, benefit sharing, or the Canadian economy. To frame it as such is an insult to indigenous self-determination and continues in the spirit of ongoing colonial attempts to dispossess indigenous land.

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1.4 Dissertation Outline

This research project is presented in five chapters. The next chapter, Chapter 2, outlines the theoretical trajectory of my work. I first ask how settler colonialism dispossesses and go on to outline the theoretical frame that guides my dissertation. I define the key terms of settler colonialism, dispossession, and refusal. Further, I explain how I understand Indigenous resource

⁶ In 2011 I also co-wrote an "Introduction to Canadian Mining Regulations" with Ramsey Hart at MiningWatch Canada (Hart & Hoogeveen, 2012). I reference this in order to demonstrate the sustained interest and research in mining regulations that informs this work.

sovereignty over Tsilhqot'in lands to be of central significance to my analysis. This understanding is central to my thesis, which critiques the history of mineral staking and environmental assessment today. In my discussion of Indigenous resource sovereignty, I provide details about the Tsilhqot'in Declaration of Sovereignty, first signed in 1984.

Chapter 3 situates key moments in Tsilhqot'in history in relation to the politics of resource extraction. The first is the Tsilhqot'in War of 1864. A main thread of the story of the Tsilhqot'in War is the rejection of settler attempts to build a road through Tsilhqot'in territory to the gold fields. In 2014, the 150th anniversary of the Tsilhqot'in War was marked with an apology by the province of British Columbia. This apology resonates with the politics of recognition, which I discuss further in Chapter 6, making it subject to a present-day critique of recognition and reconciliation. After my discussion of the Tsilhqot'in War, I shift temporal periods and outline the Nemiah Declaration, which has established a rejection of mining in the Nemiah Wilderness Preserve. The Xeni Gwet'in formed the preserve in 1989. The Nemiah Declaration was the first law declared on the Tsilhqot'in title land. Thus, Chapter 3 also summarizes the history of the Tsilhqot'in land title case that was decided at the Supreme Court of Canada in 2014. The court case is significant to colonial resource extraction efforts and Indigenous and Tsilhqot'in regional politics in the contemporary moment. Chapter 3 provides the necessary context for the environmental assessment hearings that took place in regards to Fish Lake. Before moving on to the issue of environmental politics, I present crucial historical material that is key to my focus on the dispossession of Indigenous lands and the significance of re-centring Indigenous resource sovereignty.

Chapter 4 maintains that today's Mineral Tenure Act is steeped in the logic of settler colonial dispossession that remains resisted and rejected. I provide evidence that this logic was

established in the colonial period, during the formation of British Columbia as a settler colony. This formative period, which encompassed the first Gold Fields Act, is intriguing because progressive environmental policy analysts today criticize free entry mineral staking, as established in the Mineral Tenure Act, as “archaic.” Chapter 4 outlines how the Mineral Tenure Act is based on historic principles. I show how nineteenth-century miners practiced the free entry principle on a day-to-day basis and assumed practical authority to govern lands. This presumed authority dismissed Indigenous claims to land. The everyday nature of mineral staking and the embedded principle travelled with the miners who came from the California gold rush to the Fraser gold fields in 1858. Racial structuring defined mining laws in the past, and the presumed superiority and legislative legitimacy of white settlers was inscribed into law. Chapter 4 articulates how mining laws and resource regulations are based on a social order that dismisses Indigenous resource sovereignty through a presumed authority to operate on lands that were claimed by the Crown. The lands claimed by the Crown were brought under its sovereignty through day-to-day activities, such as mineral staking. Chapter 4 questions the assumed legitimacy of Crown ownership of gold and the origins of this assumed legitimacy in British Columbia. This historical examination may at first appear to diverge from the politics of environmental assessment at Fish Lake. But in fact, Chapter 4 is key to my core argument about the (resisted) structural dispossession of Indigenous lands. It sets the stage for my analysis of Fish Lake in the Chapters 5 and 6.

Chapter 5 outlines the regulatory history relevant to the New Prosperity mine proposal. I also provide an analysis of the significance of the fish in Fish Lake and their apparent disposability. This involves a discussion of the Mining Metals and Effluent Regulation and an explanation of why the scientific understanding of fish matters. I argue that by rendering

Indigenous understandings of fish into mere technical knowledge, fish may only be accounted for within certain parameters, like through the lens of economic capital. Though the environmental assessment resulted in a rejection of the mine, technical renderings of fish illustrate how the assessment process still fails to account for understandings of fish and wildlife that exist outside the confines of state bureaucracy. However, Tsilhqot'in peoples, through statements made during the environmental assessment hearings, significantly rejected these technical renderings. This rejection was at times strategic and based on the representational politics required by the regulatory confines under which CEAA operates. By representational politics, here, I refer to the differing actors performing their roles as oppositional stakeholders.

Where Chapter 5 is about understandings of fish, Chapter 6 is about the politics of development, understandings of reconciliation, and the legal discourse of Indigenous politics within environmental assessment. I draw on data from the August 2013 community hearings that were a part of the federal environmental assessment process for the twice-rejected mine at Fish Lake. Here I discuss the differing understandings of aboriginal law in Canada and make the argument that settler colonial violence is often mediated through processes of environmental assessment, which avoids addressing Indigenous resource sovereignty and instead, enacts a politics of reconciliation. A concluding chapter follows in which I reflect on my methodological and theoretical approach and the parts of this project that I continue to find most inspiring.

Chapter 2: Settler Colonial Geographies of Dispossession

Colonialism survives in settler form. In this form, it fails at what it is supposed to do: eliminate Indigenous people; take all their land; absorb them into a white, property owning body politic. – Audra Simpson (2014, p. 7)

This chapter lays out the theoretical apparatus I use throughout this work. My lens is informed by settler colonial studies and geography literature that concerns dispossession. I define primitive accumulation and my understanding of settler colonial dispossession in order to offer a critique of the weaknesses of relying too heavily on accumulation by dispossession and imperialism as a way of explaining contemporary relations to land; my argument here gestures towards the spaces of dissent and rejection that exist for Indigenous people like the Tsilhqot'in when they are faced with a grounded attempt at dispossession. It also points to the irony inherent in the geographical nature of academic scholarship and theorists who study on what might be otherwise understood as dispossessed lands or unceded territories.

The theoretical specificity in this chapter lies at the intersection between theories of settler colonialism and Marxian of critiques dispossession. Primitive accumulation and accumulation by dispossession provide a starting point to explain Canadian mining regulations. The analytical approach used is distinguished from those associated with the accumulation by dispossession thesis (Glassman, 2006, 2007; Gordon & Webber, 2008; Hart, 2006; Harvey, 2005; Mansfield, 2007; Perreault, 2013; Prudham, 2007). I build on moves in settler colonial studies towards an analysis of the “logic of settler accumulation” (Brown 2014) that centrally includes analyses of how *land* figures within analyses of primitive accumulation (Coulthard 2014a, b; Nichols 2015).

In contrast with the accumulation by dispossession literature, I suggest that as much as dispossession of land is central to the colonial project, an understanding of settler colonialism is necessary for understanding dispossession in the context of Canada as well as in other settler colonial contexts such as Australia and New Zealand. Settler colonial dispossession is a useful lens of analysis to explain conflicts over territory instigated by the extractive industries' capital based economic priorities. Nevertheless, as Audra Simpson (2014) argues, settler colonialism is not complete. The successful resistance by the Tsilhqot'in to the Prosperity copper-gold mine at Fish Lake demonstrates how the settler colonial project remains resisted and ultimately refused. This literature, including settler colonial studies, is largely unexplored by scholars engaged in environmental politics and human geography. This represents a gap in geographic scholarly ways of knowing within the discipline (also discussed by Hunt, 2014). Unlike Indigenous geographies literature (Coombes, Johnson, & Howitt, 2012a, 2012b, 2014), settler colonial studies takes an anti-colonial approach and is regionally distinct from much of the seminal work around colonial geographies that focuses on the Middle East (Gregory, 2004).

2.1 How Does Settler Colonialism Dispossession?

Geographers have, however, demonstrated a sustained interest in colonialism, including in British Columbia. Cole Harris, for example, provides an analysis of how British Columbia's native reserves were structured by colonial dispossession (2004). Harris asks, "how does colonialism dispossession?" and provides a geographic analysis that ties colonialism to dispossession in "the geographical reorganization" of British Columbia through the reserve system. He argues that postcolonial discourse analysis effaces issues of power and particularly the significance of the reorganization and distribution of land. Harris discusses settlement and

the links to Marxian notions of labour power while recognizing that “the lives in [settler] stories, like the production of capital, were sustained by land” (Harris, 2004, p. 172). Harris’s work makes explicit ties between colonialism and dispossession.

Following Cole Harris’ questioning of how colonialism dispossesses, the key questions I address in this dissertation revolve around whether or not mining property laws and environmental assessment regulations, including the New Prosperity mine assessment at Fish Lake, may be usefully understood as a contemporary case of unrealized dispossession. One goal is to demonstrate how settler colonialism continues into the present day even though dispossession remains incomplete; I examine how settler colonialism continues to structure dispossession through mining property laws and environmental assessment regulations and treat settler colonialism as an unrealized project. By suggesting dispossession is incomplete this thesis privileges Indigenous agency and the push back against settler colonial state apparatuses including mining laws. I examine mining laws at two distinct moments in British Columbia’s regulatory history. In particular, I focus on the B.C. Gold Fields Act (1859) and the current Mineral Tenure Act (1996). In addition, I ask where Indigenous sovereignty is situated in the ongoing formation of settler Canada vis-à-vis resource laws.

The first question I address asks if contemporary mining laws, and particularly the principles enshrined in the B.C. Gold Fields Act (1859) and the current Mineral Tenure Act (1996), can be interpreted as a crucial mechanism of dispossession. As I elaborate below, my answer to this question is essentially, yes: mining law is rooted in and continues the act of dispossessing Indigenous lands.⁷ A foundational claim I make is that the transfer of mineral

⁷ Though a counter argument to this claim could be that land was alienated from Indigenous people in Canada through other legal mechanisms, since the Royal Proclamation, including the Treaty of Oregon, and later claims to British and then Canadian sovereignty, in many communities this throughout Canada this alienation has not been

ownership, from Indigenous lands to the state (in this case the provincial Crown) and then to mineral exploration companies, presents an inherent and ongoing contradiction since First Nations are generally not consulted at the mineral staking stage, nor were they consulted when the Crown claimed the land in British Columbia. Hence, dispossession is nested within the state-based rejection of Indigenous territorial claims. The burden of this contradiction, and the mechanism of dispossession present in the Mineral Tenure Act's mineral staking system, are realized through attempted (both failed, and successful) resource extraction projects. Throughout this work, I indicate that the tension or contradiction that occurs when mineral claims are granted to settler mining interests remains, like the settler colonial project itself, contested. Further to this, settler colonial power functions not just through dispossession, but also through the reconciliatory politics of environmental assessment—which suggests an auxiliary question as to how environmental assessment participates in the politics of recognition and reconciliation.

Another question addressed in this research asks where Indigenous sovereignty comes to be situated in the formation of settler Canada vis-à-vis resource laws. This question concerns the passing down of resource extraction principles through generations of regulatory changes. It also involves the claimed objectivity that is part and parcel of settler laws and the assumption that Crown sovereignty is legitimate.

I call for a broad re-imagining of sovereignty in order to prioritize Indigenous resource control—control determined by Indigenous people like the Tsilhqot'in—over settler attempts at colonial dispossession. The historical component of this project, for instance, explains how

fully realized, in that many Indigenous people, like some Tsilhqot'ins, continue to live on and from their land base. I write more about Treaty history in Chapter 3.

settler resource laws were written in order to expose differences and similarities between past and present settler colonial attempts at dispossession.⁸

Finally, I address what happens when dispossession is placed within the context of settler colonialism, especially through mining law and regulation. As I illustrate throughout this work, settler colonial dispossession operates in tension with the rejection and resistance of Indigenous nations, peoples, and communities. Significantly, this tension and rejection of settler colonial dispossession exists both within and outside of state-sanctioned processes, such as the environmental assessment process for the New Prosperity mine proposal at Teztan Biny on Tsilhqot'in territory, the site where I ground the rejection of resource dispossession. The Tsilhqot'in Declaration of Sovereignty and the Nemiah Declaration counter the settler narrative of resource regulation, as does the Supreme Court of Canada decision discussed in the following chapter.

The temporal scale of analysis shifts throughout the following chapters, from the regulatory regimes of the past when environmental assessments were unheard of, to those of the present. As I indicate, property law embedded in mineral staking regimes continues to lack mechanisms that allow for Indigenous consent; it thus remains troubled and continually leads to territorial conflict that perhaps, if re-imagined, could ultimately be avoided through an overhaul of the free entry principle. Environmental assessment does not address Indigenous resource sovereignty. In a regulatory sense, consent should be sought at the very beginning of mineral

⁸ I do this in Chapter 4, where I address the historical conditions under which mining laws came to be written. I am unsatisfied with the lack of Indigenous agency my recollection of the writing of settler laws allows, but I nevertheless believe that by focusing on this era of settler law, I justify how contemporary resource regulation functions on an incredibly uneven playing field that privileges settler society and marginalizes Indigenous people and Indigenous ways of knowing. Thus, while the historical element of this research could be criticized for focusing too strongly on the settler narrative, my thesis relies on an understanding of how settler resource laws in the past came to function, in order to better explain the colonality of the inheritance of present-day resource regulation.

claim staking processes, but even if that were the case, fundamental property rights would remain troubled from the onset because land was granted to the Crown without treaties in most of British Columbia, including Tsilhqot'in territory.⁹

I examine some of the problems that occur when consent is not sought at the mineral staking stage and sub-surface rights are alienated from Indigenous interests at the very first stage of mineral exploration. The unfolding of two Canadian environmental assessments at Teztan Biny, where the Tsilhqot'in did not (and do not) want a mine, demonstrates this lack of regulatory foresight and its embedding in ideals based on the dispossession of Indigenous lands. This lack of foresight was structurally embedded with regards to the ongoing failure of the state to recognize the significance of Indigenous consent in British Columbia's mining regulatory system. Nevertheless, these mining proposal rejections remain extremely important victories given the contextually oppressive system within which resource regulation operates.

2.1.1 Settler Colonialism

Though colonialism need not always be a lens for critique, settler colonialism is of crucial importance in discussions of the geographies of resource extraction in Canada. Contemporary readings of primitive accumulation such as Harvey's (which I turn to soon) can be discussed in light of the settler colonial condition in order to expose how *settler colonialism dispossesses*. For theorists like historian Patrick Wolfe, "settler colonialism destroys to replace" (Wolfe, 2006, p. 388). For Wolfe, settler colonialism is based on elimination: "Settler colonies were [are]

⁹ Scholars may point out the supra-regulatory agreements such as Impact Benefit Agreements (IBAs) that in some cases, like in Canada's northern diamond mines, have provided revenue and benefits to Indigenous nations. But these agreements are made in an incredibly uneven fashion, with some mines engaging in IBAs and others not. Further, they fail to create any mechanism of consent at the mineral-staking stage and thus surface as an afterthought, neglecting Indigenous decision-making power over sub-surface resources. In short, IBAs do not privilege place-based politics, Indigenous self-determination, or Indigenous resource sovereignty.

premised on the elimination of native societies.” Further to this elimination, as Scott Morgensen suggests,

Settler colonialism directly informs past and present processes of European colonization, global capitalism, liberal modernity and international governance. If settler colonialism is not theorized in accounts of these formations, then its power remains naturalized in the world that we engage and in the theoretical apparatuses with which we attempt to explain it.

He argues that western law “incorporates Indigenous people into the settler nation by simultaneously pursuing their elimination” (Morgensen, 2011b, p. 53). Similar to Wolfe’s use of replacement, elimination can be read as symbolic or figurative as opposed to totalizing; it remains significantly rejected in Indigenous-led protests as well as in scholarly literature in settler colonial contexts (A. Simpson, 2014; Tuck & Yang, 2012).

Settler colonial studies is a field that has gained much traction (Banivanua-Mar & Edmonds, 2010; Barker, 2012; Morgensen, 2011a, 2011b; Preston, 2013; A. Simpson, 2014; Veracini, 2010, 2011; Wolfe, 1999, 2013). Though there is a body of work that engages with colonialism and dispossession, fewer analyses position dispossession squarely in conversation with settler colonialism, though notable exceptions to this exist and continue to emerge, particularly in the work of Coulthard (2014a, 2014b) and Brown (2014), for example. My frame builds on Coulthard’s claim that primitive accumulation must be stripped from its temporal character. Similar to De Angelis’ intervention around the ongoing nature of primitive accumulation (2001), Coulthard insists that dispossession is ongoing. One key difference in the

argument on temporality in relation to primitive accumulation that Coulthard makes, is unlike De Angelis, he draws on Wolfe's emphasis on how land and territory are central to the settler colonial project. This is crucial in that the acquisition of Indigenous territories plays a primary role within settler colonial politics.

Another key intervention in settler colonial studies that focuses on primitive accumulation is Nicholas Brown's work on settler accumulation. Brown asks, "[In moving] beyond Marx, what happens to primitive accumulation when we stop assuming that dispossession was successful and instead start from the conviction that settler colonialism is, in part, a failed project? By denaturalizing dispossession, in other words, how does settler colonialism destabilize and modify theories of primitive accumulation?" (2014, p. 6). Brown suggests settler colonial studies literature is helpful in understanding the push back on analyses of dispossession that may tend to look at the concept through a structurally polarizing lens. The mine I discuss that was rejected on Tsilhqot'in territory was, in simple terms, not "dispossessed." However the push and pull between the attempted opening of the mine and the underlying structure of the Mineral Tenure Act that is in place allow for space to illuminate *how* dispossession remains a relevant configuration in understanding the complexities of state power in facilitating decisions around resource extraction projects in Canada.

2.1.2 Dispossession

Taseko [Mines Limited] took its name from the second largest lake in Tsilhqot'in territory, Dasiqox Biny ... It then proposed a mine site only kilometers from this precious watershed. Taseko wrongfully appropriated this name from the Tsilhqot'in people in the same way it tried to appropriate and exploit some of our most critically important lands for a massive open-pit mine.

Chief Russell Myers-Ross (Tsilhqot'in National Government, 2014)

Chief Myers-Ross, leader of one of the six Tsilhqot'in communities (Yunesit'in) and one of the two communities located closest to Teztan Biny, notes how the mining company appropriated a name. Taseko Mines Limited (TML) proposed the New Prosperity mine. Taseko is the name of a Tsilhqot'in lake, called Dasiqox (Taseko) Biny (Lake) in the Tsilhqot'in language. According to many Tsilhqot'in, the name itself is stolen. In this sense, attempts at dispossession—and dispossession itself—are much broader than the physical disappearance of minerals. They include the appropriation of place names and the attempted extraction of not just copper ore, but also plants, animals, and bodies. The concept of dispossession serves as a complex pivot point, and one that conjures considerable tension, in order to further understand the push and pull between settler colonial state sovereignty and Indigenous sovereignty and thus control over land.

The critique of dispossession in human geography is largely associated with David Harvey's idea of accumulation by dispossession. In this section, I recount the notion of accumulation by dispossession, as argued by Harvey. Given that Harvey builds on Marx, I first outline Marx's understanding primitive accumulation. This summary of primitive accumulation

is by no means exhaustive; rather it is merely intended to set the stage for my subsequent discussion of accumulation by dispossession. After defining primitive accumulation and relevant arguments within this vast literature, I discuss how others have used the idea of accumulation by dispossession in different contexts, especially in relation to resource extraction. This leads me to show how accumulation by dispossession has been disconnected from settler colonialism and how it occludes the politics of refusal. This is not to say that there is not space for resistance given within the accumulation by dispossession literature, for that would be inaccurate. Yet I argue that it is crucial to reconnect settler colonialism to the power dynamics latent in discourses surrounding accumulation by dispossession, and further, that settler colonial dispossession is resisted and rejected, particularly by the Tsilhqot'in in the case of the mine proposal at Fish Lake. As mentioned, this is particularly complicated by the role of the state in facilitating decision making around resource extraction, as I explore further in the latter chapters.

2.1.3 Primitive Accumulation

Primitive accumulation, according to Marx, is “nothing else than the historical process of divorcing the producer from the means of production” (Marx, 1976, pp. 874–5). But what, precisely does this mean and how has it been taken up in subsequent literature? This divorce that Marx refers to was at a time in English history when a transformation from feudalism to capitalism took place. This is clear in the following passage that references the “old feudal arrangements”:

The immediate producer, the labourer, could only dispose of his own person after he had ceased to be attached to the soil and ceased to be the slave, serf, or bondsman of another.

To become a free seller of labour power, who carries his commodity wherever he finds a market, he must further have escaped from the regime of the guilds, their rules for apprentices and journeymen, and the impediments of their labour regulations. Hence, the historical movement which changes the producers into wage-workers, appears, on the one hand, as their emancipation from serfdom and from the fetters of the guilds, and this side alone exists for our bourgeois historians. But, on the other hand, these new freedmen became sellers of themselves only after they had been robbed of all their own means of production, and of all the guarantees of existence afforded by the old feudal arrangements. And the history of this, their expropriation, is written in the annals of mankind in letters of blood and fire (Marx, 1976, p. 875).

There is much that can, and has, been written about this passage outside of my reference to the historical character. The closing statement quoted, about the brutality of the history of primitive accumulation, is a point that remains relevant today, and exists outside of what Marx refers to as the “classical form” of primitive accumulation. Brutality and violence is central to all sorts of primitive accumulation strategies. For the time being my purpose is to clearly define what Marx and later thinkers mean in reference to primitive accumulation. For Marx, primitive accumulation implies the divorce of the labourer from their means of production. In his analysis, this divorce, again, was a brutal one and this violent nature is still reported as a significant today, when primitive accumulation is used as a tool to explain relationships in contemporary human environments. In the final chapters of this dissertation, I draw on the hearing transcripts from the New Prosperity mine proposal hearings, and the brutality involved in the attempt to open a mine where, in this particular case, it is clear in terms of the proposed re-designation of fish and lakes.

So, even though dispossession of the land at Fish Lake has been resisted, the violent and brutal character of dispossession can still be seen through the attempted opening of this copper-gold project.

Put simply, the key elements of dispossession for Marx rely on the i) divorce of the labourer from his means of production; ii) include a violent character, based on the transformation to a capitalist economy; iii) can be wide in geographic scope, but has only existed in a classical form in England. For more on this geographical disparate nature of primitive accumulation and the classical English character, I draw once again on Marx.

In the history of primitive accumulation, all revolutions are epoch-making that act as levers for the capital class in course of formation; but, above all, those moments when great masses of men are suddenly and forcibly torn from their means of subsistence, and hurled as free and “unattached” proletarians on the labour-market. The expropriation of the agricultural producer, of the peasant, from the soil, is the basis of the whole process. The history of this expropriation, in different countries, assumes different aspects, and runs through its various phases in different orders of succession, and at different periods. In England alone, which we take as our example, has it the classic form (Marx, 1976, p. 876).

In this passage there is a reference to the historical nature of expropriation and its geographical scope. England is very clearly placed at the centre.

How, then, have scholars interpreted the beginning of capitalism in contexts such as the North American one? This is an especially pressing question if, as Glassman has argued,

following De Angelis (2001), “so-called primitive accumulation is no longer primitive” (Glassman, 2007, p. 94) and the character of primitive accumulation is inherently a continuous one in ‘modern’ economies. In further understanding primitive accumulation, Michael Perelman is useful in his suggestion that primitive accumulation is often short hand for the brutality of the initial burst of capitalism.

In *The Invention of Capitalism* Michael Perelman is concerned with how classical political economists advocated depriving people of their support, referring to their means of production (2000, p. 2). This, he points out, is labeled as primitive accumulation whereby primitive refers to ‘non’ or pre-capitalist, and accumulation is in reference to wealth of the elite. Perelman argues that there is a lack of attention on the complicated nature of dialogue that existed within the thought and ideologies within classical political economy and places a pointed focus on the work of Adam Smith. He does this, in part, to highlight how Marx emphasized the social division of labour; the social division of labour, as Perelman suggests, was particularly ignored by Smith.

Beyond Perelman’s preoccupation with Smith, the temporal dimensions of capitalism are also present in his critique. These temporal dimensions matter in terms of distinguishing primitive accumulation in its classical form versus primitive accumulation writ large. Later, the work of others, including Massimo De Angelis, focus more squarely on how notions of time factor into the primitive accumulation framework. Temporality matters to the transition from a pre-capitalist to capitalist society and when/how this is accounted for. As noted above, De Angelis has argued that primitive accumulation is necessarily continuous. His argument draws on Marx’s reliance in his description of primitive accumulation and the “forced separation” between people from their means of production. This is used to outline how primitive

accumulation is necessarily present in ‘mature’ capitalist societies. De Angelis’ work thus serves as a major intervention into dialogue around the primitive accumulation thesis. The political significance of this argument is vast. By suggesting primitive accumulation is a concept that can be understood as necessarily continuous, De Angelis is casting a large net in his understanding of what constitutes the commons (2001).

Robert Nichols takes to task the differing interpretations of primitive accumulation and “disaggregates” the concept particularly in regards to how land is taken up or what and how Marx understood to constitute the “ground.” Prior to moving to his analysis on land and after a considerable review of literature, Nichols concludes that “considerable disagreement persists ... when it comes to identifying which element is decisive in demarcating primitive accumulation as a distinct category of analyses” (2015, p. 21). He carefully interrogates how, for Marx, land is a medium of labour. This is part of a larger shift in focus on land as opposed to labour. To get to this point, Nichols explains how the capital relation is predicated on a system of exploitation and, similar to De Angelis, focuses very clearly on the temporal dimension in Marx’s interpretation of the classical form of primitive accumulation. He, like Brown, points to the influence of Coulthard’s work in shifting focus from the capital relation to the colonial one (2015, pp. 20; Brown 2014, pp. 5). Nichols eloquently and thoroughly interrogates how Marx uses land as more than simply another commodity in his writing.

Brown articulates a crossroads between settler colonialism and primitive accumulation and relies on geographers, such as that of Glassman and Harris, as well as settler colonial theorists, including Veracini and Wolfe, to explore the temporal dimensions of these two bodies of work. Empirically he juxtaposes metaphorical reference to the nineteenth century racist specter referred to as the “vanishing Indian” with that of glacial disappearance. According to

Brown, both references have served as Glacial National Park's icon and created a "spectacle of vanishing" in Montana. Brown and Nichols share a desire and attempt to disaggregate primitive accumulation. But Brown offers an examination of different forms of enclosure and the ongoing and continuous nature of both primitive accumulation and settler colonialism. This leads him to draw conclusions around the "landscape of perpetual vanishing" (2014, pp. 2). Part of Brown's argument pivots around the idea that the trajectory of primitive accumulation and settler colonialism are analogous and he is careful to "disaggregate processes that are often conflated or subsumed" (2014, pp. 3).

In Brown's ambitious account of settler accumulation (referenced above in his destabilization of primitive accumulation through its rejection) he brings together the two central concepts also juxtaposed in chapter. Drawing on Marxian critique, ranging from De Angelis to Polanyi, Brown's account of primitive accumulation is useful. His conceptualization of how primitive accumulation and settler colonialism form a relationship may help explain environmental politics in North America. Brown's understanding of this dialectical relationship can be contrasted with the work of Robert Nichols, and specifically his Hegelian influenced notion of dialectical reasoning and its presence in settler colonial theory.

The move to ask if accumulation by dispossession is a failed project is a pertinent question. Further, there is a re-emerging theme in the literature around the temporality of primitive accumulation, as described in De Angelis' work above. Building on these analyses of primitive accumulation and the significance of bringing settler colonial studies in tandem with primitive accumulation, I now turn to accumulation by dispossession. Many of the aforementioned analyses came after David Harvey's accumulation by dispossession thesis,

which has been highly influential, particularly in geography, and therefore remains worthy of attention.

2.1.4 Accumulation by Dispossession

Accumulation by dispossession, according to Harvey in the *New Imperialism*, is the historical geography of capital accumulation through imperialism (2005). People are dispossessed of property, such as land or natural resources, and this is done through the increasing growth in capital investment. Basically capitalism dispossesses. The three key strands that define accumulation by dispossession as outlined by Harvey, are all relevant to the attempted opening of a copper-gold mine at Teztan Biny: i) accumulation by dispossession requires the privatization of property; ii) accumulation by dispossession is linked to state power; and iii) accumulation by dispossession requires territorial logic. Hence, accumulation by dispossession, according to Harvey, is the privatization of property under neoliberal logic. Neoliberalism refers to the shift in economies that accompanied the Regan and Thatcher eras, whereby the rolling back of the state took place simultaneous to the opening up of markets. This introduced a new economic era driven by financialization and privatization. Obtaining property rights is one of the central tenets of neoliberalism and the process of accumulation by dispossession, again associated with increased privatization.¹⁰

Harvey attributes his understandings of capital accumulation to Rosa Luxemburg's notion of "expanded reproduction" in *The Accumulation of Capital* (Luxemburg, 2003). For Luxemburg, capital accumulation does not exist without crucial externalities (Harvey, 2005, p. 137). Harvey draws on Rosa Luxemburg's binary description of the accumulation of capital.

¹⁰ Glassman has also thoroughly thought through this relationship between neoliberalism and primitive accumulation (Glassman, 2007).

Capitalism is dependent on the “organic link” between capitalist and non-capitalist modes of production. For Harvey, non-capitalist modes of production include things such as international government and economic policies. For feminists such as Silvia Federici, though, capitalism’s ‘other’ includes social reproduction more generally and what has traditionally been women’s non-waged work, like child rearing and housekeeping. Federici traces women’s bodies in the transformation from feudalism to capitalism, building on the argument that women’s labour power was central this transformation (Federici, 2004).

Harvey also cites Hannah Arendt’s notion of political power as inextricably linked to endless accumulation: “The umbilical cord that ties together accumulation by dispossession and expanded reproduction is that given by finance capital and the institutions of credit, *backed, as ever, by state powers*” (Harvey, 2005, p. 152, emphasis added). Significantly, this endless accumulation of capital necessitates the limitless accumulation of power. Territorial logics of power are crucial to Harvey’s logic of capital accumulation (Harvey, 2005, pp. 33, 183), however this element of his analysis has been critiqued. This could be because the same territorial logics are tied to colonial expansion, including and especially in settler colonies like Canada. Accumulation by dispossession, vis-à-vis settler colonialism, provides an avenue to explain resource extraction projects that negate Indigenous consent and often lead to territorial conflict. Accumulation by dispossession differs from primitive accumulation, in that Harvey focuses more pointedly on neoliberal economics and his territorial analysis is somewhat thin. Though Harvey does recognize that accumulation by dispossession can lead to revolt and uprising, such as the Zapatista revolt in Mexico in 1994 or protests against the World Trade Organization, or in the case of this project, a significant example of protest related to the

Tsilhqot'in: the blockade in 1992 at Henry's Crossing.¹¹ His work somewhat negates the violent brutality which is embedded in Marx's understanding of primitive accumulation.

2.1.5 Extraction and Accumulation by Dispossession

In recent years, the concept (or thesis) of accumulation by dispossession has been used by scholars within the context of colonialism and the dispossession of land, including in cases of resource extraction within Indigenous territories. For example, in Chile and Colombia (Gordon & Webber, 2008) and Canada's northern diamond mines (Hall, 2012), authors have summarized and applied Harvey's analysis of capital expansion and accumulation by dispossession. In Hall's case, she traces accumulation by dispossession to the continuation of colonialism in Canada.

Tom Perrault also draws on understandings of accumulation by dispossession and provides a critique of the accumulation by dispossession narrative as it has been applied in Bolivia. For Perrault, mine-related water contamination requires an expansion of Harvey's accumulation by dispossession thesis to include "the contingent role of nature" as well as social reproduction (2013, p. 1051). As opposed to focusing on capital accumulation, Perrault draws attention to the accumulation of the "materiality of specific forms of nature" (2013, p. 1051). Both Hall and Perrault find utility in drawing on accumulation by dispossession to explain mining in their analyses of mining since it allows them to explain dispossession through a focus on contemporary capital markets.

Though Rebecca Hall engages with the conversation between colonialism and accumulation by dispossession, few analyses position dispossession squarely in conversation with settler colonialism. This is a problem since it leads to the erasure of Indigenous claims to

¹¹ This protest took place in what are now Tsilhqot'in title lands. This blockade was in many ways a catalyst for the recent Tsilhqot'in title case over unwanted logging in Tsilhqot'in territory.

territory on occupied settler lands. Economic narratives in which areas are dispossessed of property (including natural resources) can reduce land to economic terms and leave no room for critical place-based narratives (Barker & Pickerill, 2012). This is related to the connection between settler colonialism and primitive accumulation in a geographic sense, in that too few analyses use this frame productively in the global north. Building on contemporary readings of accumulation by dispossession and primitive accumulation, my work brings settler colonialism into focus in order to expose not only how *settler colonialism dispossesses* but also how this dispossession is refused in North America. In doing so I do not suggest that this is a simple problem solved, but note in section three the complexities of this refusal, particularly when experienced within state sanctioned processes.

2.2 Situating Dispossession

Indeed, the dispossession of Indigenous lands was a precursor to capitalist development in settler states, including in western Canada. However by focusing too heavily on capitalism, largely in developing world contexts, the financial aspects of imperialism, the role of racism and social exclusion in territorial expropriation become sidelined, particularly in regions like New York state or in this case, British Columbia. Settler colonial studies has played a role in shifting emphasis towards the centrality of land in primitive accumulation and dispossession narratives (Coulthard, 2014a, 2014b; Nichols, 2015) and has moved territory back into a focused centre of the colonial project more generally (Wolfe, 2006, 2013). This emphasis on land (as opposed to labour) is critical to understandings of accumulation by dispossession and the emphasis on the racial categories that exist within this in this process, particularly in the North American case. These linkages between racial exclusion and land are a seminal intervention.

Of note in Harvey's work on accumulation by dispossession is that there is little mention of his position as a scholar on dispossessed land. More broadly, economic geographers fail to make territorial acknowledgements as to the land they work and occupy. While this could be noted of many academics, in fields like geography, sociology, and anthropology, it is particularly notable in Harvey's case, given the centrality of dispossession to his analysis. This includes the reification of international examples that displace emphasis on the dispossession of Indigenous lands, including in urban American contexts. In the right to the city movement, for example, there is a blind spot in terms of Indigenous territorial claims and displacement within cities. Harvey's situated position should not be ignored, given his emphasis on accumulation by dispossession and his scope of influence. Beyond failing to acknowledge the unceded Indigenous lands within which Harvey and his colleagues operate, the predicament extends to social theory and geographical debates more generally. Fortunately this is beginning to change; scholars in geography have begun to recognize their relationship with the history of the lands in which they work.

I argue for the importance of placing settler colonialism as central to discussions around dispossession, and this includes an analysis of the lands in which we work. Accumulation by dispossession, as presented by Harvey and those that draw on this narrative, obfuscates the role of academics working on unceded territories within settler states, like British Columbia, and thus creates a gap within the literature—to which my argument attends. Such a blind spot does not exist within the field of settler colonial studies, rooted in anti-colonialism where the politics of settler colonial dispossession are a precursor. For scholars concerned with dispossession, the localized dispossession of Indigenous lands, within American contexts, has failed, as of yet, to ignite debate or acknowledgement (see, for example Amin, 2014; Baird, 2011; Butler &

Athanasiou, 2013; Glassman, 2006). While such a sweeping critique could be criticized as too wide a generalization, the politics of this suggestion remains critical to my intervention. In order to carry this critique further, I now expand on settler colonial dispossession and explain how dispossession is rejected or “refused” (following A. Simpson, 2014). This informs my understanding of dispossession and how, like settler colonialism, dispossession remains incomplete—or, as quoted above, how it “fails to do what it is supposed to do.”

2.3 Refusal

Audra Simpson provides a complementary reading of settler colonialism to Coulthard’s work in her politics of refusal. For Simpson, settler colonialism will always remain a failed project. In *Mohawk Interruptus* (2014), she productively takes on notions of elimination and structure as embedded in definitions of settler colonialism. Simpson resolutely discusses how Indigenous people refuse to be “eliminated.” As quoted above, she argues that colonialism survives but fails to eliminate Indigenous people (2014, p. 7). Simpson “challenges the presumption that the colonial project has been realized.”

Mohawk Interruptus makes three claims. The first is that sovereignty is nested, or that “sovereignty may exist within sovereignty” (2014, p. 10). Put otherwise, there can be more than one overlapping or scalar form of sovereignty in Canada, where there are different claims to ownership and identity within lands. Second, she argues that refusal is a political alternative to recognition. And lastly, she challenges the presumption that the colonial project has been realized or “that land has been dispossessed; [that] its owners have been eliminated or absorbed” (2014, p. 11). Simpson’s claims are relevant to the rejected Prosperity copper-gold mine at Fish Lake in how she illustrates that settler colonialism remains an unrealized project. Acts of

resistance and the refusal of unwanted development projects have twice stopped a mine at Fish Lake on Tsilhqot'in lands from proceeding.

The tension between the state, colonizers, and Indigenous people is constantly in flux. Tension and rejection—Indigenous people's refusal to accept the theft of their land—can be seen inside state-based processes like environmental assessment. The process of including Indigenous people as so-called stakeholders within environmental assessment legitimizes the state's settler colonial power through inclusion. This idea of inclusion and thus state based legitimization parallels writing on recognition and reconciliation that unsettle the utility of these discourses when the parameters for reconciliation are set by the settler state. The power imbalance within these state-based structures remains associated with settler colonialism, and is thus incredibly uneven. Nevertheless, as I demonstrate, voices of dissent remain registered within the confines of environmental assessment, and in effect aid in mobilization efforts. The rejection of settler colonialism is also visible outside state processes, in blockades, and protests.

I have now outlined the critical nexus between settler colonialism, primitive accumulation, accumulation by dispossession, and ultimately the rejection of settler colonial dispossession. I continue to put these ideas to work throughout the thesis. The convergence of these key terms allows me to demonstrate how mineral tenure laws can be understood as a site of primitive accumulation that ultimately underpins the politics of environmental assessment. Though environmental assessment takes place very much after the alienation of land, this predicament is central to the resource extraction dilemma when considering a shift to a capitalist order. This shift that puts mineral tenure on the cadastral grid system turns land into a tradable commodity. I have outlined how Marx and later thinkers understood primitive accumulation as inherently a violent process. The violence of the commodification of land is particularly stark

when it comes to resource extraction and the (potential) divorce of people from their land base as sometimes happens during the onset of large scale resource extraction processes. Later in the thesis, in Chapters 5 and 6, I outline the fears of losing Fish Lake, a site of spiritual and physical significance to the Tsilhqot'in people. Further, the violence of primitive accumulation in a settler context is a unique. The terms of settler colonialism are different than other colonial contexts. This I demonstrate through the nature of environmental assessment that was never intended to address the land and property relation explained through primitive accumulation, latent in the mineral staking process outlined in Chapter 4.

Mineral staking regulated through British Columbia's Mineral Tenure Act continues to legally pursue the elimination of Indigenous claims to land. This act sets out the guidelines for staking claims to minerals and getting a miner's license in British Columbia. My structural focus on the elimination of claims to land through mining law is not intended to further erase Indigenous agency or Indigenous people. As is evident in the Tsilhqot'in Nation's mobilization and resistance to the Prosperity mine proposal, Indigenous people will not be erased or replaced, regardless of settler colonial law. By drawing on a framework that situates dispossession through mining laws within settler colonial studies, my goal is to interrogate what settler colonial dispossession is and how it functions in order to provide an understanding of the contemporary mining environment of Canada and British Columbia.

2.4 Geographies of Settler Colonial Dispossession

Within human geography there have been discussions and criticisms that parallel the irony of scholars neglecting the erasure of Indigenous claims to land upon which they operate. For example, Sarah Hunt makes an important contribution to geographers studying Indigenous

ontologies by juxtaposing what ontology might mean at an academic geography conference with what it might mean at a potlatch, learning to dance (Hunt, 2014). Though the object of critique in this reference is ontology, I would argue that the sentiments of Indigenous erasure expressed around debates concerning Indigenous ontology extend to critiques of dispossession, meaning there is a large gap or divide in understanding dispossession within the literature, versus that of lived experience. Given the ongoing erasure of Indigenous people's claims to their homelands within dominant state based discourse, expanding this erasure within studies of dispossession could be seen as somewhat of a crisis. Though it is clear that for Harvey accumulation by dispossession is an imperial process, what happens when this theoretical premise is then recognized under the terms of colonialism in settler states? Harvey's thesis negates focus on colonialism towards a configuration of market-based capital. This may be more useful for analyzing broad international financial trends, with examples in the global south, but how does this geography inform our Anglophone largely white positions within the institutions we operate.

This erasure is apparent in Gillian Hart's call to "denaturalize dispossession," where she suggests that dispossession must be historically and geographically specified (G. Hart, 2006), a point also suggested by Coulthard (2014b). On the contrary, for Harvey (following Marx), accumulation by dispossession is a much more general phenomenon that is reliant on the predatory and molecular nature of capital and seems more useful in broad ranging analyses as opposed to specific place based cases; *The New Imperialism* covers a vast geography. The theory no doubt remains a useful tool of analysis. Yet, the significance of settler colonialism (including in the U.S.) is obfuscated through focus primarily on the economic aspects of accumulation by dispossession, or imperial power. Again, many applications of primitive accumulation, and particularly Harvey's accumulation by dispossession narrative, may, in effect,

render the history of the erasure of Indigenous people and their lands invisible. This invisibility is crucial in settler states like Canada, where mining regulations continue to negate Indigenous claims to resources, sovereignty over resources, and claims to land. This negation is particularly relevant in settler colonial contexts such as the U.S., Australia, and New Zealand, and is distinct from associations with the postcolonial in states with differing histories of settlement. If, then, settler colonial dispossession, like primitive accumulation, is an ongoing process, British Columbia's mining laws and practices serve as a concrete illustration of such. However, as the example at Fish Lake demonstrates, state mediated processes continue to complicate such a linear argument.

The privatization of property through the transfer of mineral rights to companies is undoubtedly linked to political/state power through the claiming of Indigenous lands as Crown lands in the first place, and later through their transfer to mineral exploration and extraction interests. In the end, the Canadian state, through the assessment of findings by the environmental review panel and a final decision by the Minister of Environment and cabinet, twice rejected the mine at Fish Lake. State power, in this case, is not as straightforward as its connection to capital accumulation that facilitates dispossession.

As opposed to explaining the empirical case of gold mining and the rejection of the mine proposal at Teztan Biny through the broad reaching accumulation by dispossession thesis, I follow Hart's geographical call, referenced above, to critically conceive of space and in this case settler colonialism. Further to this engagement with Hart, I argue that understandings of land are critical to explain the predetermined economic categories present in particular applications of the accumulation by dispossession narrative and reference resource regulation to explain the Prosperity mine proposal and its rejection. This examination of rejected dispossession begins to

make visible how Indigenous territorial land rights are often ignored, including within state mediated processes. By explaining mining regulations within this context, my thesis seeks to expose the settler colonial foundation of the alienation of resources from Indigenous people, and in this case the attempted dispossession of Fish Lake from the Tsilhqot'in by TML. Like capitalism itself, dispossession remains actively resisted, rejected and refused on Tsilhqot'in lands within and outside the confines of settler state law. The theoretical framework for my dissertation rests on the notion of the rejection of settler colonial dispossession in favour of re-centring Indigenous resource sovereignty, to which I turn now.

2.5 Indigenous Resource Sovereignty: Placing the Tsilhqot'in Declaration at the Centre

I now discuss Indigenous resource sovereignty in order to place the Tsilhqot'in Nation at the centre of debates over mining in settler colonial British Columbia. I draw on the Tsilhqot'in Declaration of Sovereignty, signed in 1984 and again in 1998, as a counterpoint to how resources are governed by the Canadian state and as an alternative to state-based understandings of sovereignty (see Appendix C for full declaration). I do this in order to further expand and complement the above-stated critique of settler colonial dispossession, since my research examines conflicts over territory between Indigenous people and mining companies, including the legal mechanisms the state uses to govern resource conflicts. I look, implicitly and explicitly, at claims the Canadian and provincial state make to sovereignty, which are in competition with Indigenous resource sovereignty, or Indigenous control over resources. Given these two competing claims to sovereignty, part of this work blurs the binary between state sovereignty on the one hand and Indigenous sovereignty on the other. The notion of sovereignty is being meaningfully used by Indigenous nations both to declare lands their own and to reclaim land

(including land within urban centres). Taiaiake Alfred is well cited in his suggestion that sovereignty is not an Indigenous term (Alfred, 2002). But by no means does the language of sovereignty belong solely to the settler colonial state.

The Tsilhqot'in National Government's final submission to the Canadian environmental assessment panel clearly states, "The Tsilhqot'in communities and leadership overwhelmingly and resolutely oppose [the Fish Lake] project." This rejection of the mine, however, was not made on the grounds of Indigenous sovereignty, but rather on the grounds of cultural recognition and the impact on Indigenous ways of living. The scalar politics of sovereignty in Canada are noteworthy because the province manages resources that are vested in the Crown, so Indigenous nations like the Tsilhqot'in are faced with competing claims and regulations imposed on their territory from both the provincial and the federal governments.¹² To be clear, I am critical of the state-based processes and argue that it is important to recognize the significant place for dissent outside the confines of processes like environmental assessment. At the same time, I aim to illuminate the utility of systems like environmental assessment in rejecting unwanted resource development projects, though rejections like that of the Prosperity project are rare.¹³

¹² This became apparent in the Tsilhqot'in title case. In the final decision released by the Supreme Court of Canada, the judges criticized the province of British Columbia for not living up to its obligations to the Tsilhqot'in. John Borrows (2014) argued that discussions over land should take place on a nation-to-nation basis and that the federal Crown should not delegate these negotiation powers to the provinces in the first place. This line of analysis brings into question the provincial and territorial legitimacy of the provincial governance of resources.

¹³ One reason environmental assessments are rarely rejected is because they are viewed as iterative (in the province of British Columbia, for example, where the Environmental Assessment office states that regular feedback is provided to the proponent). The province of British Columbia "rubber stamped" the Prosperity mine project that was eventually twice rejected federally. However, federal rejections are less frequent than approvals, with the same iterative elements embedded in the legislation that does not allow the assigned independent panel to approve or reject projects, but only to make recommendations (British Columbia Environmental Assessment Office, n.d.).

Scholars such as Leanne Simpson point out that environmental assessment is a state-sanctioned mechanism. In her talk “Restoring Nationhood: Addressing Land Dispossession in the Canadian Reconciliation Discourse,” Simpson stated:

We [Indigenous people] have all been dispossessed from most of our land to make way for settlement and natural resource development. We know the drill. Our lands are threatened by deforestation, mining, hydroelectric development, fracking, whatever. And so we start out dissenting and registering our dissent through state sanctioned mechanisms, like Environmental Impact Assessments. Our dissent is ignored. Some of us explore Canadian legal mechanisms, even though the courts are stacked against us. And slowly but surely we get backed into the corner where the only thing left to do is to put our bodies on the land. (L. Simpson, 2013)

In the case of the New Prosperity mine proposal, I suggest the state ignores Indigenous resource sovereignty, yet does not completely negate engagement with Indigenous people and particularly the Tsilhqot’in. The Tsilhqot’in will not be erased, replaced, or ignored, and their assertions to sovereignty were paramount during the Canadian environmental assessment process and hearings, as discussed in Chapter 6.

The *Dictionary of Human Geography* defines sovereignty as “a claim to final and ultimate authority over a community” (Flint, 2009, p. 709). Sovereignty also has a significant territorial dimension that dovetails with David Harvey’s emphasis on territory within accumulation by dispossession. For political geographer John Agnew, territorial sovereignty is reliant on the idea that states require clearly bounded spaces (Agnew, 2006, p. 53). The

Tsilhqot'in Declaration of Sovereignty indeed begins with the very word *territory*, and a statement that concerns *where* their territory is located:

Territory—From the Fraser River to the Coastal Mountains and from the territory of the Stl'atl'imx to the territory of the Carrier Nations is Tsilhqot'in country. The heart of our country is Tsilhqox (The Chilcotin River) and its tributary lakes and streams. This has been the territory of the Tsilhqot'in Nation for longer than any man can say and it will always be our country; the outlying parts we have always shared with our neighbors—Nuxalk, Kwakiutl, Stl'atl'imx, Carrier and Secwepemc—but the heartland belongs to none but the Tsilhqot'in. Our mountains and valleys, lakes, rivers and creeks all carry names given to them by the Tsilhqot'in people: Anahim, Niut and Itcha; Tsilhqox, Taseko and Chilanko; Tatla, Nemiah and Toosey. Our territory is that which is named in our language. All living things in our country—animals, birds, insects, amphibians, reptiles, worms and flies, fish, trees, shrubs, flowers and other plants—also bear the names given to them in the language of the Tsilhqot'in.

This claim to territory is made temporally “for longer than any man can say” and stresses the shared outer boundaries as well as the significance of language and place meanings. So, territorial sovereignty is not a monolithic force, and though the state makes claims to authority and neatly bounded territorial maps, these attempts at territorial authority remained challenged, including through the Tsilhqot'in declaration, which places emphasis on language and different species as part of an understanding of territory.

The Tsilhqot'in declaration recognizes the illegal colonization of land and traces this to 1858, a watershed moment in the founding of British Columbia, when James Douglas, the region's first British Governor, rushed to have Indigenous territories declared subject to the Queen of England. Douglas's British intentions were colonial and strategic in response to the gold rush that moved up the Pacific Coast. This moment distinctly marks a fundamental turning point in the development of settler colonial formations and relationships, rooted in conflicts over resources, land, and gold on Tsilhqot'in territory.

The Tsilhqot'in Nation have their own declaration of sovereignty (see Appendix C), which argues

when the Queen of England extended to our nation the protection of her law, by including our territory in the colony of British Columbia in 1858, she did so without our knowledge or consent ... our sovereignty has been encroached upon and ... jurisdiction ignored ... We accuse the government of the United Kingdom of a breach of trust and we accuse the government of Canada of invading the territories and jurisdiction of a neutral state whose sovereignty is bound, by its own laws, to defend and protect.

The paradox as to how sovereignty and law creates their own validity is very clearly stated in the Tsilhqot'in Nation's declaration: "Britain and then Canada have created their own laws to defend and protect." This excerpt subverts Canadian politics and claims to Canadian sovereignty, and it unsettles definitions or assumptions of sovereignty as strictly a settler colonial concept.

Thus, there are conflicting claims to territorial sovereignty on Tsilhqot'in lands. Further, an examination of how mining laws came to be written in western Canada (referenced in this pinnacle moment of 1858 by the Tsilhqot'in), demonstrates how fragmented territorial claims to sovereignty are integral to gold and resource extraction in both the past and present. There is evidently competition over the ownership of minerals and sub-surface assets. The Tsilhqot'in, like other Indigenous nations, articulated notions of sovereignty in a variety of ways to claim their territory and protect it from the ongoing alienation by the Crown. This pushing back on the state is strategic. It builds on spatially bounded notions of territorial sovereignty expressed by scholars such as John Agnew (referenced above). Thus, in thinking practically about sovereignty as a concept, in Canada's political climate it is not strictly a Western legal ideology but is also used by the Tsilhqot'in to assert territorial claims. This is not necessarily the same as Agnew's understanding of territorial sovereignty, however, in that sovereignty does not necessarily assume the same bounded nature that modern states require. To many Indigenous nations territorial understanding is rooted not in abstract descriptions of territorial dimensions, but in the land.

The Dene Declaration, signed by the Indian Brotherhood of the Northwest Territories on July 19, 1975, is similar to the Tsilhqot'in declaration. As historian William Turkel suggests, the Dene Declaration served as inspiration for other Indigenous declarations of sovereignty, including that of the Tsilhqot'in (Turkel, 2007, p. 216). Part of my broader interest in this work is the complexities of why the Tsilhqot'in, like many Indigenous nations and movements, draw on the language of sovereignty over resources.¹⁴ What would happen if the Canadian state

¹⁴ Scholars such as John Borrows and Val Napoleon emphasize that Indigenous people have always had their own laws and continue to have laws that govern their society. This sort of Indigenous legal research is different than the declarative nature of statements of sovereignty, and though there are differences in documenting Indigenous laws

seriously considered the Tsilhqot'in Declaration of Sovereignty as legitimate, like the legitimacy assumed over federal and provincial sovereign property claims by settler colonial interests?

Sovereignty may seem straightforward but it is in fact not. Indigenous statements like the Dene Declaration or the Tsilhqot'in Declaration of Sovereignty draw on Western legal ideas like sovereignty, and unsettle the binary between Western and Indigenous law. The declaration is helpful, and particularly useful within state-sanctioned events like the Canadian environmental assessment process. Part of the tension in adopting and subverting Western ideologies of sovereignty is that the terms of property rights and dispossession are not necessarily immediately undone. But relying on a colonial narrative of sovereignty is dangerous, in that settler colonialism is anything but all encompassing. The more challenging and significant approach is to envision how claims like the Tsilhqot'in declaration undo Crown sovereignty, above and below the surface of lands. Tsilhqot'in sovereignty over their lands, as quoted above in the opening of the Declaration of Sovereignty include, "their mountains and valleys, lakes, rivers and creeks ... which is named in our language." All living things in Tsilhqot'in country belong to the Tsilhqot'in in what they referred to above as their heartland.

and declaring sovereignty, the act of writing such declarations remains important and central to nation building, as seen with the Tsilhqot'in.

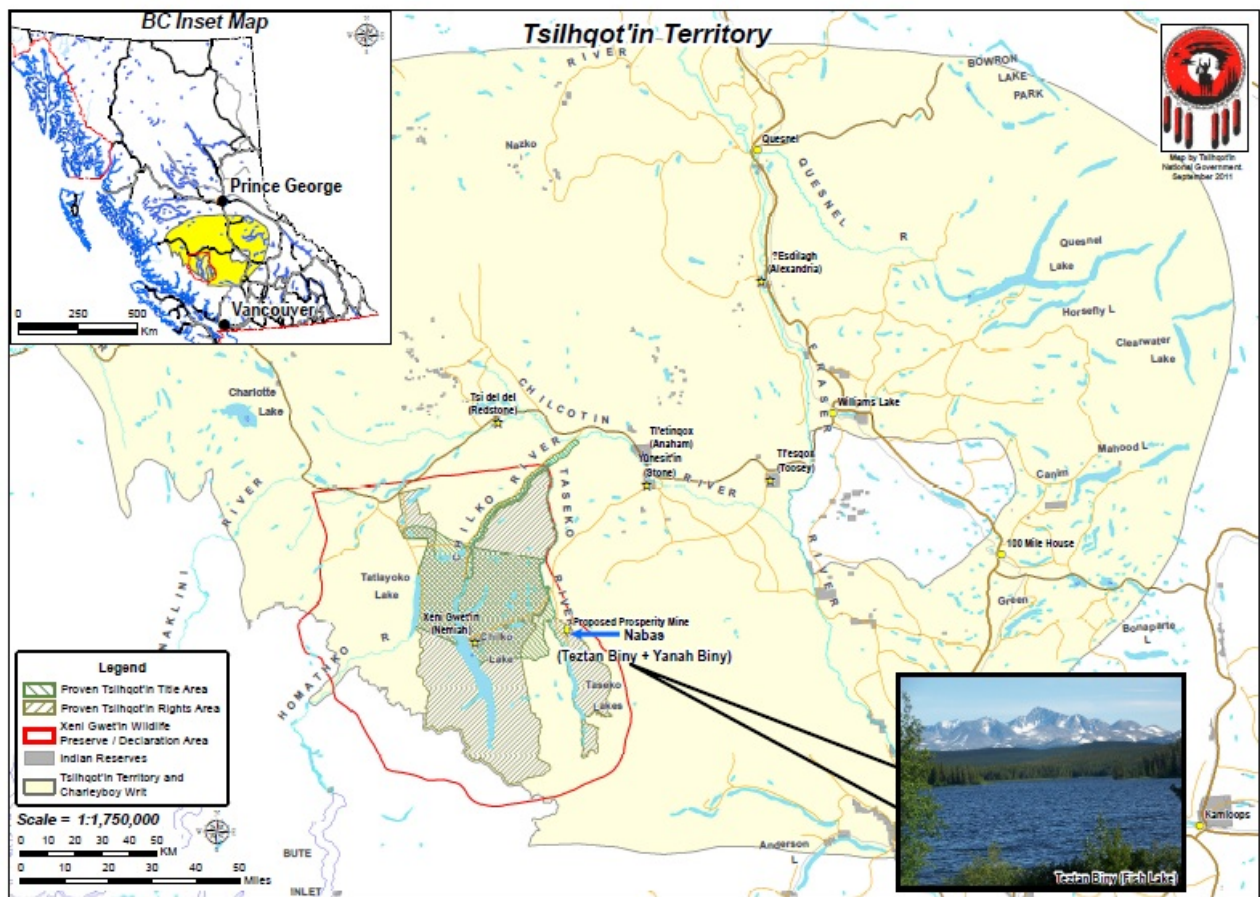


Figure 1: Map of Tsilhqot'in Territory (Tsilhqot'in National Government).

Teztan Biny (Fish Lake) is located 125 kilometres southwest of Williams Lake. It is next to the proven title area and within the Tsilhqot'in rights area as confirmed by the Supreme Court of Canada on July 26, 2014.

2.6 Independent Panelists in Tsilhqot'in Territory: Who Structures Environmental Assessment?

Below is a photograph of the Canadian environmental assessment site visit at Fish Lake, which I attended. Cecil Grinder, pictured on the far left largely organized the event. Chief Frances Laceese of Tl'esqox, Chief Roger William of Xeni Gwet'in and Chief Russell Myers of Yunesit'in stand next to the three federally appointed panelists. From right to left the panelists include Ron Smyth, panel chair Bill Ross, and George Kupfer. The three panelists were selected to write a final panel report for the Minister of Environment, as legislated in the Canadian Environmental Assessment Act. The report for the New Prosperity Mine was released on October 31st, 2013 prior to the mine's rejection by the Minister of Environment and Cabinet.



Photo 3: Canadian environmental assessment hearings site visit at Fish Lake, August 9, 2013

Four days after this photo was taken, former Chief Ivor Myers read a letter he had submitted to Taseko Mines Ltd during the community hearings in Yunesit'in on August 13th, 2013. Before reading, he asked the three panel members where they were from. Since one of the goals of the introductory material in these first two chapters is to reflect on positionality and self-reflexive exercises, before concluding, I am compelled to now place these three panelists to their homes and their communities. To do so, I quote a transcript from the environmental assessment hearings (Canadian Environmental Assessment Agency [CEAA], 2013, Vol. 15, p. 119):

Ivor Myers: "Mr. Chairman, what was your name?"

Chairperson Ross: My name is Bill Ross. R-O-S-S.

Ivor Myers: "What's your nationality?"

Chairperson Ross: "I'm a Canadian"

Ivor Myers: "What language do you speak?"

Chairperson Ross: "English"

Ivor Myers: "Where did you ancestors come from?"

Chairperson Ross: "My immediate ancestors came from Winnipeg"

Ivor Myers: "Where did his ancestors come from?"

Chairperson Ross: "His ancestors came from southern Manitoba. His father came from southern Ontario, and his father came from Scotland. My mother's parents came from Ireland."

Ivor Myers: "And the one on the left."

Mr. Kupfer: “My name is George, last name is K-U-P-F-E-R.”

Ivor: What is your nationality

Mr. Kupfer: “I’m a Canadian”

Ivor: “What language do you speak?”

Mr. Kupfer: “English and German”

Ivor Myers: “Where did your forefathers come from?”

Mr. Kupfer: “Germany.”

Ivor Myers: And on the right.

Mr. Smyth: My name is Ron Smyth. My ancestral name is McGowan.

Ivor Myers: What was the first?

Mr. Smyth: Ron.

Ivor: What is your nationality?

Mr. Smyth: Canadian

Ivor Myers: What language do you speak?

Mr. Smyth: I speak a bit of Gaelic and I speak English. I was born in Ireland.

Ivor Myers: Where were you born?

Mr. Smyth: Ireland.

Many Tsilhqot’in speakers began their testimony in front of the environmental assessment panel by acknowledging their grandparents and parents by name. The moment when Ivor Myers asked the same placement of the panelists effectively situated the settler panelists as outsiders to the territory. Geographically situating the panelists demonstrates the politics of this conflict. The

conflict is about where people are from and how outsiders were tasked with the role of making decisions about Tsilhqot'in lands.

Ivor Myers went on to discuss the invasion of Tsilhqot'in territory through small pox and particularly cited the epidemic in 1861 to 1863, still vividly recounted by the Tsilhqot'in today. Ivor Myers read the letter he wrote to the mining company, an excerpt of which I quote here (CEAA, 2013, Vol. 15, p. 128–30):

The land was taken and stolen by pre-emption. Therefore, Tsilhqot'in lands need close attention and adhere within the Tsilhqot'in law because the Tsilhqot'in still own 100 percent of the land and it's resources, whether on the surface or the sub-surface of the territory. This means our law, our property, our boundary. The place around Teztan Biny is another important area surveyed and taken without permission by your company. No approval was [provided] by the Tsilhqot'in Nation. Has your company ever been granted permission or permitted to conduct activities near Teztan Biny by the Tsilhqot'in Nation? Is it not a crime to even take land or stake land from the Tsilhqot'in people? Did your provincial government grant you that permission? The province of BC has never asked the Tsilhqot'in people or negotiated with the Tsilhqot'in Nation about the surrounding area at Teztan Biny, let alone the whole Tsilhqot'in territory. The Federal Government is also in breach of their duty. The Provincial and Federal Government of other neighbouring original governments have no jurisdiction in the Tsilhqot'in traditional lands ... This place, Tsilhqot'in country, belongs to us.

Here, Ivor Myers enacts his claim to Indigenous sovereignty. While I am critical of environmental assessment in Canada, the panelists at the community hearings heard the message, strong and clear: the Tsilhqot'in people resolutely opposed the New Prosperity mine proposal at Teztan Biny on their land that had been illegally alienated by the Canadian state.

2.7 Conclusion

In this chapter I have provided a review of the key concepts central to the theoretical intervention that supports my larger argument around the rejection of dispossession. One thread I focused on is the argument that the nature and logic of primitive accumulation remains ongoing. The violence of the divorce created through a shift to a capitalist economy, thus, is not uniform or simple, but has a variety of avenues that differ depending on place. There is a current move to imagine and recognize the significance of understandings how primitive accumulation works in settler states, including Canada. By and large, this mode of analysis that bridges settler colonial studies with Marxian understandings of primitive accumulation has yet to be directly applied to understandings of accumulation by dispossession and the consequences for such a framework in the north more generally. By placing Harvey's understanding of accumulation by dispossession within a settler colonial framework, one thing that comes to light is how capitalism is only one driving force behind dispossession. There is also the colonality of state power, which is territorial by nature. How does settler colonialism dispossess? Is it possible to imagine a settler country where Indigenous resource sovereignty is placed in the centre of debates, as opposed to on the margins? Indigenous resource sovereignty has become a legal reality that is currently being defined in a small part of Tsilhqot'in lands (approximately five percent). This is the case since the Tsilhqot'in won their landmark rights and title case in the summer of 2014.

The next chapter addresses this victory and also delves further into history to discuss the Tsilhqot'in War. There is also a discussion of the Nemiah Declaration that parallels the one above about the Tsilhqot'in Declaration of Sovereignty. Both the Nemiah Declaration and the Tsilhqot'in Declaration of Sovereignty affirm that the Tsilhqot'in are in their lands to stay. Both establish the terms of their ongoing occupation.

Chapter 3: Placing Teztan Biny, Xeni Gwet'in, and the Tsilhqot'in Nation

We are prepared to enforce and defend our Aboriginal rights in any way we are able.

-The Nemiah Declaration

Until 2014, the Tsilhqot'in were in a similar legal position to many Indigenous nations in British Columbia. Like the majority of mainland British Columbia, Tsilhqot'in land remained unceded. The numbered treaty process signed between Canada and Indigenous people in most of Canada did not extend as far west as the coast, and further, the Tsilhqot'in opted not to enter into British Columbia's modern provincial treaty process. However, the legal position of the Tsilhqot'in was dramatically altered when they were granted 1,750 square kilometres of land through a unanimous court decision that transferred title from the Crown to the Tsilhqot'in. Fish Lake is approximately five kilometres shy of the newly awarded title area but remains in what the courts referred to as the "rights area" detailed further below.

In this chapter I outline a brief history of this Tsilhqot'in land title case, because it is significant to colonial resource extraction efforts and policies in the contemporary moment. This chapter also explores landmark periods in Tsilhqot'in history that inform the present, including the Tsilhqot'in War of 1864. This event was indicative of past settler efforts to support the gold rushes through the attempted building of a road to the gold fields. 2014 was the one-hundred-and-fiftieth anniversary of the Tsilhqot'in War, and as such the Premier of British Columbia signed an apology with the current Tsilhqot'in chiefs. This apology was signed within the context of the politics of reconciliation (British Columbia Government, 2014).

The Tsilhqot'in War is therefore significant not just because of its clear ties to the ongoing conflicts over resource extraction, but also because of the way the politics of this

conflict is being framed in the settler colonial present. I introduce the significance of the Tsilhqot'in War by drawing on presentations made during the public hearings for the New Prosperity mine proposal. In order to provide further empirical context relevant to Indigenous self-determination, I also outline the Nemiah Declaration. I return to the Nemiah Declaration in Chapter 6 in light of conflicting ideologies of what constitutes the law, particularly in regards to the environmental assessment hearings in the summer of 2013 for the rejected New Prosperity project.

3.1 The Treaty Process in Canada

The comprehensive land claims process moved very slowly through the Office of Native Claims during the 1970s and 1980s. The federal government's guidelines allowed it to negotiate only one claim at a time in each province or territory. In British Columbia, where the provincial government refused to participate on the grounds that no Aboriginal rights ever did or ever would exist in this province, the entire process was stalled. The Nishga claim, supported by the accumulated documentation of over 100 years of constant petitioning and preparing for litigation, had been filed first and lay dormant. All other First Nations knew that their claims would not even be considered until after the Nishga's was settled.

—Dara Culhane, *The Pleasure of the Crown* (1998, p. 92)

In Canada, the treaty process continues to play a role in the political and legal landscape that influences resource development, as well as the relationship between the state and Indigenous people. Treaties are inseparable from the colonial dispossession of Indigenous lands

through mining, concurrent with agricultural settlement, industrialization, urbanization, forestry, gaming preserves, conservation projects and hydroelectric development. Treaties have also been used to understand and “settle” the relationship, thus establishing terms of agreement between Indigenous people and the Canadian state, on both provincial and federal scales. Many critics, however, argue that the modern treaty process extinguishes Indigenous title (Diablo, 2015; Pasternak, 2014).

It is through historical treaties and section 35 of the Canadian constitution that Aboriginal title has come to be understood in Canadian laws, policies, and courts. Aboriginal rights were legally enshrined in the Canadian constitution in 1982. Section 35 of *the Constitution Act* reads that

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Section 35 continues to inform Aboriginal rights case law as well as the Treaty process. Usher, Tough, and Galois provide the following summary of Aboriginal title:

Aboriginal title to land arises from long and continuous use and occupancy by native peoples prior to the effective assertion of European sovereignty (although the criteria for dating this event are not well established by the courts). Aboriginal title is therefore a form of property right, although ... its substance and effect are not fully codified. The *Royal Proclamation* of 1763, which was the clearest statement of British imperial policy and precedent, recognized aboriginal title in Canada as an encumbrance on the Crown's disposition of land. It is for this reason that treaty-making has normally preceded settlement and development (with the significant exception of British Columbia).

(Usher, Tough, & Galois, 1992, p. 113)

The first formal treaty in Canada was the Royal Proclamation (1763) that established and defined Aboriginal title in the later treaty processes. It has been referred to as the Magna Carta of Indian Rights in Canada (Harris, 2002, p. 14, quoting Hall, *Looking Forward looking Back* SCC, RCAP, vol. 1, p. 115–116). In the Royal Proclamation, King George III established the constitutional basis for the transfer of Indigenous land. In Upper Canada two years prior (1791), he claimed the “Dominion” for his own. The Royal Proclamation, thus, was a seminal document and foundation agreement that legally established the relationship between settlers and Indigenous people in Canada.

John Borrows has written about how the Royal Proclamation was the beginning of the treaty process in Canada. He argues that the proclamation guaranteed self-government. Borrows' account places emphasis on the Treaty of Niagara, ratified in 1764 and part of the *Royal Proclamation*. He “reconstructs the promises” made in this seminal document and essentially argues that the Crown cannot ignore First Nation participation in this agreement.

“First Nations were not passive objects, but active participants, in the formulation and ratification of the Royal Proclamation” (Borrows, 1997, p. 169). His approach counters “ethnocentric colonial interpretations of legal history” (1997, 170). He points to how First Nations control was altered post-Proclamation and that conflicting visions of land allocation within the text ultimately privileged the Crown. These colonial interpretations of history remain rejected by Indigenous people, who continue to reference the Royal Proclamation in positive terms, and along the terms agreed to and understood by First Nations at the time. In fact, the Tsilhqot’in Declaration of Sovereignty (Appendix C) draws on the Royal Proclamation and the understandings set forth during this era. The assertions over Indigenous lands and the rejection of the colonial order were clear during the wampum belt exchange, as outlined by Borrows.

Borrows asserts that when the Royal Proclamation is interpreted in tandem with a reading of the wampum belt exchanged at the Treaty of Niagara, it is clear that this was an agreement in which First Nations, among others, affirmed the self-determination of Indigenous people, including determination over land. He notes the inadequacy of colonial interpretations and challenges the reading of this seminal treaty as a unilateral declaration by the Crown: “The *Royal Proclamation* can no longer be interpreted as a document which undermines First Nations rights. Colonial interpretations of the Royal Proclamation should be recognized for what they are—a discourse that dispossesses First Nations of their rights” (Borrows, 1997, p. 172). The numbered treaties were signed under the principles established in the Royal Proclamation.

Also relevant to the case in B.C. is the Treaty of Oregon (1846), which influences legal discussions about contact in terms of British claims to sovereignty. The Treaty of Oregon established the 49th parallel, with the exception of Vancouver Island, did not follow the same latitude as the border inland. The physical and political geography that was emerging as the

Canadian state meant that negotiations and treaties over land ownership were not homogenized, but disparate. This is also seen in the numbered treaty process.

Between 1871 and 1921, eleven numbered treaties were negotiated. Though not all have been respected, promises were made in these treaties about reserve lands, hunting and fishing, money, education and medical care. The results of the numbered treaty process were devastating, in that reserve land allocations were small and agriculturally weak, as was the case with the reserve system in B.C., determined outside the numbered treaty process (outlined by Harris, 2002).

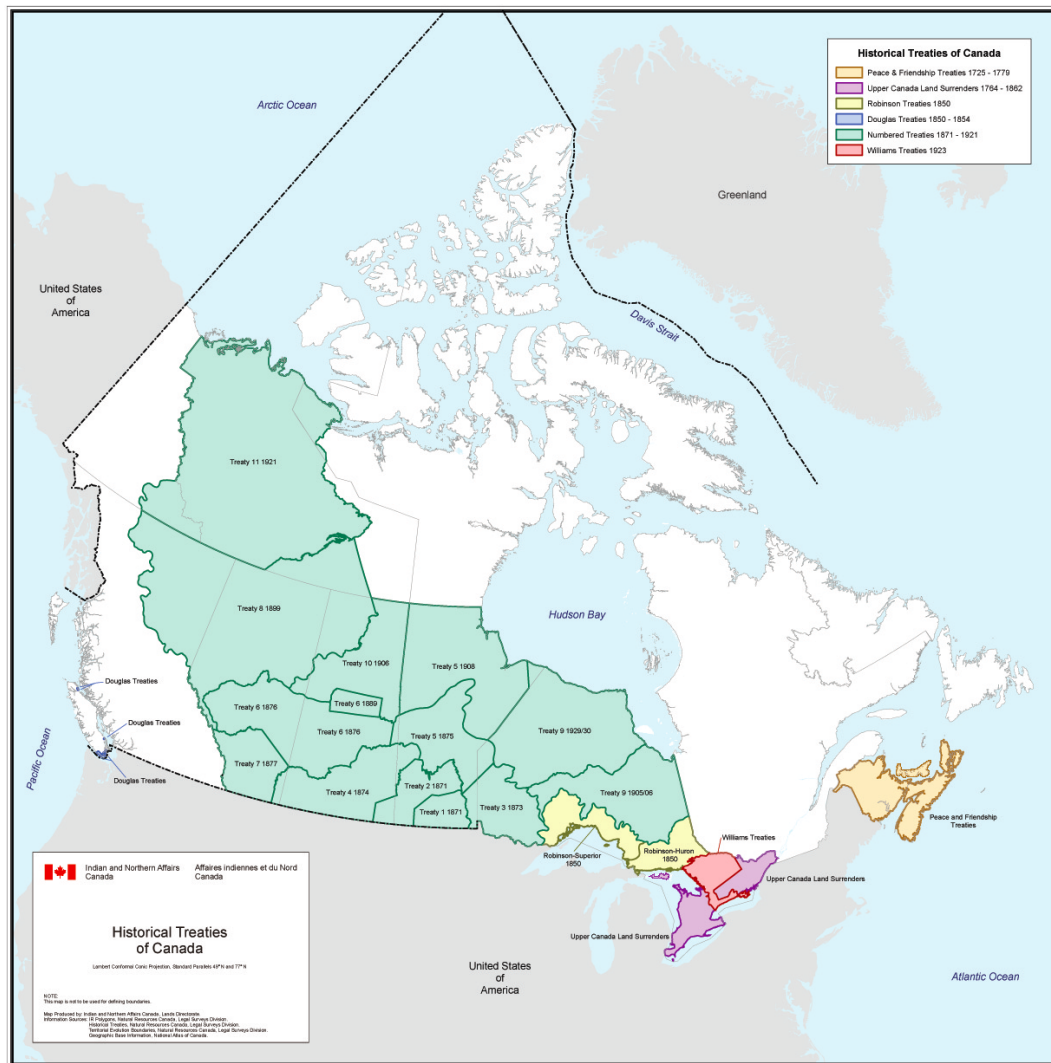


Figure 2: Map Illustrating Pre-1975 Treaties of Canada.¹⁵

¹⁵ (Indigenous and Northern Affairs Canada, n.d.)

Of note on this map is the presence of the Douglas Treaties that were negotiated on Vancouver Island prior to B.C.'s entrance into Confederation between 1850 and 1854. Treaty 8 also expands into the northwestern part of British Columbia.

The numbered treaties included guidelines for the Crown and outlined the particulars of what "said Indians" would receive for surrendering their land. This excerpt from Treaty 8, for example, outlines the language used in the treaties that forfeited rights and title from Indigenous people:

AND WHEREAS, the said Commissioners have proceeded to negotiate a treaty with the Cree, Beaver, Chipewyan and other Indians, inhabiting the district hereinafter defined and described, and the same has been agreed upon and concluded by the respective bands at the dates mentioned hereunder, the said Indians DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors for ever, all their rights, titles and privileges whatsoever, to the lands included within the following limits ...

Though much more was present in the treaties, given the context of the above clause and the legal interpretation of the numbered treaties, it is quite clear that the Crown's understanding of what was surrendered in comparison to that of Indigenous people is staggeringly different. In regards to the numbered treaties Michael Asch goes so far to suggest that, "it would not be hyperbolic to say that the views [of the Crown and Indigenous people who signed the numbered treaties] are in diametric opposition" (2014, 76). Since the last numbered treaty was negotiated in 1921, there have also been a number of so-called modern treaties.

The first modern treaty was the *James Bay and Northern Quebec Agreement* (1975). Since then, a number of additional treaties have been signed, including in the north. The map below illustrates modern treaties that have been signed, particularly in the north but notably including the Nisga'a Final Agreement and the Tsawwassen Agreement.

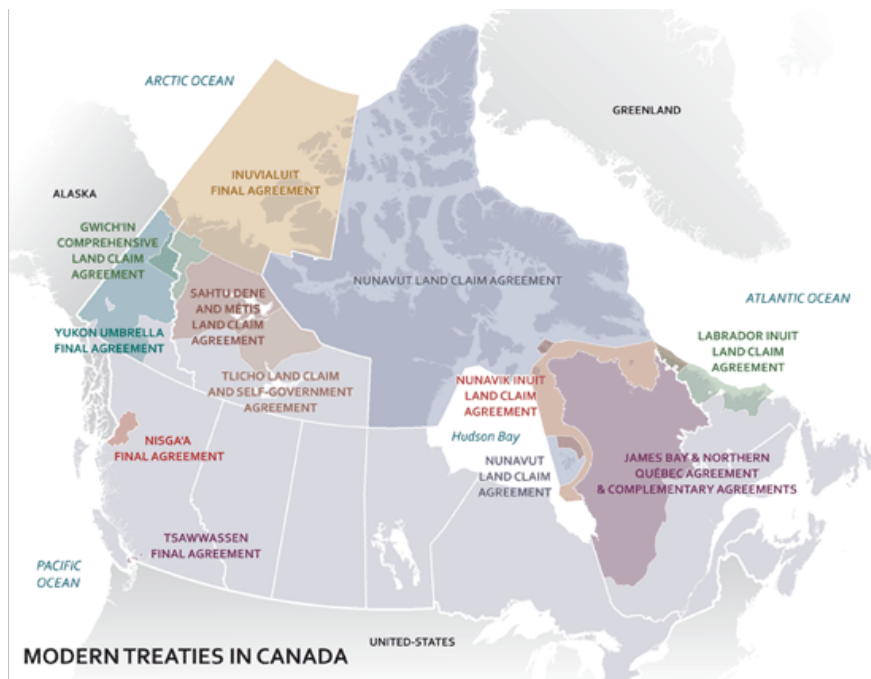


Figure 3: Map Illustrating Post-1975 Treaties in Canada

The Tsilhqot'in did not enter into the British Columbia modern treaty process and instead pursued legal title through the courts. Radical scholars and activists argue that the modern treaty process extinguishes title (Diablo, 2015). However, there are currently a number of First Nations in British Columbia engaged in the six-stage treaty process. The modern B.C. treaty process was established in 1992, when the Treaty Commission was founded to advance land claim negotiations. Despite the advent of the modern treaty process, the Nisga'a report they

had been on a “quest for a treaty” since 1890. The Nisga’a Treaty figured above came into effect on May 11, 2000, after the laws that made it illegal for Indians to raise money for land claims were repealed (Nisga’a Lisims Government, n.d.).

There are a number of circumstances as to why the Tsilhqot’in chose legal action through the courts as opposed to the treaty process in order to lay claim to their territory. I turn to a brief history of the Tsilhqot’in title case next, after establishing the relevant geography. Of note is that though there is much that could be written about the interface between the Tsilhqot’in political process and strategy in relation to land claim process and the critical anti-colonial reading of the politics of recognition, my focus, and the purpose of this chapter, is to establish relevant data to outline the regional mineral staking regulations and the case of a rejected copper-gold mine at Fish Lake. My central focus remains on resource extraction and the terms that guide hard-rock mineral staking today. However, there are substantial differences between how the rejection of a mine at Fish Lake would play out had the Tsilhqot’in entered into a modern-day treaty, or had the mineral rights at Fish Lake been located within another territory where, perhaps, a numbered treaty had been signed.

3.2 Xenigwet’in

Roger William, plaintiff in the Tsilhqot’in title case, had been the Chief of Xenigwet’in for the most part of twenty-five years. Xenigwet’in is one of the six Tsilhqot’in communities. The Xenigwet’in First Nations Government is formerly known as the Nemiah Indian Band as established through the Indian Act and is located in the Nemiah Valley. The six Tsilhqot’in communities are united as the Tsilhqot’in Nation. The Tsilhqot’in National Government, established in 1989, represents Tl’etinqox (Anaham), Tsi Deldel (Redstone), Yunesit’in

Government (Stone), Xeni Gwet'in First Nations Government (Nemiah), ?Esdilagh (Alexandria) and Tl'esqox (Toosey). Below is a contemporary map of the roads (Highways 97 and 20) that connect the six communities today. Highway 20 runs further west to Bella Coola and connects Williams Lake to the coast. As shown, three Tsilhqot'in communities reside just off of Highway 20, with one community located north of Williams Lake. The proposed copper-gold mine discussed in this dissertation is located between Xeni Gwet'in and Yunesit'in.



Figure 4: Tsilhqot'in communities (Tsilhqot'in National Government)

Xeni Gwet'in and the Nemiah Valley are a three-hour drive from Williams Lake. Two hours of this drive is along unpaved roads, and Xenigwet'in remains off the electricity grid. On the road to Xenigwet'in is the community of Yunesit'in, also called Stone First Nation. Each community has a 'caretaker area.' The Xenigwet'in and Yunesit'in caretaker areas are the land,

plants, animals, and water surrounding the community that they care for. The caretaker areas are regionally discrete, and they surround each of the six Tsilhqot'in communities.

Chief Roger William gave a talk at UBC in the fall of 2014 on the Tsilhqot'in title and rights case and the background relevant to the twice-rejected mine proposal at Fish Lake (William, 2014). He first provided a history of the landmark events that have altered the path of Tsilhqot'in people, and the talk also outlined the environmental governance history of Fish Lake. Tsilhqot'in history most often recounted to settlers, and frequently drawn on during the environmental assessment hearings, begins with a crucial moment that marks the beginning of perhaps the most troubled era of contact between the Tsilhqot'in and settlers: the 1862 smallpox epidemic that decimated Tsilhqot'in populations. Disease and death are remembered as particularly violent at Puntzi Lake, where only two young girls survived in a village with a population of over two hundred. The small pox epidemic of 1862 is not forgotten in Tsilhqot'in memory, and is recounted to visitors such as myself. Major population shifts of genocidal proportion resulted from disease, and throughout the settlement of B.C. smallpox visited all Indigenous groups, some several times. 1862 was the year of the Cariboo gold rush, and was also the year the worst recorded outbreak of smallpox took place. The Tsilhqot'in people still vividly recount this event.¹⁶ Disease significantly affected native populations, including in Tsilhqot'in territory where spread of smallpox remains a vivid memory of the loss of Tsilhqot'in peoples, culture, and history.

¹⁶ Cole Harris concludes that smallpox first reached the Strait of Georgia 1782, and he maps the approximate distribution of smallpox at this time (1997, p. 19). Harris questions the white (colonial) misunderstanding of the spread of disease in B.C. He asks why settler society has chosen not to understand what he refers to as the "decimation of native society" by smallpox prior to the arrival of Vancouver and Galiano.

3.3 The Tsilhqot'in War

In 1864, two years after this major smallpox outbreak, the Tsilhqot'in War took place. Tsilhqot'in people discussed the War often during the environmental assessment hearings, and the conflict constitutes a critical dimension of the history of colonial mining efforts and struggles over resource sovereignty today. I tell this story because it is about settler efforts to support the gold rush and provide routes into the gold fields. Those fields were in Indigenous territories, and Tsilhqot'in people were killed for defending their territory. The event remains vivid in Tsilhqot'in history. The settler narrative of the Tsilhqot'in War is about the building of a road from Bute Inlet through Tsilhqot'in territory to provide a transportation route for settlers travelling to the gold fields. There were two gold rushes in the mid-1800s in British Columbia. The first was that of 1858, which I discuss in light of the origins of mining laws in what is now known as western Canada (in Chapter 4). The second gold rush was the Cariboo gold rush of 1864. Miners travelling north, often through Victoria on Vancouver Island and/or New Westminster, were headed to the Cariboo gold fields in and around Barkerville, south east of where Prince George lies today.

Travelling up the Fraser Valley proved to be a treacherous, long route to the gold fields. Alfred Waddington, a Victoria-based entrepreneur, led this failed road building project. The project was referred to as "Waddington's Road" as explained in scholarly descriptions of the Tsilhqot'in War by historians such as John Lutz and William Turkel.¹⁷ Historians have recounted the Tsilhqot'in War with narratives largely derived from the colonial archive and in John Lutz's case, augmented with interviews with the Tsilhqot'in National

¹⁷ Waddington's road was being built in order to provide a route to the goldfields, which thus demonstrates the role of resource extraction in conflicts between Indigenous people and settlers and the imposition of settler state formation through the gold economy on what was otherwise Tsilhqot'in land. The Tsilhqot'in War could be squarely understood in light of a failed attempt to dispossess Indigenous people of their lands and resources

Government, for example. The two conflicting sides were the Tsilhqot'in and the settlers who wished to open up the road. The archival story, as one would imagine, is not identical to the way the story has been passed down by Tsilhqot'in people. My point is not to resolve this differentiation, but to show how the other main details of the story remain the same. The story involves the colonial government's ultimate defeat, though colonial powers sought revenge through the hanging of six Tsilhqot'in chiefs. I now cite a quite thorough passage by Chief Russell Myers Ross in Yunesit'in that describes the Tsilhqot'in war, presented to the panelists at the environmental assessment hearings. As noted above, for the Tsilhqot'in, the history of the war begins with the smallpox epidemic:

It was a very well-organized group of settlers that brought smallpox to British Columbia in 1862. First Nations groups held sovereign de facto power in the territory prior to smallpox. Evidence of this is the fact that Hudson's Bay Company followed Indigenous laws when interacting in our territory. Even to gain access to land one would have to marry in. At this time two waves of smallpox came into the Tsilhqot'in: the first was led by Francis Pool, leaving a couple people on the trail to annihilate First Nations communities starting from Victoria, Nanaimo, Port Rupert, Bella Coola, (Native word), [sic] and then the Tsilhqot'in villages that now go through Puntzi Lake and Chilko Lake. Those situated at Puntzi Lake observed hundreds dead leaving only two small girls as survivors. The kill rate was estimated as 80 to 90 percent. Smallpox had a devastating effect and one could say that the un-trusting relationship with white people is a result of this early memory.

The motive becomes clear when all the fog evaporates. The motive, of course, is land acquisition. The rule of law at the time for the employees of the Queen was to acquire land through treaty. For struggling colonies the only other way to declare the lands or to take lands is to declare it as empty [*sic*]. So it prompted a clear motive to annihilate the populations and alter the balance of power. The people who brought smallpox to First Nations were affiliated with the colonial government, including James Douglas, certain men with the Hudson's Bay Company, and the Puget Sound Agricultural Company. In short, the same people surveying the areas to preemptively occupy indigenous lands were the same people spreading the disease. Our ancestors responded in self-defense later by removing people identified as spreading the smallpox, sometimes by means of assassination and in 1864 preventing a new threat.

The 1864 skirmish was coined "The Tsilhqot'in War." A road crew threatened the Tsilhqot'in with smallpox, but the relationship was simultaneously worsened when a road crewmember had tied up a Tsilhqot'in woman in a cabin and raped her repeatedly. The Tsilhqot'in would later kill 14 men, then they would move north to intercept individuals responsible for the deaths at Puntzi ... Their pack train was moving to supply the road house that was slated to be a future settlement. So this - - Puntzi Lake is close to Tsi Deldel, just north of Tsi Deldel. When the colony received word of the so-called "massacre," they assembled two militias, totaling over 130 men. Once in the territory they tried to capture the war leaders ... No doubt they viewed their effort as a failure. Our ancestors selectively chose to kill Donald McLean. He's famously known as "Samandlin" amongst the Tsilhqot'in. As he was the main guide in the former Hudson's Bay Company, and an employee at Fort Tsilhqot'in years before, he was drawn into a

trap and shot and once dead the Tsilhqot'in stopped negotiations. [Donald McLean is known as being particularly racist, disliked by Indigenous people due to his acts of violence that ultimately led to his demise.¹⁸]

Tobacco was offered to the Tsilhqot'in as a gesture of peace. Governor Seymour represented the first time the colony ever sent an authority to the Tsilhqot'in. He later asked the Tsilhqot'in permission to leave and was granted. Despite the gesture in a meeting the militia chose to nevertheless shackle a few Tsilhqot'in leaders and haul them to Quesnel for trial. This trial was not a real trial. It's a symbolic act for the colony that represented their authority and ability to instill fear in the indigenous population... The war leaders that were hung are still memorialized by our nation today on October 26th for defending our territory. (CEAA, 2013, vol. 15, p. 82–85).

Chief Myers Ross begins with the role of smallpox and goes on to highlight some of the key events in the Tsilhqot'in War that involved the killing of fourteen men and the colonial government's retaliation—sending what John Lutz refers to as a volunteer army (2008, p. 136). A discrepancy between Lutz's reading of the Tsilhqot'in War and that of the Tsilhqot'in people is the role played by smallpox.¹⁹

¹⁸ Thanks to David Williams for discussions about the settler history of contact in the Tsilhqot'in. Donald McLean's sons, "the McLean brothers," did not correct this family history of brutality and racism towards Indigenous people. See also (Lutz, 2008, p. 131) for further history on McLean and his "superb disdain" and outright hostility towards the Tsilhqot'in.

¹⁹ Tom Swanky, an author who has been criticized for disregarding colonial academic renditions of history, discusses this discrepancy in his book *The True Story of Canada's "War" of Extermination on the Pacific*. Swanky's contention with academic historians is reciprocated by criticisms of his work (see the book review by Robin Fisher in *BC Studies*, Summer 2014, for example). Swanky has spent a lot of time in Tsilhqot'in territory talking to people and learning Tsilhqot'in history. Though his work is not peer reviewed, he is a friend of the Tsilhqot'in and his book is a resource I have heard recommended by community members. There are a number of ways to interpret the debates over the role of smallpox. While academic settler historians, for example, may argue that there is little proof in the archive of the strategic spread of smallpox, the story passed down by the Tsilhqot'in

In both Chief Russell Myers Ross' description above and Chief Bernie Mack's description below, the role of smallpox is introduced directly before the details of the war. If newcomers were not given permission to peacefully enter Tsilhqot'in territory for road building purposes, the Tsilhqot'in report that there was the threat of the further spread of smallpox by settlers, or at least one settler in particular. John Lutz details how the new colonists and settlers in power at the time of the Tsilhqot'in War had very little experience with Indigenous people. Lutz refers to these settlers as "a new breed of Europeans" compared to James Douglas, the region's first governor with deep ties with the Hudson's Bay Company (Lutz, 2008, p. 131).

What these differences in storytelling illustrate is how histories and stories, including that of the Tsilhqot'in War, remain contested narratives with often unspoken differences. At times these differences seem worlds apart, but the monumental events that describe the Tsilhqot'in War are the same in both the colonial archival narrative and the story as told by Myers Ross above. For example, the significance of the war to the Tsilhqot'in in protecting their territory, the hanging of the Tsilhqot'in chiefs, and the mishandling of the conflict by the colonial government are all clearly recounted in both the settler scholarship and Tsilhqot'in narratives.

Chief Bernie Mack, representing the ʔEsdilagh (Tsilhqot'in) Nation (also known as the Alexandria Indian Band), also discussed the Tsilhqot'in War during the environmental assessment hearings. His written statement traces the history of contact between settlers and the Tsilhqot'in in his community, and reads as follows in regards to the war (CEAA, 2013, Submission to panel, August 14 emphasis added):

details otherwise. Tom Swanky adamantly argues that the Tsilhqot'in narrative is correct and has dedicated much of his life to uncovering the tale. Even if there is thin evidence in the colonial archive of the role of smallpox being strategically spread, and/or threats of the further spread of disease, given the confines and the privileging of colonial perspectives, such an archive can hardly be accepted as the only rendition of this history.

Our ancestors feared infringement on our territory and the increased threat of smallpox, (small pox was an epidemic that had already killed many of our people and it was an environmental impact that was very detrimental to the population of our people). At that time Klatassin, a Tsilhqot'in leader, and other Tsilhqot'in attacked one of the road builder's work camps, killing fourteen road construction workers and setting off what was to be called the Tsilhqot'in War or Chilcotin War. This was an unfortunate incident, which later resulted in the hanging of five of our leaders in Quesnel, B.C. in 1864. *The five Tsilhqot'in men who were hanged for defending our lands and way of life were:* Telloot, Klatassin, Tah-pitt, Piele, and Chessus and although we are saddened by what happened to them, we know and understand that when people's lives are threatened by intrusions into their very lands, culture and survival, disagreements and tragic incidents have happened. I point this out as it is a part of our history and although some people do not like to hear it, it is important, as it is part of the relationship experience and how our people were treated from early on. This is a significant impact on us as a people and we can never deny the realities of how our people have been marginalized and treated with disrespect through institutionalization.

The war ultimately led to the unlawful hanging of Tsilhqot'in chiefs, and I emphasize the words of Chief Bernie Mack above, as he highlights the men were hanged for defending Tsilhqot'in lands and life. He traces the disrespect, marginalization, and institutionalization of his people to the hanging of the Tsilhqot'in leaders.²⁰ Another significant part of this story is

²⁰ By the use of the word "institutionalization," Chief Bernie Mack could be referring to a number of ways in which settler colonial governments have acted to marginalize Indigenous people. This includes institutions such as contemporary state prisons that house a disproportionately high number of Indigenous women and men (Martel &

that it was indeed the gold commissioner, William Cox, who lured the Tsilhqot'in chiefs to their trial—essentially their hanging—and led the volunteer army referenced by Lutz. The chiefs were told that the meeting with the colonists was to be peaceful, or as Myers Ross states, that tobacco was offered as a gesture of peace. The Tsilhqot'in were deceived by the peace offering, sent to trial, and hung on the orders of Judge Matthew Begbie, who thereafter became known as the hanging judge, a reputation he retains today.²¹ As Lutz writes, “Judge Begbie was uncomfortable with the trick used to lure the Tsilhqot'in into their capture” (2008, p. 137). Turkel draws on archival and secondary sources and points out that this move to hang the Tsilhqot'in leaders by colonial authorities was by no means viewed fondly even by the settler population in Victoria. Myers Ross comments (above) on how the Hudson Bay Company followed Indigenous law. This Turkel also notes in a juxtaposition of the pre- and post-gold rush years; There was a major shift in relations between Indigenous people and settlers before and after the gold rush economy emerged in British Columbia in 1858.

As centrally documented in the story above, the influx of colonial government brought with it a number of colonists who had both little experience with Indigenous people and overtly racist attitudes. For example, Turkel writes that “the colonial perception of, and response to, the Chilcotin War was shaped by people who had little prior experience in the region: Waddington, Cox, Brew, and Begbie had all arrived in the colony in 1858, and Seymour in 1864” (2007, p. 184). In referring to this new wave of settlers, Lutz (above) and Turkel (here) contrast the mentality of the newly arrived colonists with the settlers who had been active in the fur trade and

Brassard, 2006), the taking away of Indigenous children from their parents through foster care, and the history of residential schools (Milloy, 1999). Or, it could refer to the institutionalization of violence towards First Nations.

²¹ This act of deceit is something British Columbia recognized through a formal apology in October 2014. At that time the Tsilhqot'in chiefs that were killed during the war were exonerated.

the Hudson's Bay Company. Fur traders did business with Indigenous people, often spoke native languages, and by and large acted more respectfully towards their Indigenous business partners. This contrasts with the new era of settlement during the gold rush years when the foundation of settler colonial law was established. William Cox, the gold commissioner sent with a volunteer army to the Tsilhqot'in, carried with him a colonial order that presupposed the duty and legitimacy of granting mining licenses. My reference here to the colonial order refers to not just the formal laws, like gold regulations, that it embodied, but also to the new territorial claims it made. Patricia Seed (1995) and Patrick Wolfe (1999) both note the assumed legitimacy of European sovereignty that settlers individually felt they carried upon arrival in the 'new world.' This assumed legitimacy is relevant in that it demonstrates how it was not only the regulations that allowed colonial mining law to be enacted, but also the embodied claims to sovereignty made through the spread of disease, the claiming of lands, and the gendered violence against Indigenous women, recounted as part of the history of the Tsilhqot'in War.

One hundred and fifty years later, how much has this colonial order changed? On October 23, 2014, in the British Columbia legislative assembly, Premier Christie Clark apologized, saying that "today marks a significant step toward reconciliation with the Tsilhqot'in Nation, and to a relationship of respect and recognition" (British Columbia Government, 2014). Clark was apologizing for the wrongful hangings of the six Tsilhqot'in chiefs, and the province formally "exonerated [the chiefs] of any crime of wrongdoing." These acts of apology, couched within the terms of reconciliation, exist within the confines of what are largely state-based terms of engagement. In contrast to these terms, the Tsilhqot'in of Xenigwet have very clearly established rules of their own that govern their lands. The Nemiah Declaration, which I turn to

now, was first declared in 1989. It was the first law established within the title lands, after the historic title case win. The Nemiah Declaration was affirmed and enacted on March 19, 2015.

3.4 The Nemiah Declaration

In 1989 the people of Xení Gwet'in (one of six Tsilhqot'in communities) wrote and signed the Nemiah Declaration, which stated there was to be no mining or logging without Xení Gwet'in involvement. The declaration coincided with the building of a series of roadblocks to prevent unwanted logging in the Tsilhqot'in, the most famous of which was that at Henry's Crossing in 1992.²² The 1990s were also a time when Tsílo'os provincial park was established in the Xení Gwet'in region, co-managed by the province and Xení Gwet'in Tsilhqot'in people of the Nemiah. Turkel notes that the Environmental Mining Council of B.C., along with others, influenced Premier Harcourt to create a park, and in 1994, Tsílo'os Provincial Park, 233,000 hectares in size, was created (2008, p. 31). Tsílo'os Park does not include the Teztan Biny area and neither the Nemiah Declaration, the Tsilhqot'in Declaration of Sovereignty, nor the ongoing title and rights court case deterred Taseko Mines Limited, a Vancouver-based company, from attempting to open a mine at Fish Lake.

The Nemiah Declaration established the Nemiah Aboriginal Wilderness Preserve.²³ The declaration extended throughout the Nemiah Territory, as indicated in the map below, and the Wild Horse Preserve shares roughly the same boundary as the Nemiah Wilderness Preserve, outlined in red below and detailed more closely in the following map (Xení Gwet'in Territory).

²² Nicolas Blomley has written about blockades in British Columbia and questions why they receive so little scholarly attention (1996). A roadblock at Henry's Crossing in 1992 is said to have instigated the Tsilhqot'in title and rights case.

²³ Anthropologist David Dinwoodie has written about the Nemiah Declaration in detail (Dinwoodie, 1998).



Figure 5: Nemiah Wilderness Preserve (Fick 2005)

It thus included Fish Lake. The declaration reads as follows:

Let it be known that:

Within the Nemiah Aboriginal Wilderness Preserve:

There shall be no commercial logging. Only local cutting of trees for our own needs. i.e. firewood, housing, fencing, native uses, etc.

There shall be no mining or mining explorations.

There shall be no commercial road building.

All terrain vehicles and skidoos shall only be permitted for trapping purposes.

There shall be no flooding or dam construction on Chilko, Taseko, and Tatlayoko Lakes.

This is the spiritual and economic homeland of our people. We will continue in perpetuity:

To have and exercise our traditional rights of hunting, fishing, trapping, gathering, and natural resources.

To carry on our traditional ranching way of life.

To practice our traditional native medicine, religion, sacred, and spiritual ways.

That we are prepared to SHARE our Nemiah Aboriginal Wilderness Preserve with non-natives in the following ways:

With our permission visitors may come and view and photograph our beautiful land.

We will issue permits, subject to our conservation rules, for hunting and fishing within our Preserve.

The respectful use of our Preserve by canoeists, hikers, light campers, and other visitors is encouraged subject to our system of permits.

We are prepared to enforce and defend our Aboriginal rights in any way we are able.

This declaration is separate from the Declaration of Sovereignty by the Tsilhqot'in Nation signed in 1983 and again in 1998. However, both lay foundational claims to the rights and title of the Tsilhqot'in people and express their intention to manage and control resources within their lands. Of particular relevance to the story that unfolds over Fish Lake is point (b), "There shall be no mining or mining explorations." Like the Tsilhqot'in War, the Nemiah Declaration was mentioned often by community members during the environmental assessment hearings. As I discuss in further detail in Chapter 6, the mining company attempting to open a mine at Fish Lake referred to the declaration as "uncompromising" and in the same line of argument said that the parties involved have to deal with "the law as is." This attempt to delegitimize Tsilhqot'in regulations as set within their own lands is deeply embedded in settler colonial claims to sovereignty that come to be read as normal and continue to be taken for granted through the settler state. This is slowly changing within the courts, as demonstrated in the court case that I turn to next.

3.5 The William Case

The Tsilhqot'in title case began with an assertion against unwanted logging. Though emphasis around the case has shifted to the relevance of defining aboriginal title and rights, it is crucial to keep in mind that this legal action started with the Tsilhqot'in people saying 'no' to unwanted resource development. The title case re-centred the role of resource extraction in conflicts between Indigenous people and the Crown because it was the unwanted logging that instigated the court case, which in effect was won through proof reliant on oral testimonies of cultural and occupational land use.

3.5.1 The Trapline Action and Subsequent Roadblocks

Chief Roger William traces the Tsilhqot'in title case to 1990 and the late Martin Baptiste's trapline case that was brought to court by William himself (William, 2014). The trapline case, or the "Nemiah Trapline Action," was brought to the Supreme Court of British Columbia against the Crown, or "Her Majesty the Queen in Right of the Province of British Columbia, the Regional Manager of the Cariboo Forest Region and the Attorney General of Canada." Logging threatened the Chilko region, Dasiqox Biny, and the Brittany Triangle. In 1992 Tsilhqot'in people met with ranchers and other First Nations to roadblock unauthorized logging. Quoting the 1990 Trapline Action trial judge, the Tsilhqot'in Nation's legal council stipulated that this roadblock and legal action were "provoked by provincial forestry authorization and plans for extensive and substantial clearcut harvesting in one of the last intact areas of Tsilhqot'in territory" (CEAA, 2013, vol. 12, p. 30–31). Therefore the logging that was authorized by the province remained unauthorized by the Tsilhqot'in of the Nemiah Valley. A protest at Henry's Crossing in 1992 and the trapline case put the wheels in motion for the contemporary court case.²⁴

In 1997 there was a second roadblock and action against the trapline case, the Brittany Triangle Action, which was amalgamated with the first territorial claim made through the Trapline Action. This happened simultaneously with Taseko Mines Limited's first attempt to open a mine at Teztan Biny, and feasibility studies were being done that estimated the amount of minerals (in this case copper-gold) available and the cost of mining in order to offer a cost-benefit analysis for a potential operation.

²⁴ The court case has been heralded as a significant "game changer," since the province can no longer legally claim the right to resources in this territory, referred to as the title lands (Phillip, 2014). Thus the history of the case is important to this thesis and to resource regulation debates in Canada more generally.

3.5.2 Provincial Title Case

Meanwhile, the trial for the Tsilhqot'in title case began provincially on November 18, 2002 and ended on April 7, 2007, with 339 trial days, making it the longest trial case in British Columbia's history. A vast documentary was recorded, including testimony from twenty-nine Tsilhqot'in witnesses and numerous experts (Nelson submission to CEAA panel 2013). The "claim area" was distinguished through the trial and the record. (See the map of the Nemiah Wilderness Preserve and the rights and title lands. Note that Fish Lake is located inside the rights area, but just shy of the title lands.)

The court case resulted in Justice David Vickers ruling that the Tsilhqot'in had territorial rights and a right to claim title to the Nemiah Valley (the claim area), yet title was not technically granted. The Vickers decision significantly criticized the previous dismissal of oral history in courts, concluding that oral histories and traditions must be given equal weight to written work (*Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700, para. 134–7). The decision, released on November 20, 2007, granted aboriginal rights to hunt and trap throughout the claim area. This included the right to capture and use wild horses. Vickers found that "Tsilhqot'in people were present in the Eastern Trapline Territory at the time of first contact [1793]. The area has been used by Tsilhqot'in people since that time for hunting, trapping, fishing and gathering of roots and berries" (para. 893, quoted in Nelson, 2013). The trial judgment also granted the aboriginal right to trade skins and pelts by drawing on Section 35(1) of the Canadian Constitution Act (para. 1291, quoted in Nelson, 2013). The forestry authorizations were struck down, but all parties appealed the decision.

The B.C. Court of Appeal heard the case in November of 2010, and in June 2012, the decision to uphold the rights to hunt, trap, and trade was made, but the appeal court ruled that only “specifically occupied” or “intensively” used places could be claimed. This is known as a “postage stamp” approach to aboriginal title because only very small areas of title are granted. Again, the Tsilhqot’in appealed the decision and the approach.

3.5.3 Supreme Court

In November 2013, the case was heard at the Supreme Court of Canada. On October 30, a bus ride was organized called the “title case express,” and elders who had testified in front of Justice Vickers journeyed to Ottawa with Tsilhqot’in people and Indigenous leaders to hear the Supreme Court of Canada case. William and others have discussed the momentum that grew during the bus journey from British Columbia to Ottawa. Indigenous communities greeted the Tsilhqot’in across Canada in support of their ongoing struggle to assert legal title over their lands.

On June 26, 2014, the Supreme Court decision was released, and the panel of judges unanimously ruled that the Tsilhqot’in had title to 1,750 square kilometres of their lands. Canada’s leading aboriginal legal scholars thought this outcome was as good as it could get. For example John Borrows, referred to this as a “best case” scenario (2014).

As mentioned above, this case was possible because the Tsilhqot’in, like most of British Columbia’s First Nations, were not involved in Canada’s historic numbered treaty process that ceded lands to the Crown. Hence the Tsilhqot’in are just one of many nations without treaties that had not chosen to enter into the provincial treaty process. This was one of the factors that allowed for the judges to grant aboriginal title. They declared that British Columbia “breached

its duty to consult owed to the Tsilhqot'in through its land use planning and forestry authorizations.” The case outlines that aboriginal title “flows from occupation in the sense of regular and exclusive use” (*Tsilhqot'in Nation v. British Columbia*, 2014, para. 2 [*Tsilhqot'in Nation*]).

Discussions since the Tsilhqot'in title case have debated the utility of this court case decision for improving Indigenous control over resources in Canada as well as strengthening the right to consent to resource development projects. Indigenous activists and legal critics, including Tsilhqot'in people, do not believe it is necessary to have title to their lands legitimized by the courts. Put otherwise, many people are asking why Indigenous people have to ask their oppressors for land that has always been theirs. The Tsilhqot'in title case was estimated to cost somewhere in the neighbourhood of \$40 million (Borrows, 2014). The ability to permanently stop unwanted logging and mining in 1,750 square kilometres of Tsilhqot'in territory was won with this monumental title case. Given the debates over the meaning of this advance in legal title, this was not simply a victory within the confines of the courts, or the legal system, or the rules of colonial law.

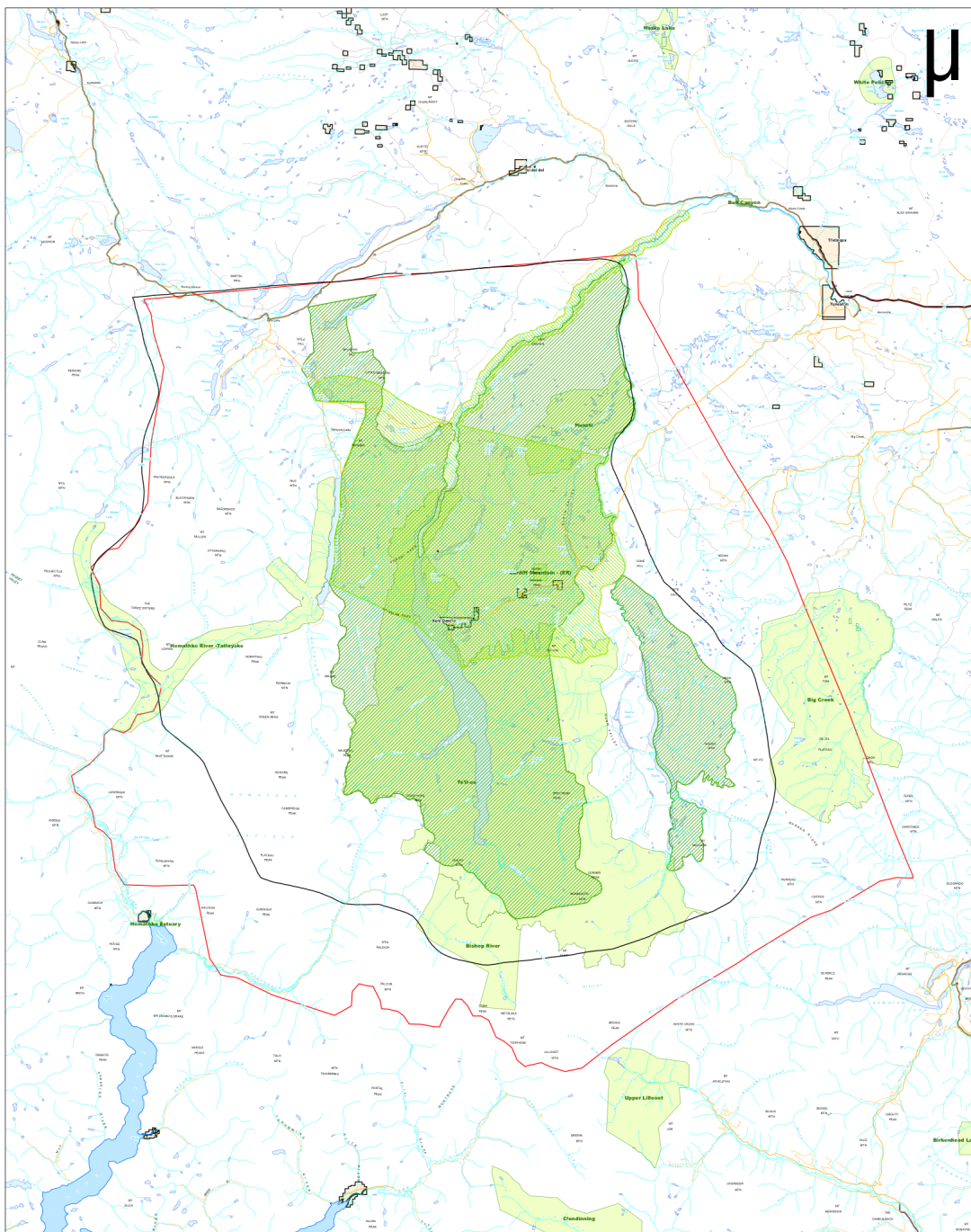
The “archive of place”—in reference to the title of William Turkel’s book—at Fish Lake remains ongoing, and has unfolded significantly since the book was published in 2007; Tsilhqot'in territory at Teztan Biny remains contested. Further, the Supreme Court of Canada’s title case decision has altered the political landscape in the region via case law and the granting of title lands. To remind the reader, Teztan Biny is located inside the affirmed rights area and is approximately five kilometres shy of the awarded title lands.

In light of the monumental victory that granted title to the Tsilhqot'in, above and below the surface, Taseko Mines Limited released a public statement (the very day the judgment was

announced), stating, “[the] ruling confirms that Taseko’s New Prosperity Gold-Copper project is located in an area where aboriginal title does not exist. As such, New Prosperity is the only proposed mine in B.C. that people know for sure is not in an area of aboriginal title” (TML, 2014). They wrote this statement because Fish Lake is just shy of the title area. So, according to the company, aboriginal title was only proven inside the area drawn on the map, though Fish Lake is located inside the awarded rights area. This statement by Taseko Mines Limited demonstrated an inability to meaningfully engage with the Tsilhqot’in Nation, a dismissal of Tsilhqot’in claims to rights at Fish Lake awarded by the court decision, and a desire to delegitimize the significance of the decision to reject the mine proposal. This was the case even if the purpose of such a statement was aimed at their shareholders. There are conflicting understandings of politics at work as shown through the rights and title case and the cultural quantification of the Tsilhqot’in’s connection to their lands. If Taseko Mines Limited did hear the Tsilhqot’in voices that continuously stated the significance of this place during the environmental assessment hearings, they were unable or unwilling to listen. This raises questions about the differing approaches to the politics including the definition of title and rights. The ideologies that frame such debates are situated in entrenched racial hierarchies, continually relived through law. Or rather, there is a great divide between the significance of “aboriginal rights and title” to a Tsilhqot’in person versus a settler trying to open a mine on Indigenous land. In the map below Fish Lake is located inside the “rights area” located to the left of the dark green “proven title area.”

Xeni Gwet'in Territory

With Various Administrative Boundaries, Including the Aboriginal Preserve, Declaration Area, Proven Rights & Title Areas, Provincial Parks and Indian Reserves.



- Legend**
- Xeni Gwet'in Aboriginal Preserve
 - Xeni Declaration Area - Aug 1989
 - Proven Tsilhqot'in Title Area
 - Proven Tsilhqot'in Rights Area
 - BC Parks

Scale = 1:300,000
0 10 20 30 40 50 60 Kilometers

The Xeni Gwet'in Declaration Area is also known as Xeni Gwet'in's Caretaker Area, as provided to the TNG from Mark Hamm of MOF in 2007. Boundary names confirmed by Xeni Chief Marilyn Baptiste March 2011. Map Created April 13th 2011 by TNG GIS Department. MT.



Figure 6 (previous page): Map, Tsilhqot'in Title and Rights area, as referred to in Tsilhqot'in Nation v. British Columbia, SCC 44 (2014).

3.6 Conclusion

This chapter has established the groundwork to understand the stakes of the mine proposal at Fish Lake. The conflict over gold as debated during the CEAA hearings necessitates an understanding of the breadth of encounters between settlers and the Tsilhqot'in, including those experienced through settler courts as far back as the Tsilhqot'in War. While this has been by no means an exhaustive review of the key moments in the history of the Tsilhqot'in in regards to resource development, it has nevertheless attempted to provide a historical context through which to understand the place of the CEAA hearings. Before discussing the hearings, I move on in the next chapter to a discussion that also jumps temporal scales, by examining the first mineral-staking legislation in British Columbia. This is important in understanding how settler colonial dispossession is entrenched in mineral tenure, and how the expense and effort of environmental assessment could be avoided if there was a more logical mechanism to allow for Indigenous participation and decision making earlier in the regulatory process, well before environmental assessment takes place. The following chapter discusses the colonial era—the same era during which the Tsilhqot'in War took place—but with a focus on how mining laws were racially structured to privilege settlers and delegitimize Indigenous claims to sovereignty on their lands. This social and racial stratification extended far beyond the case of British Columbia, since the roots of this legislation lie in British colonial rule.

Chapter 4: Sovereign Intentions: Mineral Staking in B.C.

This chapter is part of my larger project examining settler colonial dispossession, from B.C.'s first gold rush to the contemporary conflicts over gold taking place in the present. The rejection of the dispossession of land and resources at Fish Lake in Tsilhqot'in territory, and the rejection of the New Prosperity mine project, are my overarching empirical concerns. This dissertation's focus remains on the regulatory devices that make it difficult to reject mining projects in Canada and particularly British Columbia. My aim is not to be deterministic about the power of mining law, but rather to illuminate how the legal mechanisms that facilitate the dispossession of Indigenous lands are bound to gold economies and legal principles that were distilled in the gold rush era. My focus is on British Columbia, but it is worth noting that the same types of legal mechanisms resulted in dispossession in other settler colonial countries such as Australia and the United States, and particularly California.

British Columbia's gold rush in 1858 was situated within a particular geo-historical moment of gold exploration and extraction throughout the Americas. Colonial gold exploration and conquest travelled throughout South and Central America before it reached British Columbia in the 1850s. Gold rush regulations moved up the Pacific coast, and were part of the settlement of state law and resource governance. While my concern in this chapter is with a particular historical moment during which gold mining regulations were written, the British Columbia gold rush is part of a much larger phenomenon of gold seekers exploring many corners of the globe.

Daviken Studnicki-Gizbert (Studnicki-Gizbert, 2012), for example, traces the history of the gold rush on a much longer time scale than I do here. He begins his analysis during the Spanish conquest of the fifteenth and sixteenth centuries. Explorers travelled to the Americas partly in search of El Dorado, and this colonial European search for gold (and silver) spread from

South America to Mexico and later up the Pacific coast to British Columbia. Given the continental trajectory of gold mining throughout South and North America, the rush for minerals that brought colonial mining interests to British Columbia and further into Canada's North was relatively late. This chapter contributes to research on the Canadian geographies of mining including studies that examine Canada's north (Cameron 2011, Keeling & Sandlos 2009).

In previous research I have done on mining laws, miners involved in mineral regulation in Canada's territorial North eagerly explained to me how mineral claims came to be legally staked. This included a critical spatiality, as mining law travelled with the gold rushes throughout the Americas. It is, in part, these previous conversations with miners in the Northwest Territories that sparked my interest in the origins of mineral staking in Canada. The B.C. Gold Fields Act was a common referent in these discussions in my previous work. It was the first mining legislation formally recorded and legally enshrined in the Canadian West. The Gold Fields Act was signed on August 31, 1859, over a year after the colloquial laws I refer to later in this chapter were recorded in James Douglas' *Journal to the Goldfields* in May 1858. James Douglas was the first colonial governor of what became known as British Columbia. Like in other claim staking regimes established in Australia, the ideologies that governed mining in British Columbia were based essentially on the tenets of British mineral staking. This circumstance helps explain how resources today come to be legally alienated from Indigenous title claims and instead owned and governed by the state—through the law. The gold rush of 1858 was integral to the formation of British Columbian sovereignty and marked a pinnacle moment in the structural beginnings of provincial resource allocation laws and the dispossession of Indigenous lands. The era prior to 1871 and B.C.'s entrance into Confederation—the aptly named colonial period—had two regions named by settler colonists: (1) that of New Caledonia,

on the mainland, which was loosely under Hudson Bay Company control and which became the colony of British Columbia in 1858; and (2) the colony of Vancouver Island. These two colonies were joined in 1866 to form the colony of British Columbia.

Prior to the founding of British Columbia, the Fraser River area was known in settler colonialist geographies as New Caledonia. Simon Fraser named both the Fraser River and New Caledonia, the latter after his Scottish heritage. In 1858, approximately 30,000 people passed through Victoria on Vancouver Island, some travelling from California and some from abroad, especially Britain and Australia. That same year, James Douglas, who was soon to become governor, wrote to England requesting support from the British Crown to rule the quickly expanding colony. In response, Judge Matthew Begbie was sent to Victoria from Britain. Begbie traveled to Fort Langley and declared the new colony of British Columbia subject to the Queen. This is significant to settler colonial dispossession, because in the following year, 1859, Begbie drafted the B.C. Gold Fields Act, which was among the colony's first laws that outlined mineral staking principles. In light of contemporary mining politics and the formation of a settler society, I argue the B.C. Gold Fields Act as unequivocally built on the premise of the dispossession and erasure of Indigenous lands. However, as I demonstrate throughout, the settler colonial project remains unrealized, including on Tsilhqot'in territory where the Tsilhqot'in refuse to be dispossessed of their lands, particularly at Fish Lake.

In support of my broader claims about the rejection of dispossession, this chapter discusses the regional origins and legal mechanisms of mineral staking that continue to be actively resisted. I introduce the history of mineral laws to explain the colonial property relations that continue to be rejected. The chapter addresses the following three questions: (1) How did mineral claim staking come to be regulated in British Columbia during the colonial era

of 1858 to 1861? (2) What were the legal mechanisms adopted at that time? (3) What is the significance of the adoption of such mechanisms in light of current mineral tenure regimes?

In order to answer these questions, I begin with a description of the free entry principle and the first gold mining legislation in the Canadian West, the B.C. Gold Fields Act. I then describe some of the key moments, before and after the founding of the Gold Fields Act in 1859, in the writing of mining law. *I* suggest that there is a link between racialization, dispossession, and mining laws. In other parts of the thesis, I show how this link is still present today. Before concluding, I summarize the contemporary Mineral Tenure Act to explain how the legal mechanisms that allow for the continued dispossession of resources continue today. This provides evidence that the free entry principle, described below, remains embedded in contemporary law.

4.1 Free Entry

To be clear, part of the intervention my larger project makes is a demonstration of how, during the first British Columbia gold rush era that began in 1858, British claims to sovereignty were, in part, demonstrated through mining regulations; The gold rush of 1858 provided a climate whereby British claims to territorial sovereignty over Indigenous lands and people were accelerated. Colonial administrative powers granted the right to stake land through mining licenses. These licenses were appointed in the name of the Queen of England; thus, staking a mineral claim with a miner's license asserted British sovereignty over mineral resources. Prior to the drafting of the B.C. Gold Fields Act, the only formal mining legislation in effect was the issuance of five-dollar mining licenses. The British Columbia Archives in Victoria have records of the miner's licenses that were issued monthly prior to the writing of the Gold Fields Act. As

mentioned above, the newly appointed Judge Matthew Begbie enshrined the Gold Fields Act on August 31, 1859. That was a year after the rush began.

The mineral staking principles enshrined in the B.C. Gold Fields Act established the free entry principle, or “free-mining.” This principle allowed companies and individual prospectors to stake mineral claims without the consent of, or consultation with, Indigenous people and later (when more land was pre-empted by settlers) private landholders. “Free entry” remains an issue of contestation throughout Canada (Hoozeveen 2014; Laforce, Lapointe, & Lebus, 2009) and the United States (Benson, 2012; Huber & Emel, 2009). Bonnie Campbell argues that the ideologies underwriting free entry are responsible for asymmetrical power relations in mining more broadly and links these relations with the liberalization of mining regimes in Africa during the 1980s and 1990s (Campbell, 2010). The reach of free entry mineral staking is far and wide. Indeed, the free entry principle and mineral staking laws have a large geographical scope, with roots in eighteenth-century England (Barton 1998; Hoozeveen 2014) and later. Anthony Scott traces the roots of resource property regimes as far back as Norse times and describes lease-type tenure during the medieval period (Scott, 2008). Yet legal scholars, such as Barry Barton, suggest that free entry mineral staking and the right to stake a claim can be explained through the British system that emerged in the eighteenth-century tin mining district in England. He describes this in detail in *Canadian Law of Mining* (1993) and I have built on his historical trajectory elsewhere (Hoozeveen, 2014b). The relevant points in understanding free entry are that mining is presupposed as the highest and best use of land and that staking a claim happens before discussion with anyone else takes place. This includes Indigenous people, who often occupy the lands where mineral staking takes place. While there are restrictions placed on where mineral claims can be staked (as outlined in section 11 of the Mineral Tenure Act located in this

chapter's final section) the majority of lands in British Columbia, including private property and Crown lands, can be staked on British Columbia's *Mineral Titles Online* system. The antecedents of the rules that govern the free entry mining system are embedded in the region's original mining law, to which I turn now.

4.2 The Gold Fields Act

Below is a copy of the B.C. Gold Fields Act located at the Legislative Library in Victoria, B.C.

BRITISH COLUMBIA.



PROCLAMATION.

By His Excellency JAMES DOUGLAS, Companion of the Most Honorable Order of the Bath, Governor and Commander-in-Chief of British Columbia and its Dependencies, Vice-Admiral of the same, &c., &c.

Proclamation having the force of Law in Her Majesty's Colony of British Columbia.

WHEREAS, under and by virtue of an Act of Parliament made and passed in the Session of Parliament held in the 21st and 22nd years of the Reign of Her Majesty Queen Victoria, intituled an Act to provide for the "Government of British Columbia," and by a Commission under the Great Seal of the United Kingdom of Great Britain and Ireland, I, JAMES DOUGLAS, have been appointed Governor of the said Colony, and have been authorized by Proclamation under the Public Seal of the said Colony, to make Laws, Institutions, and Ordinances, for the peace, order, and good government of the same.

And whereas, by the "Licences' Act 1859," it was declared that, from and after the 31st day of August 1859, the Proclamation of the 8th day of February last past, and the regulations and instructions therein mentioned and referred to, and bearing date respectively the 13th July 1858, the 28th December, 1857, and the 30th December 1857, should cease and be of no effect.

And whereas it is expedient to make provision for regulating the law of gold mines in British Columbia in lieu of the provisions so repealed, and for the administration of justice therein.

Now therefore I, JAMES DOUGLAS, do hereby declare, proclaim, and enact as follows, viz:—

I. In the construction of this Proclamation the following expressions shall have the following interpretations respectively, unless there be something inconsistent or repugnant thereto in the context, (viz:)—"The Governor" shall include any person or persons for the time being lawfully exercising the authority of a Governor of British Columbia.

Interpretation clause.
"Governor."

The expression "Gold Commissioner" shall include Assistant Gold Commissioners and Justices of the Peace, acting as Gold Commissioners either under special authority, or the authority of this Proclamation, or any other person lawfully exercising the jurisdiction of a Gold Commissioner for the locality referred to.

"Gold Commissioner."

The word "mine" shall mean any Bar or separate locality in which any vein, stratum or natural bed of auriferous earth or rock shall be mined.

"Mine."

The verb "to mine" shall include any mode or method of working whatsoever, whereby the soil, or earth, or any rock may be disturbed, removed, washed, sifted, smelted, refined, crushed, or otherwise dealt with for the purpose of obtaining gold, and whether the same may have been previously disturbed or not.

"To mine."

Figure 7: The B.C. Gold Fields Act (1859)

The writing of the Gold Fields Act remains relevant today because of the claim-staking regime that was instigated at this time, when free entry was regionally enshrined in law. Miners were to apply for a free miner's certificate, a license that allowed for the staking of mineral claims. The B.C. Gold Fields Act is based on the presumed legitimacy of the "Free Miner" and the "Gold Commissioner" referenced frequently throughout the Act. In the initial Gold Fields Act of 1859, a free miner meant "a person named in and lawfully possessed of an existing valid Free Miner's Certificate." This system of granting a mining license was then copied throughout northern Canada. As referenced above, Barry Barton, who traces in detail the trajectory of free entry mineral staking in Canada and the context through which claims to gold became legally governed, writes the most thorough existing discussion of the evolution of mining laws in Canada. My work continues to build on Barton's, as it has addressed liberal ideologies and settler colonial claims to property.

It is evident in the Gold Fields Act, however, that settler colonial claims were made on more than simply property. Claims were made to sovereignty and, as stipulated below, "the right to enter without [let] or hindrance upon any of the waste lands of the Crown not for the time being occupied by any other person, and to mine in the land so entered upon." This forging of regional legislation was thus dependent on ideologies of land as insignificant except in terms of its use as a resource. There are many assumptions over free entry, or "right to enter," and Crown sovereignty made in this legislation. Similar assumptions based in British law were made in New Zealand and Australia.

The Gold Fields Act defines the terms *gold commissioner*, *mining claim*, and *free miner* as well as the right to enter lands to mine. I outline key clauses from the original act here:

Gold Commissioners to be appointed by the Governor under the Public Seal

It shall be lawful for His Excellency the Governor, by any document under his hand and the Public Seal of the Colony, from time to time to appoint such persons as he shall think proper to be Chief Gold Commissioner or Gold Commissioners or Assistant Gold Commissioners in British Columbia, either for the whole Colony or for any particular district or districts therein, and from time to time in like manner to fix and vary the limits of such districts, and limit new districts, and to revoke any such appointments and make new appointments and vary such limits and sub-divide any such districts into separate and independent districts.

Free-Miner's certificate

It shall be the duty of every Gold Commissioner upon payment of £1 to deliver to any person applying for the same a Certificate, to be called a Free-Miner's Certificate, which may be in the following form...

To continue in force for one year

The Free Miner's Certificate shall continue in force for twelve calendar months from the date thereof, including the day of issuing the same, and no longer, and shall not be transferable or capable of conferring any rights upon any other person than the person therein named, and only one person shall be named as a Free-Miner in each certificate.

Must be countersigned by the free-miner

Such a Certificate must be countersigned by the Free-Miner therein named before being produced by him for any purpose. And where such Certificate shall be issued to the Free Miner therein named in person, the Gold Commissioner or the person issuing the same

shall cause the same to be countersigned by the applicant before himself signing or delivering the same.

Right to enter and mine

Every Free Miner shall, during the continuance of his certificate, have the right to enter without [let] or hindrance upon any of the waste lands of the Crown not for the time being occupied by any other person, and to mine in the land so entered upon.

In many ways the Gold Fields Act and its amendments can be read as simply another law borrowed from British colonial legislation. Yet it is the very everyday nature of the writing and use of Western mining laws that continues to generate conflicts over territory today. The very first clause listed in the above excerpt grants the gold commissioner the authority to make districts essentially however he pleases. The act transfers the duties to demark territory into the hands of one settler. Clauses two and three (omitted) set out the physical description of the license and grant a free miner the right to mine for one year. The license has to be signed by the gold commissioner (or issuing person) and the miner. Lastly, stated in this selection from the original Gold Fields Act, is the right to enter “waste lands” of the Crown in order to mine. This grants free entry to mine lands considered waste lands by settler interests. Implicit references to Locke and working the land, or the value and definition of property, are evident, as I have discussed in previous work.²⁵

Apart from the role of the free miner and the territorial aspect of free entry another major player established by this act was the gold commissioner. The gold commissioner’s power extended well beyond the governance of gold; commissioners were also charged with water

²⁵ See also Locke, “Of Property” in the *Second Treatise*.

licensing, for example. The act also later stipulates that “The Gold Commissioner alone without a jury shall be the sole judge of law and fact,” thus granting great power to this figure who at the time embodied the colonial sovereign. Gold commissioners further assumed the roles of Indian Agents. The role of Indian Agents demonstrates the early legal stages of the governing of Indigenous people in what became the settler region of British Columbia, Canada. Indian Agents were placed under federal jurisdiction at the time of Confederation, whereas the governance of mining—particularly concerning property rights—remained, and remains, a provincial affair.

The description of the government record for the Cariboo government agency states Governor Musgrave’s definition of gold commissioners: “Not only Justices of the Peace, but County Court Judges, Indian Agents, Assistant Commissioners of Land and Works, Collectors of Revenue in the different Departments of the Public Services at the several stations hundreds of miles apart and in very extensive Districts” (B.C. Archives, GR-0216; for more on Musgrave and his role in Confederation see Bescoby, 1980). These major powers and multiple roles were symptomatic of an overstretched British Empire. They also illustrate the consolidation of legal power into the hands of a few elite settlers.

Different imperial ties were at work during the founding of British Columbia. In settler terms, the gold rush was at once an opportunity for gold seekers and a risk to British control over the Pacific coast. Claims to gold encouraged Governor Sir James Douglas to very quickly assert lands in the region—including the Fraser canyon—as subject to the Queen of England. He did this in fear of losing the area (that would become British Columbia) to American interests. The rush of miners heading north to the gold fields precipitated this assertion of British territory. The Oregon boundary dispute and territorial contestations between America and Britain were at the fore of regional politics during British Columbia’s gold rush era. Though these disputes and the

signing of the Treaty of Oregon (1846) predated the gold rush by just over a decade, tensions between American and British interests were well recorded in settler histories of the era (Wright, 2013). But on a smaller scale, the details of resource laws, such as the mining laws that governed staking principles, were everyday enactments of British sovereignty steeped in settler colonial structures. These everyday enactments continue today with mineral staking. The confluence of capital resource flows and the histories of imperial power allow for the persistence of settler colonial resource laws that negate Indigenous claims to resource sovereignty in the present. This is evident through the dispossession of claims to resources at the mineral staking stage, particularly through the Mineral Tenure Act. Settler theorists and historians suggest that settlers embody, and carry with them, claims to sovereignty (Seed, 1995; Wolfe, 1999). This embodiment can be imagined in the ways that past of mineral staking regulations were practiced on the land through the regulatory mechanisms.

4.3 The “Preservation of Peace and Order”

In the beginning stages of gold regulations, the advent of miner’s licenses was written into colonial correspondence. On December 29, 1857, Governor James Douglas sent a letter about his proclamation that declared a system for mining licenses. In this letter, he writes that he took the necessary, preparatory step of proclaiming the mining licenses for the “preservation of peace and order.” He issued a proclamation declaring the rights of the Crown in respect to gold found in its natural place of deposit within the limits of Fraser’s River and Thompson’s River Districts, within which are situated the Couteau Mines, and forbidding all persons to dig or

disturb the soil in search of Gold until authorized on that behalf by Her Majesty's Colonial Government (Douglas, 1858).²⁶

This indicates that settler authorities such as Governor James Douglas perceived the gold rush as a threat. The influx of people in search of gold, and the crisis it supposedly triggered, were thus instrumental to the extension of formal colonial status to the mainland.

To cite again Douglas's *Journal of a Visit to the Gold Fields*, in May of 1858, he recorded a list of the local rules that governed one particular gold bar, Hill's Bar, located on the Fraser River. During settler colonial gold rushes, men working in mining camps developed the first gold laws locally. These customary laws came before legally enshrined British law, but collectively they set a precedent of settler colonial resource dispossession. The customary law of settler miners colloquially asserted the material dispossession of Indigenous resource sovereignty through mining and mineral claims, as shown below.

The colloquial regulation from Hill's Bar in May 1858 read as follows:

1. No claim on this bar to exceed 25 feet front to each man.
2. Each man can hold 2 claims viz. one by preemption and one by purchase. Provided he works both.
3. Bar claims can be held during absence by partners representing claimant.
4. When workable every claim must have one day's work in every three put on it, except in case of sickness.

²⁶ The "Couteau Mines" was the colloquial phrase for the mining region before the settler population began to more frequently refer to the region as the Fraser River goldfields.

5. Any whiteman [sic] caught stealing on this bar shall be punished as a Committee appointed by the mines shall direct, and shall if he belongs to the Bar forfeit all his right, title and interest on it.

6. Any white man molesting the Indians whilst in a state of intoxication or otherwise shall be dealt with as a committee of the miners shall direct.

7. No liquor shall be sold or given to the Indians, nor exposed publicly for sale on this bar. Any one violating this law shall be fined \$100 for the first offence and for the second be sent from the forfeiting all his right title or interest in it.

For Mutual Safety

There shall be elected a captain and 2 Lieutenants who shall have entire control in case of danger or attack, or whenever they may have reason to apprehend any. Any one disobeying the orders of either shall be subject to a severe penalty.

There are many things of interest in these laws established by settlers. As Barry Barton notes, miners self-regulated—particularly in California—since the first American mining laws were not written until 1866, well after the first California gold rush (1993, p.116). He goes on to state that migrating miners brought their familiarity of free entry with them to Canada.

The customary law recorded by James Douglas from Hill's Bar established free entry, the size of claim areas, and the work requirements necessary to maintain good standing.²⁷ It also established consequences for white men stealing, and marked a clear social division between white men and Indians. The document demonstrates the gendered, racialized environment of the

²⁷ Rules that govern that a mineral claim must be worked are still enshrined in mineral rights regulations. For example, in the Northwest Territories this type of work is referred to as "representation work." In British Columbia, Notice of Work requirements are what the province uses in defense of free entry (personal communication with provincial bureaucrat).

gold rush. Rule six, that “any white man molesting the Indians whilst in a state of intoxication or otherwise shall be dealt with as a committee of the miners shall direct,” is worth contemplating in particular. It indicates, first, that there was enough abuse of Indigenous people by whites to warrant such a rule, but also that settlers conceived of this abuse as a problem. Since these customary laws imitated those from other mining districts, this document also suggests that this racial and gendered division within mining districts was also widespread in settler societies beyond British Columbia.

The final law, concerning the sale of liquor to Indians, was later enshrined formally by the colony of British Columbia. The “Penalty for Selling Liquor to the Natives” was the first ever British Columbian proclamation, issued on September 6, 1858. This is significant in that it speaks to a much larger culture of regulating “Indians” that continues today, through the Indian Act for example.

Renisa Mawani has written on liquor laws concerning Indigenous populations, particularly in her analysis of “half-breeds,” in which she suggests the existence of confused racial hierarchies, particularly in Canada during the late nineteenth and early twentieth centuries. Her work also addresses the social regulation of space and the maintenance of racial/social hierarchies through the governance of sex (“half-breeds”) and liquor laws. She argues that racial segregation through spatial means such as the creation of reserves and liquor laws is based on a desire to “construct white bodies and spaces as ‘pure’” (2000, p. 24). She also suggests that liquor laws were written under the white Eurocentric assumption that Indigenous people lacked the attributes of (good, white) self-disciplined Christians, and were designed to encourage racial segregation (2000, p. 26). The presence of these values can also be seen in the above-listed customary mining laws, particularly in law seven, which prohibited the sale of liquor to natives.

Therefore it is quite clear that gold mining laws and other early colonial regulations, including those formulated prior to the writing of the B.C. Gold Fields Act, were racially structured. The Hill's Bar mining regulations detailed in James Douglas's journal were not formally or legally enshrined, but they show how racial structuring was embedded in settler society at the time. The Hill's Bar mining code relates to the Gold Fields Act in two significant ways. Firstly, the formal proclamation of the Gold Fields Act enshrined the same principles that were in practice at Hill's Bar. Secondly, Indigenous resource sovereignty is significantly occluded in both the colloquial mining code as well as the Gold Fields Act. This occlusion is seen in the ongoing claims to sovereignty over Indigenous lands made on behalf of the settler state. Both informal and formal laws made assertions over Indigenous territory— social as well as physical space—and were bound to Western, racist ways of thinking and racist legal orders whereby gold was alienated and Indigenous sovereignty and space dismissed or not considered at all.²⁸ This demonstrates how settler colonial ways of thinking are immersed in Eurocentric thought and consciousness and do not depend solely on historic troubled legal systems such as free entry mineral staking. Mining laws continue to function within the same racial hierarchies that were present in the mid-nineteenth century, and which privilege settler Crown sovereignty and the right to mine over Indigenous claims to land. As I show later in this thesis, this is the case despite the rise and practice of environmental assessment and the inclusion of Indigenous voices in the process.

²⁸ Relevant to my larger project is that the racial structuring is largely left out of accumulation by dispossession narratives, yet is central to contemporary laws that are predicated on resource dispossession.

4.4 Nineteenth-Century Mining Code Debates

Mining laws have always been debated and updated, but the property relation that grants a miner's access remains the same. There are records in the colonial archive of an active debate, prior to the writing of the Gold Fields Act, to have the monthly license amended; Gold Commissioner Richard Hicks wrote to the British government on this topic. His correspondence provides further evidence of the active forging of, and debate over, new mining laws during this era:

Your Excellency stated that alterations were in contemplation with respect to the collection of miners' licenses. I would most respectfully suggest that a quarterly license of five dollars be collected instead of monthly, which will realize a larger revenue because we can then make all pay, rich and poor claims; as it is now, the great bulk of the claims do not pay over two dollars per day to the man. The taxation of claims in Australia was compelled to be given up in consequence of the miners not being able to pay it; and should Your Excellency adopt this course I now propose, I assure you will stand higher still in the estimation of all classes. (Hicks writing to Douglas, October 17, 1858)

This letter indicates that gold commissioners were appointed prior to the formal Gold Fields legislation. As I allude to above, it was not until after Confederation that the gold commissioner's duties were restricted to those established in mining legislation and the role of "government agent" was stratified. "Gold Commissioner" is a post still held today in British Columbia, as seen in the Mineral Tenure Act outlined in section five below. Similarly, "Free

Miner's Certificates" are also legislated under the current Mineral Tenure Act, though the terms of what constitutes a free miner have changed quite dramatically; one of these changes was the initiation of the online interface *Mineral Tenure Online*. Provincial territorial claims to land remain relatively the same though sovereign power was transferred from one settler state to another.

Also prior to the writing of the Gold Fields Act, during his trip to the gold fields, Governor James Douglas wrote in his journal (on May 24, 1858) his concerns about miners squatting and suggested that the British settler colonial leadership "ought immediately to commence sales" of mining licenses in order to gain legal authority and grant preemptions. In his journal he wrote about the racialized role of labour:

Indians are getting plenty of gold and trade with the Americans. Indian wages are from 3 to 4 dollars a day. Miners working 2 miles below Fort Yale who are making on an average one and a half ounces a day each man. The place is named Hill's Bar and employs 80 Indians and 30 whitemen [sic].

In this account, the ratio of Indigenous people to white men was 8:3. The degree to which Indigenous people participated in the mining industry during this era was significant.

John Lutz has documented the role of Indigenous labour in the founding of British Columbia and the gold rush in particular. For example, he provides evidence that after the settler gold rush had ended in 1871, native people continued to mine for gold and contributed up to \$20,000 a year to the regional economy. Further, Lutz recalls Judge Begbie's recollection that Indigenous people packed supplies up the Fraser River between 1858 and 1860, thus providing for settler entrance

into their lands (Lutz, 1992, p. 77). The settler narrative notes that Indigenous people played a major role in the foundation of British Columbia's mining economy and made up, by far, the majority of the population. According to Lutz, in 1855 there were but 774 non-aboriginals on Vancouver Island, a colony estimated to have a total population of 34,600, not including the 30,000 in the rest of the territory that became British Columbia.²⁹

4.5 Amendments: The Writing of Mining Laws After the B.C. Goldfields Act

Along with the original B.C. Gold Fields Act, the Legislative Library in Victoria houses the following List of Proclamations pertaining to gold.

List of Gold Proclamations, 1858–1865:

Gold Fields Act, August 31, 1859,

Rules and Regulations Under the Gold Fields Act, September 7, 1859

Rules and Regulations Under the Gold Fields Act, February 24, 1863

Gold Fields Act, 1863

Gold Fields Act, 1864

This list of mining laws reveals that gold regulation was being actively forged in British Columbia's pre-Confederation era. As the chronology demonstrates, the B.C. Gold Fields Act was amended in 1863 and again in 1864, and there was also *Rules and Regulations Under the Gold Fields Act*, enshrined on September 7, 1859, and recorded again on February 24, 1863.

²⁹ Yet mainstream narratives of gold continue to celebrate white settler histories and bracket Indigenous relations (Forsythe & Dickson, 2007). The scarce accounts of the history of settler colonial mining law participate in this erasure as well, in the assumption that lands were nearly unpopulated. For example, one settler narrative reads, "The true test of sovereignty over mining lands came during the Fraser River Gold Rush of 1858 and the subsequent Cariboo Gold Rush. The thousands of would-be miners who moved into *the nearly unpopulated* mainland of British Columbia were familiar with the rude democracy of the American Frontier" (Howarth in Hovis, 1991, p. 89; emphasis added).

Without going into superfluous detail about the amendments to the regulations, I will explain one key feature of the initial amendment to the Gold Fields Act in 1863. Significantly, this amendment outlines how exclusive territorial rights to mine for gold were being negotiated. The amendments in 1863 repealed clause seven of the original act. Clause seven notably recognized the “Free Miner’s” right to the claim area. The original legislated clause seven from 1859 stated,

Every Free Miner shall have during the continuance of his Certificate the exclusive right to the soil and gold in any claim for the time being duly registered and worked by him according to the regulations and by-laws herby authorized to be issued, and for the time being in force, in relation to the locality or district where such claim is situated.

No person shall be recognized as having any right or interest in, or to any claim or any of the gold therein unless he shall be, or in case of any disputed ownership unless he shall have been at the time of dispute arising, a Free Miner.

Clause seven was repealed in 1863. The original read that

Every Free Miner shall, save as against Her Majesty, have, during the continuance of his certificate, the exclusive right to take the gold and auriferous soil upon or within the claim for the time being duly held registered and *bona fide* not colourably worked by him and the exclusive right of entry on the claim for the purpose of working or carrying away such gold or auriferous soil, or any part thereof. And also as far as may be necessary for the convenient and miner like working and security of his flumes and property of every description, and for a residence—but he shall have no surface rights therein for any other purpose save as next hereinafter mentioned, unless specially granted.

The amended clause seven is more detailed and stipulates that though residence may be granted, surface rights are not secured. It also outlines that the claim must be worked for the purpose of carrying away gold. These nuances continue to hold true in today's legislation.

4.6 The Mineral Tenure Act

Below is an excerpt from the *Mineral Tenure Act* (1996), as legislated in British Columbia.

Free miner certificate

8 (1) For the purposes of this section, "**Canadian corporation**" means

- (a) a company or an extraprovincial company as those terms are defined in the *Business Corporations Act*,
- (b) a trust company registered under the *Trust Company Act*, R.S.B.C. 1979, c. 412,
- (c) an insurer licensed under the *Insurance Act*, or
- (d) a chartered bank.

(2) On application in the prescribed form and on payment of the prescribed fee, a free miner certificate must be issued to an applicant who is

- (a) a person age 18 or over and ordinarily a resident of Canada for at least 183 days in each calendar year or authorized to work in Canada,
- (b) a Canadian corporation, or
- (c) a partnership consisting of partners who are persons that qualify under paragraph (a) or (b).

(3) A free miner certificate

- (a) must be in the prescribed form,

- (b) is not transferable,
 - (c) must be issued in the name of one person,
 - (d) may be renewed, on application and on compliance with this Act and the regulations,
 - (e) is proof of every fact contained in it, and
 - (f) is valid from the beginning of the day on which it is stated to be issued until the end of the day it expires.
- (4) Despite subsection (2), the chief gold commissioner may issue a free miner certificate to an applicant who does not meet the eligibility requirements under subsection (2) if, because of legitimate circumstances acceptable to the chief gold commissioner, the applicant requires a free miner certificate to conduct business in British Columbia.
- (5) Without limiting section 7, a person may hold a mineral title without holding a free miner's certificate.
- (6) A free miner certificate may be issued in electronic form.

Land on which a free miner may enter

11 (1) Subject to this Act, only a free miner or an agent of a free miner may enter mineral lands to explore for minerals or placer minerals.

(2) The right of entry under subsection (1) does not extend to

- (a) land occupied by a building,
- (b) the curtilage of a dwelling house,
- (c) orchard land,
- (d) land under cultivation,
- (e) land lawfully occupied for mining purposes, except for the purposes of exploring and locating for minerals or placer minerals as permitted by this Act,

- (f) protected heritage property, except as authorized by the local government or minister responsible for the protection of the protected heritage property, or
- (g) land in a park, except as permitted by section 21 ...

Free miner's certificates have changed to include corporations. They remain renewable and non-transferable. Though the powers of the gold commissioner have diminished since former Governor Musgrave wrote his description noted above, free miner's certificates can still be granted to whomever the gold commissioner wishes (section 8.4). Lands that are out of bounds include those occupied by a building, a house, an orchard, land under cultivation, land that is being mined, a protected heritage property (sometimes), and park lands (sometimes). This is the reason the Union of B.C. Indian Chiefs, First Nations Women Advocating for Responsible Mining, the Fair Mining Collaborative among other environmental and Indigenous organizations argue that free entry mining must be overturned.

The Union of British Columbia Indian Chiefs' engagement with the British Columbia government over mining reform is ongoing. The Union argues that free entry mineral claim staking is in conflict with the right to free prior informed consent (Union of B.C. Indian Chiefs, 2011, p. 5). All that is required to stake a mineral claim is a license for purchase from the British Columbia Ministry of Energy and Mines. In 2005, British Columbia's Mineral Tenure Act was amended to include *Mineral Titles Online*, an online mineral staking system that incorporates digital registration of mineral titles (British Columbia Ministry of Energy and Mines, 2014). British Columbia was the first jurisdiction in Canada to digitize mineral staking procedures. This move could be seen as simply keeping up with technology, but the implications, in terms of accelerating conflicts over Indigenous land, are dramatic.

In 2009, the director at British Columbia's Mineral Titles Office suggested that the move to online staking brought about a sixfold increase in mineral claims.³⁰ Even if this spike has since settled, online mineral staking results in a larger number of territorial conflicts between Indigenous communities and mineral exploration companies.³¹ Given the dominance of the British Columbia mining industry, a comparison between the federal Prosperity environmental assessment process and the colonial gold rush after 1858 shows how, legally, settler colonial dispossession continues to underwrite contemporary mining law through the Mineral Tenure Act and free entry mining.

A comparison of historic mining legislation with that of today also allows us to contemplate the how land is valued today and by whom. The notion of waste lands, as stipulated in the original Gold Fields Act indicates a lack of understanding of different ideologies of land and place rooted in values besides Lockean notions of labour, property, and economic worth. As seen in section 11 of the current Mineral Tenure Act, those ideologies persist, as does the occlusion of the rights of Indigenous people, despite Section 35 of the Canadian Constitution and other such advances in the recognition of the rights of Indigenous people.

4.7 Conclusion

This chapter has focused on the active writing of sovereign claims to mineral rights in the mid-nineteenth century and has examined how this era is significant to resource law and particularly the Mineral Tenure Act in British Columbia today. Its research is based on the

³⁰ Personal correspondence, Mineral Titles Branch, B.C. Ministry of Energy and Mines, 2009.

³¹ There are, of course, many Indigenous people that work in mineral exploration and mining. I recognize the danger in posing these two sides as polar opposites. Nevertheless, cases such as the Prosperity mine proposal continue to exist, and Indigenous territories continue to be staked—now digitally with a new, disembodied mineral-staking system.

history of mining laws, focusing initially on 1858 to 1859 when the province's first mining laws were written. In the final section of this chapter, I juxtaposed contemporary free miners' rights with those of the past. I outlined how gold mining and the first mining laws shaped the political geography of the region through the racialized erasure of Indigenous claims to land and the further erasure of subsequent claims to Indigenous resource sovereignty by and through the maintenance of settler ideologies rooted in settler colonial sovereign power over land. These ideologies are present both inside and outside the writing of mineral laws. Mining law was a critical part of the early gold rush because it participated in the formation of British Columbia.

Power over resources was garnered by and through the regulation of gold, and the settler colonial rush for gold that took place in British Columbia's pre-Confederation era remains celebrated in mainstream histories of the province. The state and the mining industry assume mining laws are neutral, and celebratory gold rush narratives remain part of this assumption. This is crucial because a number of environmental and First Nations organizations (referenced in section five) are currently contesting the structure of the mineral staking regime in contemporary British Columbia. These organizations point out that mining laws are archaic, voicing a common critique of the dated mineral staking principles that maintain settler colonial order by allowing miners to stake a claim without Indigenous consent. Mining laws are not, in fact, archaic, because they are routinely updated. However, they can be traced to a governance structure that denies Indigenous territorial rights and is embedded in racist ideologies of settler superiority. The updates and changes to the laws have not altered the logic of dispossession and the erasure of Indigenous resource sovereignty.

Nowhere in the writing of the property relations that mechanize mineral staking are Indigenous lands in the foreground. This erasure, steeped in settler colonial logic and claims to

state-based resource sovereignty, is actively and continually resisted, including in the courts.³²

What do critics mean when they argue that mineral staking regimes are archaic? They mean that the principles that allow access to lands do so without the approval of Indigenous people or private landowners. The lack of consent is part of what drives this research, and makes the arguments put forth in this chapter—regarding the maintenance of the provincial state through mineral staking—relevant today. To examine the legal injustices of the past is to interrogate how they have carried forward into the present. These legal injustices are a large part of what continues to form Canada.

³² This was demonstrated in the 2012 Yukon Ross River Dena free entry case over the duty to consult and accommodate.

Chapter 5: Rendering Environmental Assessment Technical at Fish Lake

Fish: a limbless cold-blooded vertebrate animal with gills and fins living wholly in water.

- Oxford English Dictionary

In this chapter I explore constructions of fish and Indigenous epistemologies and ontologies during the environmental assessment processes for the New Prosperity mine proposal. I approach this discussion through the lens of rendering Indigenous knowledge technical. The idea of rendering Indigenous knowledge technical is informed by Tanya Murray Li's work as well as Paul Nadasdy's (2006) criticisms of traditional ecological knowledge (TEK). I examine the parameters through which fish are (un)able to be actors in the environmental assessment process. I begin by detailing what I mean by technifying the traditional and then recount the relevant history of the mine proposal at Fish Lake. In closing, I show how understandings of fish and Indigenous ways of knowing come to be lost in translation during the environmental assessment process. This relates to my larger argument about how the rejection of dispossession is based on more than simply the alienation of land—that it is also part of the federal state apparatus as experienced within bureaucratic processes like CEAA.³³ Yet in Canada, community hearings during federal environmental assessment also provide a significant space for Indigenous

³³ It is worth noting that in Tsilhqot'in culture, fish and wildlife are not separated from people in the same way they are within scientific studies. My goal in focusing on fish is not to de-centre the significance of fish and wildlife to Indigenous epistemologies, and in this instance Tsilhqot'in control over their territory, animals, and resources, but rather to highlight how this mine proposal was adamantly opposed because of the potential impact on "Indigenous ways of life" as stated within the CEAA panel report. The CEAA report also included an analysis of potential impacts to fish and water in the region (Report of the Federal Review Panel, 2013). Recognizing how fish are "rendered technical" (Li, 2007) during environmental assessment processes is productive when thought of in light of how the racialized and gendered constructions of Indigenous identity operate within the context of settler colonial environmental governance. It is constructive because the subject formations of both Indigenous culture and fish come to be represented in disconcerting and subordinate ways during bureaucratic environmental governance procedures.

dissent. In the case of the New Prosperity mine proposal, this dissent played a large part in the rejection of the mine, meaning environmental assessment can also be effectively mobilized by Indigenous people to stop unwanted development.

5.1 Technifying the Traditional and the Erasure of Place

Tanya Murray Li's notion of "rendering technical" helps explain how fish and Indigenous knowledge are represented during environmental assessment. I pair fish and Indigenous knowledge together here, since both are significantly translated within the environmental assessment process. Li suggests that when things are rendered technical, they are also implicitly defined as "nonpolitical" (2007, 7).³⁴ For Li, technical practices and representations of governance (such as representations within the environmental assessment here) translate "the will to improve" into explicit programs. Rendering technical can be seen in exercises of governance that produce expert scientific knowledge that focuses on "diagnosing problems and finding solutions" to, in this case, a proposed resource extraction project.

In the case of the Prosperity mine proposals at Fish Lake, there are many ways that technifying the traditional or rendering the traditional technical take place. One is through TML's reluctance to recognize the significance of an Indigenous world, and Indigenous customs and knowledge, outside the confines of state-based bureaucratic processes that, it emphasizes, must remain objective, neutral, and scientific.³⁵ This is clear in the following example.

In April 2011, prior to the second environmental assessment for New Prosperity, TML wrote a letter requesting that the federal government ensure the environmental assessment for the

³⁴ Li draws on Nikolas Rose, James Fergusson, and Timothy Mitchell in her explanation of rendering technical. Mario Blaser's work on cosmopolitics or political ontologies is also relevant here (Blaser, 2014).

³⁵ Foucault's notion of governmentality could also be of use here. Li also draws on governmentality literature.

proposed mine at Fish Lake follow objective, scientific protocol (Hallbauer, 2011; O’Neil, 2012). The letter asks the Environment Minister Peter Kent to ensure that environmental assessment measures are “fair and balanced” and to disallow religious ceremony at future environmental assessment procedures.³⁶ In the conclusion of this letter, president and CEO of TML Russell Hallbauer writes that the environmental assessment panel “does not have any right to attribute to the spirituality of place” (see O’Neil 2012). Hallbauer’s request is explicit. The erasure of the spirituality of place, here, includes disallowing religious ceremony during CEAA hearings. According to TML, spirituality is not objective or technical. If this is the case, it appears, from a regulatory perspective, that for mining companies—and this company in particular—the environmental assessment process as primarily designed to approve mining projects via studies that can quantify the scientific viability of a project. The ideologies expressed in this letter, and especially those that concern the scientific spaces present in contemporary environmental assessment, shed light on the confines of environmental assessment in considering what has come to be defined, primarily by industry and government, as traditional knowledge within extractive projects.

Anthropologist Paul Nadasdy has written about the *integration* of Traditional Ecological Knowledge and argues that when Traditional Ecological Knowledge is integrated, it can actually “[serve] to concentrate power in administrative centres, rather than in the hands of aboriginal people” (Nadasdy, 1999, p. 1). For Nadasdy, the integration of traditional knowledge is

³⁶ In a Globe and Mail newspaper article entitled “Taseko Mines asks Harper to place limits on first nations input” Justine Hunter indicates how the previous CEAA process in 2010 had a children’s performance that the company disagreed with. In the letter they also objected to the hearings opening with spiritual ceremony (Hunter, 2012). Further to this, in a PR report released to media outlets regarding second CEAA process, TML referred to the opening for the hearings as follows: “There was also vocal First Nations opposition lead by the Tsilhqot’in National Government (TNG). Cecil Grinder, a TNG medicine man led a war dance at the beginning of the hearings waving a red-tipped spear in a menacing fashion at the crowd and the panel.” This construction of a spiritual opening ceremony as a “war dance,” within itself, reveals the misunderstandings that TML have propagated.

reductionist and reliant on a traditional/modern dualism that depends on Indigenous difference. Further, similar to Li's notion that "questions that are rendered technical are simultaneously rendered non political," Nadasdy suggests traditional knowledge studies ignore the politics of the issue at hand.

Nadasdy is concerned with northern TEK integration strategies and states, "many scientists and managers have no real intention of trying to integrate traditional knowledge with science, but are merely paying lip service to the idea because it has become politically expedient to do so" (1999, p. 3). This results in a failure to deal seriously with traditional knowledge, such as recognizing the importance of places like Fish Lake, as a strategy to retain control over land and resources. How do fish, the mountains, the water, and the environment more generally factor into environmental assessment? Nadasdy suggests that in Canada, incorporating TEK into environmental review processes was a relatively new strategy. Now, Nadasdy's study on TEK is fifteen years old, and aboriginal consultation via traditional knowledge is not as new a concept as it once was. Yet the incorporation of TEK via community hearings still exists within an economically driven, science based paradigm reliant on resource extraction projects succeeding most of the time. However, in this example of the proposed at mine at Fish Lake, its success and approval was not the case.

To the Tsilhqot'in, Teztan Biny is not a resource periphery, and they expressed this repeatedly both inside and outside of community environmental assessment hearings. Rather, they argued that it is a place of spiritual and cultural significance with an ecosystem that is currently well functioning and that ought not to be jeopardized. The idea of creating a new habitat for fish, for example, does not seem to correlate with the goals of traditional knowledge studies.

5.2 Teztan Biny/Fish Lake: An Ongoing “Archive of Place”

In the Tsilhqot’in language, ‘teztan’ means *fish trap* and ‘biny’ means *lake*. Thus, Teztan Biny has been translated into English as Fish Lake. The lake is aptly named fish trap lake, given the estimated 85 000 rainbow trout that reside at Teztan Biny. Teztan Biny is a sacred ceremonial place with a rich archaeological heritage. This heritage was documented during the environmental assessment. There are significant sites all around the lake and along the creeks, including pithouse and occupation sites, graves, culturally modified trees, and “lithic scatters” (Terra Archaeology “Archaeological Impact Assessment” report prepared for TML; Ehrhart - English 1994; *Tsilhqot’in Nation v. British Columbia* [BCSC 1700 2007]). Fish Lake is a traditional fishing site of the Tsilhqot’in.

Ethno-botanist Nancy Turner presented a submission for the environmental assessment, where she referred to Fish Lake as a cultural keystone place (2013). By this, she means a “location with high cultural salience for one or more groups of people and which plays, or has played in the past, an exceptional role in a people’s cultural identity, as reflected in their day to day living, food production and other resource-based activities, land and resource management, language, stories, history, and social and ceremonial practices” (Turner 2013, July 31 CEEA New Prosperity). Turner’s definition, as used in the environmental assessment hearings, translates the significance of Fish Lake into an idea, particularly useful in bureaucratic, technical processes such as environmental assessments.

The cultural significance of Fish Lake stands in stark contrast to the corporate mining history established by TML. In 2012 TML, a registered company on the Toronto Stock Exchange, had a gross profit of \$51.7 million and its annual revenue was \$253.6 million (Lamb-

Yorski, 2013). In January 2015, the company estimated that the deposit at Fish Lake contained 3.6 billion pounds of copper and 7.7 million ounces of gold (TML, n.d.b).

Table 1: Prosperity Mineral Reserves

Category	Tonnes (millions)	Gold (G/T)	copper (%)	Recoverable	
				gold ounces (millions)	copper pounds (billions)
Proven	481	0.46	0.26	5.0	2.4
Provable	350	0.35	0.18	2.7	1.2
Total	831	0.41	0.23	7.7	3.6

Taseko's wealth, most recently, has been derived from mining projects such as the Gibraltar mine located north of Williams Lake. Of note is that the mineral claims that began the process that eventually allowed for a mine proposal at Fish Lake were staked through the Mineral Tenure Act.³⁷

5.2.1 Mineral exploration history at Fish Lake

Historian William Turkel provides an account of the scientific and corporate descriptions established over the geography of Fish Lake. Turkel's portrayal is grounded in science and

³⁷ A foundational claim I make in this research is that the transfer of ownership of minerals from unceded Indigenous lands to the state (in this case the Provincial Crown) and then to Taseko Mines Limited presents an inherent contradiction. I particularly demonstrate this through a discussion of the claims to British sovereignty that were made during British Columbia's colonial era prior to Confederation between 1858 and 1871. As was discussed in Chapter 4, this is a time when emerging gold laws established property relations that remain today.

technology studies and takes into account Tsilhqot'in understandings of Teztan Biny.³⁸ The narrative detailed by Turkel in his book *Archive of Place* notes that formal records in the Fish Lake region are traced to a 1924 Geological Survey of Canada, Chilko Lake Expedition (2007, p. 24)³⁹. Exploration began right at Fish Lake in 1960 (2008, p. 20). Thus, though the region had been placed on Canada's national geological records thirty years previously, there was no known settler account of mineral exploration at Fish Lake until the 1960s. Taseko Mines acquired the mineral exploration property in 1969 from Phelps Dodge, which had conducted a small exploration program from 1963–4 (TML, n.d.c). Throughout the 1960s, 70s, and 80s there were active drilling programs that mirrored the rise and fall of copper prices. If copper prices were high, drilling was done, and when they were low there was no drilling. No surveys were made between 1980 and 1986, for example, when copper prices were low.

In 1992 Taseko began drilling at Fish Lake, and estimated gold deposits for Fish Lake were 14.8 million ounces of gold and 5.6 billion pounds of copper (2007, pp. 27–28). As Turkel notes, in the early 1990s a confluence of sustainable development initiatives and the New Democrat provincial government put 'development at all costs' on the back burner as the province prioritized the environment (2007, pp. 29–30). Later, Premier Gordon Campbell's and then Premier Christy Clark's pro-resource development regime guided the Provincial Liberal government. It is this regime that has reigned over the two Prosperity mine proposals.

³⁸ This is notable in that a solid incorporation of Indigenous narratives is not necessarily an approach used in Science and Technology Studies nor environmental history, two disciplines his book traverses.

³⁹ This history was also important to TML, who claims ownership of mineral titles at Fish Lake. During the environmental assessment hearings, company representative Ms. Gizkof explained to Yunesit'in community member Ms. Whitey-Hunlin that she was aware of exploration dating back to the 1930s. The Tsilhqot'in history of gold at Fish Lake, as presented in the CEAA hearings, indicates that the mineral tenure at this place is not as straightforward as British Columbia's mineral titles office assumes.

In 1994 the B.C. Ministry of Environment, Lands and Parks objected to a Fish Lake Mine proposal set forth by Taseko on the grounds that it would result in a permanent loss of fish, meaning that fish stocks would be destroyed (2007, p. 27). For this initial mine proposal, which took place when copper prices made the mine appear viable, the federal government, in contrast to the B.C. provincial government, was less concerned with the fish, as they believed they could be replaced.

The original Prosperity proposal was to drain Fish Lake and fill it with non-ARD waste rock. The fate of Fish Lake was a popular thread in the support for the Tsilhqot'in's will to reject the mine and the lake was featured prominently in the media (see CBC, 2014 for example). Marginalized in this dialogue around the "draining" of Fish Lake (as repeatedly suggested in the news) are the many other reasons the mine was rejected. The emphasis on the draining of Fish Lake raises questions about the de-legitimization of the concerns and rights of the Tsilhqot'in people. A focus on the draining of the lake decentres the impact as well as the voice of the Tsilhqot'in people. The 2010 panel report outlines the significant impacts the project would have on the use of lands and resources for traditional purposes and aboriginal rights and title (CEAA panel report 2010, p. 239). But as I argue in this chapter and the next, these rights and Tsilhqot'in culture are technified and represented in very particular ways throughout the environmental assessment process.⁴⁰ The 2013 panel report augmented its statement about the proposed project's impact on the use of lands and resources, and its impact on aboriginal rights. The report criticized the mine design as well as the negative impact of the potential project, despite its so-called saving of Fish Lake itself (Report of the Federal Review Panel, 2013).

⁴⁰ This includes the description, offered by Nancy Turner above, outlining Fish Lake as a cultural keystone place. Despite the 'technification' of Indigenous people's voices, interventions like Turner's were key to the rejection of the mine.

To give an image of the sheer size of Fish Lake, I have included a photo taken the morning of the August 2013 site visit by the Canadian environmental assessment panel. Below, is the image of the mine plan captured from the New Prosperity federal EIS. The proposed New Prosperity mine proposal was for an open pit mine, quite large in scope. It included a 125-kilometre power transmission line corridor. The conical open pit pond located in the lower left hand corner of the diagram was estimated to be approximately 1.2–1.6 kilometers wide, thus providing the scale and scope of the actual lake that was to be drained and filled with non-ARD waste rock.

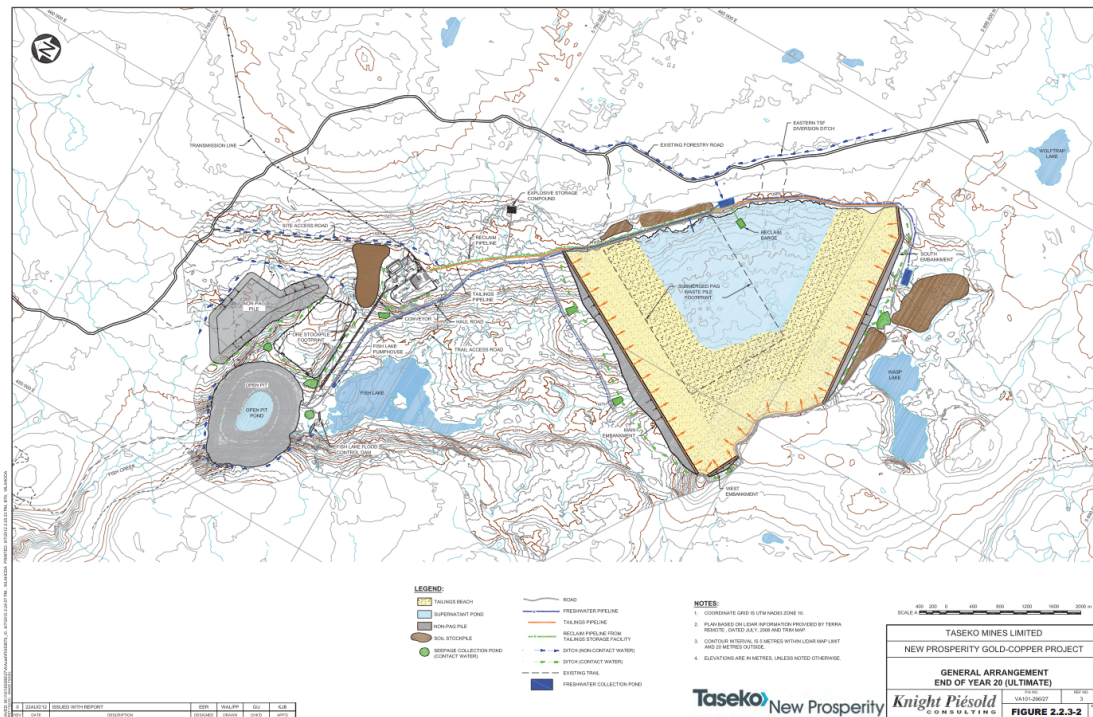


Figure 8: New Prosperity Gold-Copper Project



Photo 4: Fish Lake, August 9, 2013



Photo 5: Fish Lake. Photo by Garth Lenz

5.2.2 Countering the corporate narrative

We were frustrated, we were livid.

– Chief Roger William

The second Canadian environmental assessment process began shortly after the rejection of the first Prosperity mine proposal. A mere three months after the rejection of the mine plan, TML submitted a second application for what became the New Prosperity project. This was the first time in Canadian history that a mine proposal had been assessed twice at the federal environmental assessment level, and as Chief Roger William stated in a talk at the UBC Longhouse, “We were frustrated, we were livid.” These sentiments of frustration, expressed by

the Tsilhqot'in people throughout the environmental assessment for 'New' Prosperity, are noteworthy. They underlie the different ways in which the bureaucratic structures of settler colonialism remains rejected by the Tsilhqot'in.

During the 1990s, when TML's exploratory drilling was active, the community leadership of Xení Gwet'in thought the best way to approach mineral exploration was to be involved through consultation. This, Chief Roger William outlined, did not mean that the Tsilhqot'in agreed with the development of the site, but that they did not want to be excluded from the drilling procedures (William, 2014).⁴¹ In 2006 the Tsilhqot'in Nation agreed to discuss mining with the province and TML and enter into a joint environmental review process with the province and the federal government. At the time, Kemess North, another British Columbia mine proposal farther north, was rejected during a provincial-federal joint panel project, and the Tsilhqot'in felt optimistic. But this rejection was part of the impetus that led British Columbia to pull out of the joint process proposed for the Prosperity mine proposal.

Chief Roger William reported that the parties were too far apart. The distance in opinion over the feasibility of mining at Fish Lake remains to this day. William's view is that TML changed gears in the mid-2000s, and that Taseko Mines moved forward without meaningful engagement with the Tsilhqot'in Nation or the Xení Gwet'in First Nation (William, 2014). The relationship between the two parties was severed, and the Tsilhqot'in Nation decided their ultimate priority was to protect Teztan Biny, thus indicating that there was a more amiable

⁴¹ There were a number of other issues going on for the community as noted by Chief William, including securing running water. The 1990s was also a time in which there was a shift in governance among Tsilhqot'in communities to protect and support one another, through the building of the Tsilhqot'in National Government that was founded in 1989. I write this historical context to provide understanding as to the factors, throughout the 1990s until today, that have led to the rejection of a mine at Fish Lake. The rejection of the mine was not simply about the mine proposals and environmental assessments, but is based on many years of tumultuous history between the Tsilhqot'in, and especially the Tsilhqot'in of Xení Gwet'in's rejection and refusal of many modes of Western governance, while adopting a stronger position through the creation of the Tsilhqot'in National Government.

engagement with TML in earlier years. British Columbia moved forward with its own environmental assessment, which the Tsilhqot'in and environmentalist NGOs suggest received a 'rubber stamp.' Former Chief Marilyn Baptiste, for example, noted that the provincial approval was a rubber stamp, "and everyone knows it" (McCarthy, 2012).

5.2.3 Provincial versus Federal environmental assessment

The Canadian Environmental Assessment Agency had made moves to combine the federal and provincial review, so that projects such as Prosperity were only required to go through a single assessment. But Taseko Mines objected to a joint provincial-federal review panel, and British Columbia backed away from the process of amalgamation (Haddock, 2011, p. 9). Haddock suggests that the Tsilhqot'in National Government refused to participate because of the provincial government's decision not to cooperate with the federal government. Certainly there is evidence that TML were drawing on more aggressive and non-cooperative tactics, and were operating as if there would be no Indigenous involvement at all (*ibid.*).

This scalar jurisdictional tension led the province to divorce their participation in the environmental assessment from the federal government. As Haddock notes, British Columbia did not facilitate Indigenous participation, a circumstance made clear in the federal panel report that led to the rejection of the first Prosperity proposal. This lack of inclusion could be seen as a fault in that the province and the company were not performing due diligence. The panelists for the first federal environmental assessment noted that the information relating to current use and impacts on First Nations was not taken into account by the province (CEAA panel report 210 p 174, in Haddock, 2011, p. 10).

Environmental assessment neglects Indigenous resource sovereignty, and one of the ways that this happens, in a jurisdictional sense, is by rendering Indigenous knowledge technical for bureaucratic processes, or by attempting to ignore Indigenous people and perspectives all together. This suggests the paradoxical relationship between environmental assessment and Indigenous participation. Indigenous people can refuse to participate in environmental assessment when there is a poor relationship between the nation and the province, as was reportedly the case for the provincial Prosperity environmental assessment. Yet when the Tsilhqot'in did not want a mine at Fish Lake, the Province ignored them. In light of this, it was good that the federal environmental assessment was able to step in and ultimately reject the mine proposal. The paradox remains, however, that this process takes into account "aboriginal consultation" only "to the extent possible," thus placing concrete parameters and limitations around Indigenous resource sovereignty.

5.3 Fish, Environmental Assessment, and the Prosperity Mine Proposal

Fish Lake is home to a significant rainbow trout population. Environmental consultants working for the mine company estimated that there were 85 000 individual rainbow trout (*Oncorhynchus mykiss*) in Fish Lake. The lake is located in close proximity to the Taseko River, a major salmon-bearing watershed. Schedule 2 of the *Mining Metals Effluent Regulations* (MMER) nested within the *Fisheries Act* was part of TML's initial proposal to relocate the fish in Fish Lake and open a copper-gold mine. The second proposal also involved Schedule 2 of the MMER because the adjoining Little Fish Lake was proposed as a tailings impoundment area. Part of the initial mine plan, rejected in 2010, was to relocate some of the existing fish habitat to another lake in the area. The draft Environmental Impact Statement (EIA) states the following:

“During the construction phase, Fish Lake stock will be transferred to at least one recipient lake (Slim Lake).” Here it draws on the fish habitat and compensation plan data compiled for TML. The plan involved saving “1000 individuals” (individual fish) that could be used for brood stock, and then transferring several thousand more fish to at least one neighbouring lake. Fish that were not moved would presumably be left to die. The implications of this language, and the rendering of fish as brood stock to be easily transferable, displaces Tsilhqot’in epistemologies that read the fish in Teztan Biny as a historic and contemporary source of sustenance, and certainly as more than brood stock. It also neglects any importance of the value that fish have beyond their apparent disposability.⁴² During the environmental assessment community hearings, Tsilhqot’in peoples discussed catching their first fish in Teztan Biny and repeatedly cited the importance of the area as a place of cultural transmission. For example, the Tsilhqot’in National Government opened their final submission with the following quote by Blaine Grinder, of Tl’etinqox-t’in, taken from the CEAA hearings:

[M]y family and I, we use Teztan Biny for sustenance. My children now have memories of getting their first fish at Teztan Biny. These memories are imprinted into their minds. I will eventually fast and sweat there, but I know I’m not ready.

When I’m ready, I know that this will fill me spiritually like no other place, and for my children when it is their turn. Currently, myself and my family go to support other spiritual people of that area.

⁴² The value of thinking through fish-hood is not merely tautological, but rather provides a shift in meaning and allows for a re-centering of fish as sentient beings.

It is the only place that we go that we do not bring food knowing that the lake will provide for us no matter what. Personally I do not know another place like this. For myself, there is no mitigation or option for mining this area, and this will never change.

... In a hundred years we will all be dead, everyone here, not even our words will really matter. It will be our actions, what we leave for future generations. Our struggles of today will be our victories of tomorrow.

(Grinder, in Tsilhqot'in National Government, 2013, p. 2 from CEAR #1019)

Mr. Grinder's emphasis on spirituality and sustenance contrasts with the arguments made by the mining company during environmental assessment procedures. Mining company studies stipulated that the new fish population would be even more valuable than the old fish population. The new fish were quite literally reported to be bigger and stronger than the Indigenous fish population (CEAA Federal Review Panel, 2013a). The New Prosperity mine proposal relies on creating expert scientific knowledge of Fish Lake and the surrounding ecosystem.

5.4 Schedule 2 of the *MMER*

The Prosperity mine became federally regulated, or of 'Canadian federal interest,' through the *Fisheries Act*. Schedule 2 of the *Metal Mining and Effluent Regulations (MMER)* of the Canadian federal *Fisheries Act* allows lakes to be drained and used as waste rock facilities. Once a lake is classified under Schedule 2, it is no longer protected by the *Fisheries Act*, nor is it considered a natural body of water; rather it is subject to separate regulations that concern the newly formed tailing impoundment area.

The 2002 amendment that continues to allow the disposal of mine effluents into surface water, rivers, and lakes is crucial to this chapter's central theme of the disposability of fish and the scientific renderings of fish and Indigenous knowledge in environmental assessment. Criticism of this amendment has been widespread, and environmental groups staunchly oppose the regulation. The Council for Canadians, for example, refers to Schedule 2 as "an inconspicuous name for legislation that is responsible for the destruction of freshwater bodies in Canada ... [and that]... allows metal mining corporations to use lakes and rivers as toxic dumpsites. Once added to Schedule 2, healthy freshwater lakes lose all environmental protections." The council stipulates that the exact number of lakes that have been impacted by Schedule 2 is hard to find but that five bodies of water have been approved under this loophole (Schedule 2). In February 2014 19 mines had been classified under this act. The council argues further that contamination in these areas will be left for decades. A CBC news article from June highlights how lakes had been proposed for reclassification (Milewski 2008). Taseko's rejected Prosperity Mine proposal is one of the few mines proposed through Schedule 2 of the MMER that was rejected.

5.5 Rendering Fish Disposable

An understanding of TML's mine proposal, the MMER, and legal framework is necessary in order to detail how fish are technified and, as I suggest, rendered disposable during scientific, corporate-driven environmental assessment. The scientific rendering of fish during the environmental assessment hearings de-centres Indigenous ways of knowing and understanding fish. What gets excluded during environmental assessment, and the limitations around how Indigenous people are included in environmental governance, is of concern.

Questioning this exclusion allows for an understanding of how Indigenous epistemologies translate into the assessment process and how environmental assessment scientifically frames fish.

Though fish and aquatic systems were covered during the technical environmental hearings for the mine, the issue also came to a head during the community hearings in the community of Xeni Gwet'in during the second environmental assessment in 2013. Fish biologists working for the Tsilhqot'in National Government asked the mining company if in fact the fish in the lake were "overpopulated" as was stipulated by the mining company, or if the mining company actually meant that the fish in Fish Lake were "at capacity." This was a significant moment in the hearings in that TML was being questioned on their claim that there were too many fish in Fish Lake. The Tsilhqot'in Nation's biologist, hired to report on the company's impact statement, used a different reading, oriented around the notion of biological conservation and reliant on the notion of capacity. At the community hearings, it was clear that he found the idea that the fish in Fish Lake were "overpopulated" amusing. Yet this account also strays from Tsilhqot'in epistemologies of fish.

Tsilhqot'in understandings of the area played a major role in the community hearings during the assessment process, but the ways in which Tsilhqot'in histories were displaced by scientific readings of fish, even through the lens of cultural anthropology, or are marginalized during the community hearings, places makes it difficult to put Tsilhqot'in knowledge of fish at the centre. This was not news to the Tsilhqot'in National Government, who, in their final submission to the panel, pointed out the continuity of colonialism. In TNG's discussion of Xeni Gwet'in's vision for their lands, they write, "the notion that Xeni Gwet'in should abandon this vision for their future, along with their core values and beliefs, for marginal and short-term

economic benefits from the proposed mine is an offensive relic of colonialism” (Tsilhqot’in National Government, 2013, p. 148).

TML submitted their Environmental Impact Statement by the contracted environmental assessment company who were hired to perform several studies, including that of fish. The species-based arithmetic that exists in the documents is similar to other scientific studies and environmental assessments. During the first process in 2010, the study of fish was also notable in the mundane treatment of trout stocks, noted above. The habitat balance suggested in the “feasibility design of fisheries compensation program,” issued in draft on April 8 2010, relies on the creation of a new lake and the previously referenced fish-spawning habitat creation project (Knight Piesold Consulting & Triton Environmental Consultants, 2010). In the scientific discourse employed to legitimize and explain the transfer of fish, fish are seen merely as an obstacle that must be maintained in order to move forward with the mining project. Fish habitat is rendered disposable while dialogues centred on mineral extraction are placed squarely in focus in environmental assessment discourse. At the same time, the company involved, in this case TML, insists that the assessment process be considered neutral and objective, as outlined in the reference to the letter from Hallbauer at the fore beginning of this chapter (O’Neil, 2012).

The distance between Indigenous epistemologies of fish, or fish understood as a source of subsistence, and the quantification of trout matters here greatly. For the Tsilhqot’in, as for many other people, fish represent much more than “limbless cold-blooded vertebrate animal[s] with gills and fins living wholly in water” as defined by the Oxford English Dictionary. It would seem this definition, however, fits within the biological renderings posed in mining feasibility studies.

The New Prosperity Mine Project Description describes fish as follows:

The Upper Fish Creek watershed, including Fish Lake and Little Fish Lake, contains a population of monoculture rainbow trout. These fish utilize 117.6 ha of lake habitat and approximately 6.4 km of associated inlet and outlet streams for spawning and juvenile seasonal rearing. Rainbow trout, chinook salmon, bull trout and mountain whitefish intermittently utilize the Lower Fish Creek drainage near the confluence with the Taseko River. (Taseko Mines Limited, 2011, pp. 2.5, 2.2)

5.6 Lost in Translation

To the Tsilhqot'in and scholars that critique environmental assessment like Nadasy, the fish in Teztan Biny are understood as more than simply the "monoculture of rainbow trout" reported by TML. What the Tsilhqot'in continually stated during environmental assessment hearings was that fish were a means of subsistence for generations, and that fishing remains central to Tsilhqot'in culture. But the translation within the formal confines of the governance process could only account for so much.

For example, Trina Setah discussed important fishing sites for her people. She also translated the Tsilhqot'in words for a variety of fish. Yet the Tsilhqot'in language was lost in the settler colonial and bureaucratic translation to English, as demonstrated in the community hearing transcripts that read as follows: "(Native word) humpback salmon; (Native word) spring salmon; (Native word) rainbow trout; (Native word) bull trout, which is also known as dolly martin; (Native word) is sturgeon" (CEAA, vol.13, 2013a, p. 120). This quote, taken directly from environmental assessment community hearing transcripts, itself demonstrates how Tsilhqot'in comes to be translated through environmental assessment simply as "Native words."

There is certainly more meaning behind these “Native words,” but it is lost in the bureaucratic setting of environmental assessment hearings.

This is by no means to argue that community hearings do not allow a critical opening within the environmental assessment process. Community hearings allow for many moments that cut through the technocratic. Community member Alex Lulua, for example, was straightforward when he stated, “It doesn’t take a rocket scientist. It takes a fisherman or someone who lives off the land to say [mining, gas, and oil exploration] is what is causing salmon stocks [to die]” (Alex Lulua, quoted in CEAA, vol.13, 2013a, p. 128). I read this grounded perspective as a rejection of TML’s Western, science-based renderings of fish, a rejection that may not have been afforded space within the environmental assessment otherwise.

Further, Chief Ann Louie of the Williams Lake Indian Band stated, “This fight [against the mine proposal] is about our fish stocks, our salmon stocks, our rivers, our waters.” Or, as stated by Ramsey Hart of MiningWatch Canada shortly after Chief Ann Louie had spoken, “Teztan Biny is not a fish pond.” For TML, on the other hand, “Fish Lake will not be sacrificed since Taseko Mines is committing 300 million to guarantee that Fish Lake and the fish are not adversely effected [sic].” These sentiments, of an Indigenous leader, a mining in/justice advocate, and a mining company, were all presented on the final day of the environmental review hearings (CEAA, 2013, vol. 22, p. 48). Near the end of the day, Chief Stewart Phillip of the Union of British Columbia Indian Chiefs stated,

“This is not an economic review; this is not about the potential benefits of the mining industry; this is not a platform to tout the ebb and flow of the construction industry. This is an environmental review. It’s about water. All water is connected. It’s about fish.

And certainly, the déjà vu nature of this exercise is such that the Panel can only arrive at the same undeniable conclusion as the last panel, that this project must, absolutely must, be rejected. Otherwise, Fish Lake will die. Dead is dead. Let me repeat that. Dead is dead. This is not, with an N, an economic review. Thank you very much.” (CEAA, 2013, vol. 22, p. 93)

Social and cultural concerns were present during the environmental review process, but as Chief Stewart implied, while environmental assessments are not meant to be feasibility studies, they constantly refer to the economics at play and that potential for financial growth. Meanwhile, there is little consideration of the terms under which communities are assumed to participate. The ways culture comes to be recognized in environmental assessment contrasts with scientific and economic discourse, including that of the role of fish.

I interrogate how environmental assessment processes favour techno-scientific descriptions of species habitat over questions that concern epistemological or ontological values. What does it mean to account for how decisions over mines take place, to challenge the epistemological assumptions that underwrite the environmental assessment process? How are Indigenous ways of knowing incorporated into environmental processes that are primarily based on techno-scientific species analyses of trout populations, for example?

5.7 Can the Rainbow Trout Speak?

In the *Rule of Experts*, Timothy Mitchell asks, ‘can the mosquito speak’? Here, he describes the mosquito in early 1940s Egypt as an active agent in the spread of malaria (Mitchell, 2002). Mitchell’s analysis sketches the role of the mosquito in a different way than I intend to

portray fish. I don't seek to give the trout in Fish Lake agency by ascribing particular meanings to them, but I do see it as significant to mention the limitations of *seeing* fish through the environmental assessment process. Fish (and water) played a central role in debates about and resistance towards the copper-gold mine proposal. The role of fish was important, both materially and discursively, in informing resistance to the mine's federally rejected proposal. I have suggested that fish became visible primarily through scientific, technical evaluations during the environmental assessment process. Meanings outside quantitative data are rendered relatively obsolete in the technical segments of environmental assessment that focus on fish and wildlife.

For example, the debate over how water quality would be affected took centre stage at the hearings for the New Prosperity Mine proposal and in the aftermath prior to the federal rejection. TML filed a judicial review based on what they criticized as an inaccurate seepage model analysis by Natural Resources Canada (Koven, 2014). Water quality and seepage rates formed one centre of debate during technical hearings, which parallels how fish came to be rendered scientific and takes attention away from the history of Tsilhqot'in understandings of the environment, including understandings of trout. Mineral extraction is about far more than copper-gold, and as Leanne Simpson points out, extraction is about land, plants, animals, culture, and knowledge being treated as a resource. This is certainly the case for many of Canada's Indigenous people.

This erasure of fish and the translation of Indigenous knowledge into a technical platform have been explored in the history of the mine proposal. Turkel writes that in 1995, when the TML mining company had proposed a copper-gold mine at Fish Lake, "managers decided the last thing they wanted the Fish Lake deposit to be associated with in people's minds was Fish"

(Turkel, 2007, p. 44). The mine proposal name changed from the Fish Lake to Prosperity. To reiterate, I am less eager to call into question the lived ontologies of the fish in Fish Lake than to illuminate the understanding and representations of this ‘lively capital’ (Collard & Dempsey, 2013), and to question how, in environmental assessments, fish are *not* given a voice and are considered only for their technical worth.

I question the role of fish in bureaucratic processes, and specifically in environmental assessments embedded within the settler colonial state. Tsilhqot’in ways of understanding fish could be put productively in tandem with emphasis on the non-human world. Since fish were key in dialogues around the environmental assessment process, it is worthwhile to explore how ontological assumptions about fish are entangled within and outside of economies and environmental regulations more broadly. The Tsilhqot’in Nation’s opposition to the original Prosperity mine was indicated in a press statement prior to the first environmental assessment process, when the Tsilhqot’in National Government stated the following:

TML’s plan is to drain the pristine, trout-bearing Fish Lake and dump waste rock there. Little Fish Lake would be turned into a tailings pond. The mine will transform the Teztan Biny watershed into an industrial zone, and disrupt the cultural, spiritual and ceremonial practices that the Tsilhqot’in have exercised on these lands for centuries. TNG has also expressed concerns that the mine will not only destroy important fish habitats, but also will heavily affect grizzly bears, moose, deer, beaver and other wildlife in the region. (Tsilhqot’in National Government, 2010)

This media statement was strategic and informed by community resistance. It places the disruption of cultural, spiritual and ceremonial practices at the centre and is couched with references to trout, fish habitats, and wildlife. Allied environmental critics, too, were concerned with the adverse effects to Fish Lake's watershed, fish habitat, and the wildlife population more broadly.

The Tsilhqot'in Nation's cultural, spiritual, and ceremonial practices are less numerically bound to scientific renderings of fish that are widely reported throughout environmental assessment processes. Culture is taken into account during environmental assessment and comes to be a site of debate. But in written reports, culture becomes sidelined as non-scientific, or masked in the language of mining company consultations or dated anthropology studies. The primary anthropological study, which was of great use and drawn on often within the environmental assessment hearings, was initiated by the mining company proposing the mine (Ehrhart-English, 1994). So, the question remains as to how culture, fish, and Indigenous consent come to be constituted within environmental assessment.

5.8 Conclusion

Much of this chapter has provided the regulatory and historical background needed to understand the dynamics of the New Prosperity mine proposal. In this chapter I have also suggested that constructions of fish during the environmental assessment process for the New Prosperity mine proposal were limited. The confines of performing an English environmental assessment in Tsilhqot'in lands are a testament to these limitations, in that by relying on English as the dominant language, Tsilhqot'in perspectives were put in a subordinate position. This was evident during the hearings, where the Tsilhqot'in referenced or spoken during the hearings was

often not translated, and in the transcripts are merely written in as “[native words].” In the community of Xeni Gwet’in, where many elders do not speak English, this relegates the most respected knowledge holders to an outcast position in a process where their knowledge is central to understandings of the land, plants, animals, and fish at Teztan Biny.

Despite this, TML argued for the mine hearings to be (more) objective and neutral. In the letter written by TML and addressed to Environment Minister Peter Kent in regards to objectivity at the hearings, Hallbauer states the following in regards to the Prosperity mine proposal:

There were ... circumstances during the course of the [environmental assessment] hearing itself that we felt would cause the average person to question the objectivity of the panel and its willingness to keep the process on track and within scope. As you know, the purpose of the panel hearings is to obtain information and submissions, and to ensure the relevant issues are duly assessed from a scientific and objective perspective. Yet there were a number of circumstances in which the panel permitted presentations to be made that are difficult to square with even the most generous interpretation of a science-based assessment. One such example included the panel allowing a group of kindergarten children to present a play, in which the children wore fish cut-outs on their heads, moved around the floor, and then all fell over simultaneously, symbolizing the death of the fish ... We do not see how such actions add in any way to the scientific assessment of the proposed project, or how they serve to keep the panel process seen as being objective and fact based (Hallbauer, 2011).

I return to this letter from the CEO of TML because it succinctly positions the company as reliant on technical understandings of fish and wildlife that are “fact based.” Community-based expressions, like children presenting their understanding of the potential loss of fish in

Fish Lake, do not fit into this process. Nor do these representations fit Hallbauer's understanding of a science-based assessment.

Environmental assessment *can* facilitate the extraction of knowledge and often minerals, although there are exceptional rejections, like the twice-rejected mine project at Fish Lake. I do not wish to undermine the vital role of Indigenous participation and dissent like that which was literally registered during the environmental assessment hearings. Yet environmental assessment reorganizes the circulation of fish and is understood within the confines of how Indigenous lands are delegitimized through settler law. Subsequently, settler colonial dispossession remains central to Canada's resource booms of the past and present, and this can be partially explained through the ways environmental assessment integrates Indigenous knowledge and fish.

Chapter 6: Cultural Weapons? Environmental Assessment and Reconciliation in Canada

Taseko believes that opponents to the mine in aboriginal communities have used culture and heritage inappropriately as a weapon by exaggerating the value of the areas that will be impacted by the mine and their use of those particular lands and resources for cultural purposes. – John McManus, (CEAA transcript, vol.22, p 314, 2013)

They can't afford what we've got. Not even Taseko. They can't afford what we've got. Not even Taseko. – Carla Jean Billyboy Cuts, (CEAA transcript, vol. 15, p 209, 2013)

This chapter builds on Turkel's *Archive of Place* by placing further emphasis on the differences between Tsilhqot'in understandings of Teztan Biny and corporate-governmental, science-based renderings of Fish Lake.⁴³ I also build on critiques of traditional ecological knowledge referenced in the previous chapter (Nadasdy, 1999) and further demonstrate how dissent is registered within the Canadian Environmental Assessment Act. My argument is essentially that the politics of environmental assessment de-centres Indigenous resource sovereignty. Further, by alluding to the limitations of the EA process, I show that the process does not and cannot fully or accurately represent Indigenous, and in this case Tsilhqot'in, voices once translated through settler colonial governmental procedures. Empirically the chapter is based on community

⁴³ Jane Wellburn (2012) offers an in-depth update on the conflict over the Prosperity mine proposal. Her work makes the astute point that the conflict is not one solely of Indigenous people versus non-Indigenous people but is deeply rooted in conflicting environmental values. Her MA thesis criticizes the media's simplification of the debate over Fish Lake to such dualistic thinking reliant on a native/non-native division. Yet there are active and very visible attitudes based on racial exclusion that were prominent in the CEAA process, including in the hearings; at times CEAA provided a stage for these attitudes to be displayed or performed, as indicated in the quote above by John McManus, which suggested that culture and heritage were used inappropriately, as a "weapon."

hearings, with a focus on how the Tsilhqot'in discovery of gold and Canadian Aboriginal law came to be accounted for, or not, within CEAA. I discuss how, in this case, corporate extractive interests attempt to dismantle both Indigenous ways of knowing and Indigenous victories within Aboriginal case law in Canada.

My aim is to show that the settler colonial discourse of modernity is deeply entrenched in corporate and state procedures. In essence, I continue to suggest that regardless of years of regulatory advances, settler colonialism is omnipresent in the practice of resource extraction laws and regulations today. The settler colonial present and the celebration of modernity come to be lived and breathed through CEAA with different actors conforming to their role as “government,” “Indigenous,” and “corporation.” Yet the larger regulatory context, embedded in the history of the state, reveals spaces or cracks through which colonialism begins to disintegrate. The central tension I set forth here articulates how the dominant settler culture procedurally delegitimizes Indigenous culture.

6.1 Competing Narratives of Gold Discovery, Competing Cultural Representations

The Tsilhqot'in narrative of place and gold discovery at Teztan Biny exists in tension with the legal mineral rights history at Fish Lake. While the Tsilhqot'in trace the lineage of gold discovery to their elders, and particularly to George Myers, TML lays claim to sub-surface rights through mineral claims facilitated through the Mineral Tenure Act. Corporate history came to be described as objective through submissions to the CEEA review panel, media analysis, and most prominently the CEAA hearings that took place in the communities of Xenigwet'in and Yunesit'in. Within state-facilitated environmental assessment procedures, Indigenous knowledge, including the significance of places like Teztan Biny, is formally presented yet

remains marginalized. This marginal position is in part due to the premise of settler colonial dispossession latent in mining laws, including CEAA.⁴⁴

This was evident throughout the hearings. Tsilhqot'in people, particularly in the CEAA community hearings in Yunesit'in, indicated how 'gold discovery' at Teztan Biny is understood locally, in contrast to the corporate rendering of mineral discovery at Fish Lake. As I discuss below, The environmental assessment hearings in Yunesit'in on August 13, 2013, actively contested scientific, industrial, and state discourse.

This is an important segment of the Tsilhqot'in National Government stance on mineral development. The Nation stands united in opposition to mineral development at Teztan Biny. A consensus over the story of gold ownership and George Myers panning for gold at Teztan Biny was presented in Yunesit'in. Former Chief Ivor Myers, whom I quoted in Chapter 2, referenced George Myers as the "co-founder" of any potential mine at Fish Lake. Ivor Myers and his relatives were aware of the region's gold, despite any corporate mineral staking or geological surveying. The Tsilhqot'in have an active memory of the history of gold discovery at Fish Lake. This history is not lost on Taseko, but it remains marginal in corporate recognition. In Yunesit'in on August 13, the contention over who discovered and found the gold was quite clear. The topic arose after TML addressed the crowd in their morning presentation. For example, Ms. Whitey-Hunlin directly asked TML who discovered gold at Fish Lake.

⁴⁴ Mario Blaser (2014) may suggest that this knowledge is in fact untranslatable due to the differing ontologies at work. Following the logic in the previous chapter, and criticisms of the reification of ontologies by Zoe Todd, perhaps the ontologies are not untranslatable but remain unacknowledged within the EA paradigm.

This last [question] is very important to me and I'm sure it is going to be very important to the community here. I wanted to ask... who was the first one to discover the gold at Fish Lake? There's a reason why I'm asking this. (CEAA 2013, vol. 15, p. 65).

Katherine Gizikoff, the director of environment and government affairs from TML responded:

I do not know the name of the individual, the prospectors that discovered it, but I know Ira Myers would be able to speak to George Myers, at least participating in the prospecting of that – that resource and it might be more prudent for him to speak to that. But I know that prospecting exploration was, from our view, has been documented at least since about the 1930s, that there was a prospector's cabin there and a mining company, an exploration company there, but about the same time that we also heard about Jimmy Williams moving his family up to the Nabas area as well. So that's all documented in the Cindy Ehrhart-English report and we've heard others in the communities the last few days with a bit more substance and detail around that. (CEAA 2013, vol. 15, p. 65-6)

Gizikoff does recognize the Tsilhqot'in stories of gold discovery, though from the view of the company settler prospecting began in the area as early as 1930s. The discovery of gold or resources more broadly continues, in this instance, to go hand and hand with colonization. As demonstrated in Chapter 4, the linkages between claims to settler sovereignty, state formation, and the discovery of gold in British Columbia make clear how gold discovery is bound with settler claims to lands and resources. The fundamental principles enshrined in the settler laws

written in the gold rush era govern mineral staking through today's Mineral Tenure Act, a derivative of which was practiced during the mineral staking at Fish Lake in the 1960s, as recorded in the corporate narrative as well as Turkel's *Archive of Place*. An important dimension of the stories told about the Teztan Biny and Nebas area is their refusal to recognize TML's claims to gold in the region. Whitey-Hunlin (quoted above) stated the following later in the hearings in Yunesti'in:

I believe the gold rightfully belongs to George Myers and his descendants and the community here of Yunesit'in Nation. I believe that we have entitlement to the gold. I believe we have the right to sit down and negotiate with you and receive 50 percent of the revenue that is coming from the gold at Fish Lake as our political settlement." (CEAA 2013, vol. 15, p. 202)

Here, there is a clear rejection of the notion that the gold at Fish Lake belongs to the company, yet there is also an acknowledgement of the possibility of gold mining. Whitey-Hunlin argues that the gold is rightfully owned by George Myers, who discovered gold in the region. This was not the only reference, at the hearings, to the Tsilhqot'in discovery of gold. The following quote also ends with a family history of gold panning at Fish Lake. Chief Russell Myers Ross states the following, speaking initially on his Master's thesis written at the University of Victoria's Indigenous Governance program, and later on his family history of alluvial gold mining at Fish Lake (Teztan Biny):

I chose to interweave a narrative identifying the constructive reality view of colonialism, which is an operational process of disfiguring an original society and making it irrelevant in the horizon... [The MA thesis]’s purpose was to share with youth the long journey that we must take to understand ourselves and it requires a full understanding of stories of empire and colonization, coinciding with the family and communal stories that came before us... Our intention is to continue renewing and regenerating our culture as you were able to witness at [the site visit to] Teztan Biny on Friday. The narrative will be a long process. It will require that we are given space to reconnect to the land, return home, as I have, and allow for the practice of remembering. Since making my return many years ago I was fortunate to learn about Teztan Biny through my great [relative]. He was able to tour us to the site purposefully before he passed away. I remember him carving one of his many bows. He told us of his time there as a child where my great grandfather brought him to pan for gold. He recalls a jar being filled with gold and leaving to Alexis Creek to cash in the gold. He got severely short-changed after all that effort. That’s not the first time he was short swindled, but he returned many more years and I would say that most of my aunts and uncles have lived there as children and relate stories to me.” (CEAA 2013, vol. 15, p. 88–89)

This statement not only discusses colonialism as operational, but is also quite clear about gold discovery. Myers Ross’s family history of gold panning further demonstrates that Tsilhqot’in were well aware of gold deposits existing at Fish Lake. Of note is how the mining company responds to Chief Myers Ross. After articulating very clearly and succinctly one story of gold

discovery at Teztan Biny, and why the mine was unwanted, Taseko Mines Limited representative McManus asked,

In your own view with all of that background and study and obviously well-articulated ability to say what you think, is this as much about the concerns about New Prosperity itself or is this about - - you know, you brought up genocidal intent of government and who has the authority to approve a project like New Prosperity or some other project.
(CEAA 2013, vol. 15, p. 92)

Mr. McManus's question relates to the company's continual suggestion that there was a "larger agenda at play" and that the Tsilhqot'in were using "culture as a weapon." Here again McManus is gesturing to a larger political agenda. TML relies on this line of thought in the hearings, and thus universalizes the company's political position. The political agenda also includes their own biases based on the promise of jobs steeped in modernity discourse, and prosperity. McManus and his team continued to suggest that the Tsilhqot'in's reliance on the politics of settler colonial dispossession (or "genocidal intent") were part of a larger agenda, but fail to see themselves as a part of this program.

Christie Smith, another TML employee, then went on to ask, "In respect to your discussing how there's imposed poverty, and the reason why we are faced with some of those things today, and I just wanted to know what the unemployment rate was in Stone [Chief Myers Ross' Community]?" Similarly, Christie Smith frequently asked Tsilhqot'in speakers, and particularly youth, where they had gotten their information on the mine from, in an attempt to indicate the missed employment opportunities. This conflict in reasoning, that assumes the

neutrality of the company and the First Nation as “political” and “misinformed” about the mine continually surfaced during the hearings.

Contention over the ownership of the minerals at Fish Lake did not stop there. Another poignant quote from the hearing that communicates Indigenous resource sovereignty is the following by Ms. Cuts, who began by asking the company, “Why are ecological assessments done internally?” Company spokesperson Mr. McManus responded, “I’m not sure what you mean” (CEAA 2013, vol. 15, p. 208-9). This was another disjuncture that could be understood to demonstrate that the community felt excluded from the Environmental Impact Statement. After some back and forth over ecological assessment, Ms. Cuts asked, “Why look in our backyard for minerals?” Mr. McManus responded, “We look everywhere. This is where the deposit is.” In an act of defiance, Ms. Cuts then stated, “What makes you think we will let you?” Despite unanimous community opposition to the New Prosperity Mine Proposal, which was expressed at the hearings, Taseko Mines Limited did not seem to listen to the message that their mine proposal remained unwanted.

6.2 Ethnographic Tools

There was very little ethnographic or cultural data collected by the mining company. Further, there is little academic research on Tsilhqot’in culture, though that is perhaps how the Tsilhqot’in like it (see Bhattacharyya, Slocombe, & Murphy, 2011 for exception)⁴⁵. Above, Ms. Gizikoff draws on Cindy Ehrhart-English’s ethnographic report in regards to gold exploration and the Tsilhqot’in use and occupation of the Nabas area. In referencing the Cindy Ehrhart-English report, the mining company representative was referring to one of the two ethnographic

⁴⁵ There is, however, a vast archive of content that was collected during the court case.

reports that TML commissioned in the 1990s. Ehrhart-English is an anthropologist who, in 1994, wrote an ethnographic heritage study of Fish Lake for TML. TML's and even TNG's reliance on this reporting shows how little work had been done on Tsilhqot'in culture within the scope of the Environmental Assessment. Anthropologist Marc Pinkoski was critical of the proponents EIS in regards to the reliance on this report. During the 2013 hearings, Pinkoski notes this in a submission he made to the panel dated March 30, 2013.

He writes, "Much, if not all, of the empirical data in this response [from TML to the panel's information requests concerning culture] is dependent on Ehrhart-English" (Ehrhart-English, 1994). Following Pinkoski, I agree that this is inadequate. There is data TML could have drawn on, written by Tsilhqot'in people themselves. However, the company's desire to open a mine in this case caused it to take an unconstitutional stance that did not take into account Aboriginal rights as enshrined in Section 35 of the Canadian Constitution, for example.⁴⁶ I discuss the legal conflict over what constitutes an Aboriginal right further in the section below on corporate ethics. TML's legal representative, during the closing of the community hearings in Xenigwet'in presented a corporately influenced interpretation of aboriginal title, which is perhaps no surprise. My point here, though, is that TML relied on a techno-scientific rendering of ethnography. Similar to how fish came to be portrayed in the EA process, there were limitations to how culture and Aboriginal rights came to be constituted.

Ehrhart-English wrote a letter, dated November 8, 2012, and supporting the Tsilhqot'in, that she submitted to the CEAA panel. It states that the Teztan Biny and Nabas area is too culturally sensitive and unique to open a mine. In it, she very clearly outlines the significance of the Little Fish Lake area to the Tsilhqot'in:

⁴⁶ Section 35 of the Canadian Constitution (1982) recognizes and affirms Aboriginal rights.

[Tsilhqot'in families] used the entire [Fish Lake] region just as one would utilize a grocery store, or a road map that highlighted where the clothing store is, where the hardware store is, where the restaurant is, etc. ... With the passage of time, and changing fortunes of the Canadian economy, Tsilhqot'in will continue to evolve as members of the modern economy, but they will continue to be Tsilhqot'in and as such, Fish Lake will always be important to their identity as Tsilhqot'in.

She goes on to elaborate that traditional foods make up at least 50% of most household diets, and that and for most elders this number rises to 75%.

Little Fish Lake is the area in which most of the traditional activities have taken place. Taseko asked me what they might do regarding this indisputable fact as far as mitigation techniques and I suggested, at that time, that they avoid the Little Fish Lake area all together [*sic*] ... I am very surprised they would attempt to propose to place a tailings pond on the area. (2012, p. 3)

My criticism of the reliance on this work during the hearings is not a criticism of Ehrhart-English herself, for her study in fact helped the Tsilhqot'in get the mine proposals rejected. Rather, it is ironic that her work was relied upon repeatedly in the hearings as some kind of cornerstone representing Tsilhqot'in culture. I question how this ethnography comes to be (more) valued than the Tsilhqot'in voices that spoke of the history of the area themselves.

TML stated the following on methodology in the First Nation Consultation report dated August 1, 2009, (emphasis added):

The Heritage Significance of the Fish Lake Study Area: Ethnography is a comprehensive study that examined historical and current traditional land use in the RSA, *and is the primary basis for understanding the history of the Tsilhqot'in*. The study was conducted in July and August of 1993 wherein all community members over the age of 15 were asked to participate in an interview. The interview methodology was designed with the Xenigwet'in (Nemiah) members to ensure appropriateness for Tsilhqot'in culture. In total, 58 members of the Xenigwet'in community were interviewed and three members from the Yunesit'in (Stone) were interviewed. Efforts were made to interview more members of the Yunesit'in (Stone); however, members were not available. In total, over two hundred hours of interviews were conducted on all aspects of the individual's *[sic]* lives and land use in Fish and Little Fish lakes area.

Though TML recognized the anthropological study they commissioned, they used the report primarily to demonstrate that they had taken culture into consideration in their mine design. This is seen in Gizikoff's reference to the Ehrhart-English report above that could be read as a way of delegitimizing the Tsilhqot'in claims to gold discovery at Fish Lake. I am not arguing that TML's use of the report was biased (a point TML made of the analysis used by the TNG shown below), but rather, that the company used the ethnography to legitimize its claims to having done the cultural work deemed necessary. Yet the ethnographer herself wrote a letter in support of the Tsilhqot'in's wish to reject the mine proposal, a point that was taken up in the final panel report.

Boasting 200 hours of interviews, taken no less than twenty years before the mine proposal for the New Prosperity project went through Environmental Review, the Ehrhart-English report was in fact heavily relied upon by both the Tsilhqot'in legal council as well as TML. This is, as noted above by TML, the report noted as the "primary basis for understanding the history of the Tsilhqot'in." The anthropologist that did the study, Ehrhart-English, did not think that the mine design adequately accounted for Tsilhqot'in culture. She suggested that her 1994 report had to be taken "as a unified whole" and presented a critique of TML's use of her data. For Ehrhart-English the patterns of Tsilhqot'in using the Fish Lake area for supporting their way of life, for living their cultural ways is a very old pattern, and as such is of crucial importance to them as people. If you take that and layer a measure of spiritual connection, an extremely long time depth for certain families, and groups of people to have used an area for generations, knowledge is gained of how to use that environment in different seasons for different reasons, that cannot be altered, and it cannot be replaced or moved elsewhere (2012, p. 8).

Ehrhart-English, then, acknowledges the significance of Fish Lake as a place that cannot be "replaced or moved elsewhere." The study commissioned by TML led the anthropologist working with the Tsilhqot'in to conclude that the Fish Lake area was of extreme importance to the Tsilhqot'in as people, as was stated by many of the Tsilhqot'in. This included actively asserting that the presence of gold in the region was well known, and that it belonged to them, as it was traced to the people who lived and grew up in the area.

6.3 Rejecting ‘Prosperity’: Tsilhqot’in Self-Determination vs. Corporate Ethics

It’s a narrative of essentially white colonial settler governments trying to steal indigenous lands, and I don’t know how to say it differently, because that’s the narrative that we see.

– Chief Russell Myers Ross (CEAA, 2013, vol. 15, p. 93)

The rejected mine was a site of controversy because of the Tsilhqot’in Nation’s staunch opposition and the prospective environmental and social impacts, not to mention the widely criticized tailings impoundment area plan with a highly disputed seepage model. Corporate advertisement for the Prosperity project expressed sentiments such as, “Mining in Canada—It’s part of who we are” and “Mining has formed a critical cornerstone in our identity as Canadians” (Taseko Mines Limited, 2014). Canadian national ideologies based on economic development and employment of First Nations workers are foundational to the ideological sentiment that backed the now twice-rejected mine. This was the first time the Canadian Environmental Assessment Agency had considered a proposal previously rejected by a federal review panel (Stueck, 2011). Community resistance and the Tsilhqot’in’s rejection of the Prosperity mine were central to the federal mine rejections, though this was articulated with bureaucratic flavour. The overall conclusion stated, that the New Prosperity Project

would result in significant adverse environmental effects on the water quality in Fish Lake (Teztan Biny) and Wasp Lake, on fish and fish habitat in Fish Lake, on wetland and riparian ecosystems, on Aboriginal current use of lands and resources for traditional purposes, archaeological and historical resources, and cultural heritage. The panel also

concludes there would be a significant adverse cumulative effect on the South Chilcotin grizzly bear population and moose, unless necessary cumulative effects mitigation measures are effectively implemented. (Report of the Federal Review Panel, CEAR #1178, 2013, p. 243)

It is worth noting that under the Canadian Environmental Assessment Act, it is not the three federally appointed panelists that make decisions. They write a final report, quoted here with reference to adverse environmental effects and impacts on Aboriginal use. The Tsilhqot'in are forced to perform their aboriginality through proof of land use and occupation based on tradition, and regardless of panel report results, final decisions are left to the Minister of the Environment and Cabinet. In the case of the New Prosperity Mine proposal, Minister of the Environment Leona Aglukkaq and Cabinet formally rejected the mine on February 26, 2014, based on recommendations by the review panel.

The regulatory environment and the continuation of colonial mineral staking practices—with no mechanism for consent—places the Tsilhqot'in Nation in a state-facilitated dispute over gold mining one hundred and fifty years after conflicts over gold in the region began. This can be explained in light of settler colonialism and the free entry principle enshrined in mineral staking legislation, still in effect today, in that it was this free entry mineral staking claim to property that was a catalyst for all future regulatory procedures. Further to dispossession mechanized through free entry mineral staking and based on the alienation of property, British Columbia and Canada facilitate environmental assessment but also write and rewrite the rules that govern these procedures. This creates an incredibly uneven playing field and dramatically differs from Tsilhqot'in law and governance structures. Even though the cards are stacked to

favour Western law and science, Tsilhqot'in law and governance clearly made its way into the community hearings for the New Prosperity Mine Proposal. Fanny Stump, for example, submitted the Tsilhqot'in Declaration of Sovereignty to the panel. The Declaration ends as follows:

We govern according to our principles of consent. We ask you to understand that what we are saying is not unique or peculiar to the Chilcotins: it is happening throughout the Americas. The period or era of colonization and neo-colonialism is passing; the Fourth World is emerging. (Submission to CEAA panel by Fanny Stump, August 14, 2013; Tsilhqot'in Nation, 1998)

This excerpt from the Tsilhqot'in Nation's Declaration of Sovereignty clearly states that the Tsilhqot'in govern themselves and will continue to do so. It also draws parallels to the colonization of Indigenous people more broadly. Powerful expressions of Indigenous self-determination were paramount throughout the community hearings. They included several references to the significance of Teztan Biny as a place. The area is of great cultural significance. Referenced throughout the hearings was evidence of burial sites, fishing locations, hunting grounds, and locations in the Fish Lake area where people grew up. The area was referred to as a "one stop shop," a phrase borrowed from the community hearings by the Tsilhqot'in legal council and used to demonstrate the significance of place.

Another example at the hearings of strong Tsilhqot'in voices rejecting the mine was that of Ms. Whitey-Hunlin. In response to TML's New Prosperity proposal presentation, she said,

God made us First Nations and we are red in colour and we are beautiful. We are a proud nation. First Nations exist. We can't just be ignored out of existence. We are here to stay. We will continue to stand up for our rights and the rights of our land and whatever we have left, and we will stand and we will stand united. And that is all I have to say.
(CEAA, 2013, vol. 15, p. 205)

Here, Whitey-Hunlin echoed community sentiment and refused to leave—refused to be ignored. These moments of refusal and occupation and the sentiment “we are here to stay” are directed at TML and stand for more than a rejection of the New Prosperity Mine proposal. They stand for a rejection of settler colonialism generally. The community hearings were full of these moments in which people referenced the history of their land. For example, the failed attempt at colonial road building that resulted in the Tsilhqot'in War of 1864 came up many times throughout the hearings. In Xenigwet'in, for example, Trina Setah outlined that the Tsilhqot'in National Government was established in 1989

to meet the needs of the Tsilhqot'in communities and their strive to reestablish a strong political government. The communities continue to work as a Nation to continue to fight for our six war chiefs of 1864. The war chiefs stood against the Canadian government in an effort to gain Tsilhqot'in aboriginal rights and title to the lands we call Tsilhqot'in.
(CEAA, 2013, vol. 13, p. 102)

As referenced in Chapter 2, 2014 marked the 150th anniversary of the hanging of the six Tsilhqot'in war Chiefs by the colonial government. The Tsilhqot'in continue to defend their

lands today, as was done in 1864, when Britain attempted to build a road through their territory, which ended in the colonial government's defeat. The colonial government sought revenge through the unlawful hanging of six Tsilhqot'in Chiefs, who were tricked into showing up for their hanging under the auspices of a peace talk. Trina Setah, like others, also mentioned Ts'il?os and ?Eniyud, very significant transformation sights that are "protectors of the land" (CEAA, 2013, vol. 13, p. 105).

It is difficult to explain the significance of Ts'il?os and ?Eniyud within the confines of an environmental assessment hearing, yet these moments of teaching demonstrated the strength of Tsilhqot'in knowledge.⁴⁷ These are just some of the many expressions that continue to reject settler colonial dispossession and the gold-copper mine at Fish Lake. The proponent—TML—played on the idea that the rejection of the mine stood for more than the mine itself. TML officials alleged that the Tsilhqot'in resentment and resistance to the mine proposal on their traditional land was due to a history of mistrust of white people rather than the mine proposal. As Mr. McManus stated, "This isn't even really about the New Prosperity project; rather, it seems to be about the establishment of rights and title and how that applies to the authority of Canada and British Columbia as regards to the approval of industrial projects in the area." McManus then went on to criticize particular influential and well-respected community leaders for leading what he literally referred to as a "misinformation campaign." According to McManus, the introduction of spirituality and sacred sites was not at all part of the first Prosperity mine proposal's earlier hearings: "Honestly, that wasn't part of the discussion [during consultation] in 2008." He then went on to argue, "We've seen the introduction of all of the above perhaps to sway the opinion and the conclusion of this panel." This set the stage for the

⁴⁷ Here Mario Blaser's discussion of what how ontologies are and are not translatable is useful (Blaser, 2014).

company's continued emphasis on misinformation in the conclusion of the panel hearings in Xeni Gwet'in.

Following McManus, mining company representative Mr. Jones went on, "All of this information or misleading information or confusing information that's been provided to communities—you know, I think it's only fair to say that it leads to confusion, it leads to mistrust and it leads to fear, and I think we've certainly heard that this week" (CEAA, 2013, vol. 22, p. 240). The company again suggested that the Tsilhqot'in were confused and misled, resulting in mistrust and fear. They pointed to specific influences in their final argument:

[There were] a number of organizations engaged by TNG to provide information to the Panel. These organizations MiningWatch, Friends of the Nemaiah Valley, Wilderness Committee, Raven Trust and Valhalla Wilderness Society. Taseko's hired independent, qualified, and experienced professional consultants with no stake in the project, and these organizations all have definite agendas that can be readily found on any of their websites. (CEAA, vol. 22, 2013, p. 295)

This is another example of TML claiming a neutral and independent stance in contrast to what they viewed as misinformed studies and an agenda that was set against them. TML's legal team representative, Mr. Gustafson, further supported the 'campaign of misinformation' argument. For example, Chief Roger William of Xeni Gwet'in provided a detailed personal account of his role in bringing what has become the biggest Indigenous rights and title case in Canada since *Delgamuukw* (*Delgamuukw vs. British Columbia* [1997]) forward in the courts. Following Chief Roger's account, TML's lawyer during the hearings, Mr. Gustafson, stated,

It's important to recognize that the governments of British Columbia and Canada continue to have a right to govern. It's also important to recognize that the lands in question are Crown lands and that Taseko holds mineral interests under provincial laws. It's important to recognize that, in our respectful submission, and [the] uncompromising position as set out in the Nemiah declaration, which the Panel has heard much about this week, are not consistent *with the spirit of reconciliation*. The suggestions in this proceeding, by and on behalf of the Tsilhqot'in, that the law of Canada provides veto rights regarding land use decisions, simply do not accord with the law of Canada. In our view, what we have heard in the past few days is a lot of commentary that reflects a larger political agenda and a struggle for broader rights, as Mr. McManus eluded to a minute ago. We understand that ambition, but for now, and for all purposes of this proceeding, we need to deal with the law as it is. We've heard numerous times that the Tsilhqot'in are here to stay. We certainly expect so. And I repeat, through the now famous words of Canada's then Chief Justice Lamar in the Delgamuukw decision, "Let's face it, we are all here to stay." Taseko genuinely desires a reconciliation with the Tsilhqot'in people. If the project is approved at this EA stage, Taseko will continue to work to foster that relationship as it moves forward into permitting. (CEAA, vol. 13, p. 242-44).

The logic employed by Taseko Mines Limited's legal team here is that the lands are Crown lands. This is a claim the Tsilhqot'in squarely reject. Gustafson refers to the company's point of view as "respectful" and that of the Nemiah "uncompromising." One of the things the

Nemiah Declaration does is reject mining and mineral exploration. Contrary to Gustafson's reading of the Nemiah Declaration, which he juxtaposes with TML's respectful mine proposal, scholars such as Elizabeth Furniss and David Dilwinnie do not find the declaration uncompromising, but have celebrated the document as politically significant, particularly as it is considered authoritative by the entire Xeni Gwet'in community. Furniss draws on the work of Dilwinnie and argues that the Nemiah Declaration can be read as a Western legal document "affirming the nationhood and sovereignty of the Nemiah First Nation" (Furniss 2006, p. 185). In this respect, the Nemiah Declaration does not compromise Indigenous resource sovereignty. Dilwinnie articulates the strength of the Declaration in light of its translation from Tsilhqot'in to English. He suggests that the Tsilhqot'in version is able to convey much deeper meaning than that afforded by the English document. To Gustafson, this nuance is lost, and the Declaration is understood as simply uncompromising, because it does not fit neatly within his client's pro-development paradigm. The Nemiah Declaration rejects mining.

6.4 The Spirit of Reconciliation

The scholarship of Glen Coulthard and Leanne Simpson provides tools to critique reconciliation discourse. They reject liberal recognition paradigms, and iterate how Indigenous resurgence and nation building remains ongoing, despite the politics of recognition. Coulthard rejects the politics of recognition whereas for Gustafson above, the Nemaiah Declaration is "not consistent with the spirit of reconciliation." State-based political regimes under the guise of reconciliatory politics do not escape settler colonial attempts to classify and control Indigenous people. One of Coulthard's central claims is that "in the Canadian context, colonial relations of power are no longer reproduced primarily through overtly coercive means, but rather through the

asymmetrical exchange of mediated forms of state recognition and accommodation” (2014, p. 15). In one sense, environmental assessment is designed to accommodate First Nations, but the exchange of information remains highly asymmetrical. Thus, Gustafson is right in that the stance in the Nemiah Declaration assumes the playing field is equal, and that the people of the Nemiah Valley have the right to say no to development in their own lands. The Tsilhqot’in people of Xenigwet reject that the mine should be able to move forward at Fish Lake, which according to TML is inconsistent with the spirit of reconciliation.

The Tsilhqot’in reject the delegitimization of their culture and livelihoods. As Russell Myers Ross states, “our culture is renewable.” Powerful Tsilhqot’in voices remained salient throughout community hearings, in line with critiques of reconciliation as an ineffective mode of governance. Therefore, as is the case with Gustafson’s rendering of it above, the “spirit of reconciliation” does not forward Indigenous claims to territory or Indigenous self-determination. Rather, TML’s spirit of reconciliation rejects the practice of a veto right to development projects; The troubles with TML’s corporate legal strategy are succinctly demonstrated above in Gustafson’s point that Canadian law does not allow for a veto right.

Gustafson went on, “In our view, what we have heard in the past few days is a lot of commentary that reflects a larger political agenda and a struggle for broader rights ... We need to live with the law as is.” According to Gustafson’s logic, the law represents an unquestionable claim to sovereignty. Yet this is disputed. To once again draw on Coulthard, the law, including the courts, fail to challenge racism and the Canadian state’s assumed sovereignty. In Coulthard’s words, “even though the courts have secured an unprecedented degree of protection for certain ‘cultural’ practices within the state, they have nonetheless repeatedly refused to challenge the

racist origin of Canada's assumed sovereign authority over Indigenous people and their territories" (2014, p. 41).

Gustafson's view of the law parallels how fish came to be represented during the hearings: through the lens of scientific studies of population, stock type, etc., discussed in the previous chapter. TML wished to foster a relationship based in the spirit of reconciliation, because mining interests had rights, too. As Gustafson stipulated, "they are here to stay." This idea of settlers and native people being "here to stay" is usefully juxtaposed with Patrick Wolfe's foundational definition of settler colonialism as "a structure, not an event" (Wolfe, 1999, p. 3). If the Canadian law, as is, is here to stay, its entry into the formation of the colony of British Columbia in the late 1850s and 1860s remains a structural force, not simply an event that took place in the past. Indeed, while the structure has evolved to allow environmental assessment, for example, it remains steeped in the structures of settler colonial law. British Columbia's entry into Confederation in 1871 and the laws established prior to that time—legally granting rights to Britain over Indigenous territories—remain a structurally-embedded starting point in Gustafson's law, "as is." The coloniality that underwrites these laws was fundamentally challenged during community hearings, but such challenges can surface only to a limited extent within the confines of a stakeholder system that does not grant decision-making authority to the Tsilhqot'in.

In contrast to what Gustafson referred to as "the law as it is," Chief Russell Myers Ross explicated a contrasting vision of law. He started his statement to the CEAA panel in Yunesit'in by countering claims that Fish Lake was outside the title claim area as defined by the court case: "These lands are under our own Tsilhqot'in law. Our law is called (Native being spoken). Canadian law is only one source of law" (CEAA, 2013, vol. 15, p. 76). I leave the "Native being spoken" from the transcript explicitly in this quote, because it represents precisely how

Indigenous difference came to be recognized through the federal panel procedures: as a foreign language. In fact, Chief Myers Ross's remarks were straightforward; he simply stated that Canadian law was only one source of law. Yet there are more profound political ramifications of this argument, which resists a reification of the Western legal orders through which the CEAA operates. Here, scholarship that explores Indigenous law and argues for a stronger incorporation of Indigenous legal orders, both inside and outside the courts is of relevance (Borrows, 1997; Napoleon, 2013).

Gustafson's argument was followed by the words of TML representative Ms. Gizikoff. Her statement extended the theme of settler colonialism and was pertinent to entitlement based on gold exploration and discovery.

I appreciate the stories of the people on the land and their discomfort and distrust of mining. My family stories are a little different, with my father going to the Klondike during the gold rush. So mining is part of my [settler] heritage. I have fishing stories and swimming stories with my children in ... old pits filled with water. And my son, now an archeologist, grew up taking water, soil and vegetation samples with me while at work.
(CEAA, 2013, vol. 15, p. 250)

Here, Ms. Gizikoff presents us with an example of entitlement based on heritage and an illustration of how she renders the politics of difference, as her family stories were "a little different." By comparing her stories to those of the Tsilhqot'in, she suggested similar histories and erased the Tsilhqot'in as distinct Indigenous people by placing her heritage on par with that of the Tsilhqot'in. In this narrative, the colonial violence of the settler state is rendered invisible.

Mr. Gustafson was right. There was a larger political agenda at stake. What he failed to recognize is the part that TML played within that larger agenda that embraced settler colonial law.

6.5 Conclusion

In *Red Skin, White Masks*, Glen Coulthard argues that colonial violence structures state domination in Canada's present through "a medium of state recognition and accommodation" (2014, p. 25). For Coulthard, colonial hierarchies are reproduced through asymmetrical power relations mediated through recognition and accommodation (2014, p. 14). These asymmetrical power relations are mediated through environmental assessment, which recognizes Indigenous culture yet does not allow Indigenous sovereignty to be taken seriously or accepted as legitimate. Environmental assessment is in many ways a part of Canadian reconciliatory politics. Kirk Lambrecht writes, "Aboriginal consultation and the environmental assessment/regulatory review of projects by tribunals can be integrated so as to operate effectively and serve the goal of reconciliation" (Lambrecht, 2013, p. 1). Lambrecht views this process in a positive light and positions it as a central contribution of his book *Aboriginal Consultation and Environmental Assessment*. But by gesturing towards competing narratives of gold discovery, conflicting ideologies of the place of Tsilhqot'in culture in environmental assessment, and the differing terms of what might constitute a political agenda, I have tried to show that the politics of reconciliation as lived through environmental assessment fail to reasonably address sovereignty. That is perhaps not what environmental assessment was designed to do, which illustrates the fundamental flaw in mining regulations in Canada.

Patrick Wolfe's notion that settler colonialism is a structure can be used to further understand the workings of this type of power. These workings are visible through mining regulation in Canada, but are not without cracks in their formation. These cracks, or spaces that escape the settler colonial structure, are evident in that Tsilhqot'in culture and people continue to thrive, despite the ongoing attempts to dispossess Tsilhqot'in lands and resources. This was an active part of the Tsilhqot'in Nation's legal argument in response to Taseko Mines Limited's New Prosperity mine proposal.

Ideas around representation and strategic politics inform my approach, which distinguishes the significance of Indigenous self-determination and rejects settler colonial dispossession. The ways cultural representations inform the environmental assessment process can be performative within capitalist colonialism, but they remain significantly constitutive of the successes and failures of the settler colonial state and the project of Indigenous sovereignty.

Chapter 7: Concluding Remarks

Highway 20 runs from Williams Lake to Bella Coola, and part of this journey is along the Tsilhqot'in Plateau. New signs were put up along this highway, as well as on the road that goes down into the Nemiah Valley. The signs are in the Tsilhqot'in language and indicate where Tsilhqot'in communities are located. These were put in place after the 2014 title case victory. The first time I drove down this road, the signs were not yet there and I was on my way to sit in on the 2013 environmental assessment hearings. At that time I had finished my doctoral research proposal, which posed key questions very similar to those I pursued in this final dissertation. The questions I asked were about dispossession, settler colonialism, and mining laws and regulation in western Canada.

On that initial drive to Nemiah, I thought to myself that of all of the people I know, the Tsilhqot'in people of Xeni Gwet'in do not appear to live in a land that has been dispossessed. The stunning landscape and view of the mountains, along the way to my destination on Chilko Lake, made me appreciate how the countryside and culture in Xeni Gwet'in has, yes, been deeply implicated by colonialism and contact, but remains intact and in many ways thriving, despite the devastating impact of industrial logging. Since that first trip I have been down the same road many times. The original questions I posed over mining regulations and dispossession have since been transformed into questions over jurisdiction, assertion strategies to assist in Indigenous-based governance and tactics to mobilize the shift in power the Tsilhqot'in are experiencing as they become the primary decision makers over resources in their title and rights area.

In this dissertation I have outlined the very particular legal mechanisms that govern the mining industry and allow mineral staking to take place without consent. I hope also to have

raised questions about the utility of environmental assessment in order to address conflicts over territory that take place at such a late stage in the mining regulatory process.

When Justice Thomas Berger undertook the first and perhaps most famous environmental assessment process in Canadian history in the late 1970s, he placed a moratorium on the Mackenzie Valley pipeline project for ten years until land claims were settled. In regards to the community hearings, Berger wrote, in his letter that prefaced the seminal 1977 report, of the stakeholders involved in the decision to build a pipeline. In referencing Indigenous organizations' opposition to the project and the pro-development Territorial Council that supported the pipeline, he then added, "I [also] decided I should give northerners an opportunity to speak for themselves. That is why I held hearings in all northern communities, where the people could speak directly to the Inquiry. I held hearings in the white centres of population, and in the native villages. I heard from municipal councillors, from chiefs and band councils and from the people themselves. This report reflects what they told me" (1977, *viii*). Later in the same letter he continued, "I am convinced that the native people of the north told the Inquiry of their innermost concerns and their deepest fears" (1977, *xxi*).

I believe this is also how the three federally appointed panelists charged with writing a report for the New Prosperity mine proposal, pictured in Chapter 2, also may have felt after the environmental assessment hearings for the rejected mine at Fish Lake. They may also have concurred with Berger that "native people desire a settlement of native claims before a pipeline is built. They do not want a settlement – in the tradition of the treaties – that will extinguish their rights to the land. They want a settlement that will entrench their rights to the land and that will lay the foundations of native self-determination and the Constitution of Canada" (1977, *xxii*). This insight, almost forty years prior to the environmental assessment for the New Prosperity

project is still relevant today. It seems First Nations remain concerned over land and resources and continue to desire the right to govern their lands as they see fit. My questions, at the end of this project, remain rooted in the importance of land and Indigenous self-determination, sovereignty and jurisdiction, but perhaps are less abstractly connected to the details of archaic mining laws. I have addressed questions about mineral staking in B.C.'s colonial era and today. My questions now are slightly different and perhaps bigger.

The intervention and detail I have provided in regards to mineral staking laws and the case of Fish Lake provide evidence of a need for the province of British Columbia to overhaul mineral staking regulations. Put very simply, this would save time and money and would better represent the wishes of Indigenous people and private landholders today. Though many and especially older figures from the mining industry may believe otherwise, and though the province claims due diligence through their notice of work requirements, the pressing need to revisit free entry mineral staking is not going away. My juxtaposition of regionally enshrined, nineteenth-century mining codes with those in the present, however, is useful beyond a policy perspective. These laws, which continue to negate Indigenous consent or meaningful consultation, are not simply unethical. The focus on mineral codes I provide in Chapter 4, details how (settler) territorial assumptions remain embedded in contemporary mineral codes that mechanize the dispossession of land. The cadastral map and online staking system demonstrates a vision of land that has indeed been taken away, the sub-surface rights claimed largely by those set in urban environments.

Despite the abstract alienation of sub-surface mineral rights, the main intervention in this thesis foregrounds the geography of unrealized dispossession and settler colonial mining law in Canada today, and shows how state-mediated practices based on notions of reconciliation—like

environmental assessment—are necessarily tense as they do not address the centrality of Indigenous resource sovereignty. Indeed, state-mediated practices fail to address the right of Indigenous people to practice Indigenous-based decision making over their lands. By contrast, the Tsilhqot'in draw on ideas of sovereignty, like those enshrined in their own declaration and in the Nemiah Wilderness preserve, to assert power and regulate the lands upon which they live.

I suggest that Canadian mineral staking principles can be understood as based on the original theft of Indigenous land that continues to be institutionalized by the contemporary mineral staking code. By building on scholarly studies of the rejection of settler colonialism, primitive accumulation, and accumulation by dispossession, I hope to have unsettled how mineral staking and mineral assets are governed today. In British Columbia, like in the rest of Canada, this governance is based on assumptions that have been maintained since the colonial era.

In closing, I would like to reference temporality, as there seems to be relative consensus amongst scholars (Brown, 2014; Coulthard, 2014; DeAngelis, 2001; Glassman, 2007; Nichols, 2015) that primitive accumulation is ongoing. I have been careful not to suggest that my historical juxtaposition represents a continuous or uniform relationship, since the terms of settler colonialism and dispossession have significantly altered since 1858–59, when the original Gold Fields Act was written. While primitive accumulation is a well-cultivated field of inquiry, my juxtaposition of dispossession, as I have laid it out, is complex in the inherent tension that exists with a structure that has been resisted and rejected, yet also defines the terms through which mineral regulations are mechanized daily. I have also made clear that settler colonial dispossession is an ideal that is enacted through legislation that remains contested. It should be evident by now that the Tsilhqot'in, for example, appear to work around this system, both within

and outside the courts and federal bureaucratic spaces like environmental assessment. It was, notably, a roadblock at Henry's Crossing in 1992 that set the wheels in motion for the Tsilhqot'in title case.

In Chapter 3, I provided background on the Tsilhqot'in in order to root this story in the regulatory history at Teztan Biny. This involved tracing key attempts at resource extraction, such as the Tsilhqot'in War and the Supreme Court of Canada victory that took place in the summer of 2014. The Tsilhqot'in War is indicative of settler efforts to support the gold rushes in the past through the attempted road building project from Bute Inlet to the gold fields. I drew on public hearing presentations for the New Prosperity mine proposal and outlined the Nemiah Declaration (to which I returned in Chapter 6 to tease out conflicting ideologies of what constitutes the law).

Chapter 4 demonstrated how the mineral regulations enshrined in British Columbia's first era of colonial governance are rooted in racist articulations that make the dispossession of land from Indigenous people appear legally justifiable. I outlined how sovereign colonial claims to mineral property remain written into resource law today, establishing the contemporary significance of the long history of mineral regulations. Empirically the chapter is based on the legal history of mining laws in British Columbia and focuses on 1858–9, when the province of British Columbia's first mining laws were written. An important effect of the early gold rush was the way in which mining law and governance participated in the formation of what became the Canadian state. Here I also drew on the scholarship of Renisa Mawani to show how racial ordering structured the governance of mineral staking in the past and continues to do so in the present.

I went on, in Chapter 5, to focus on the technical rendering of fish in Fish Lake to show how the mine proposal at Fish Lake and mining regulation in Canada displace Indigenous claims to sovereignty, including ways of knowing fish. Environmental assessment begins on an uneven playing field because of the corporate emphasis on, and technical rendering of, fish.

Environmental assessment disregards Indigenous resource sovereignty by failing to interrogate or even address Crown control over lands. This is shown in the everyday governance of resources like fish through the environmental assessment process. Environmental assessment, like mineral staking, privileges scientific and quantifiable understandings of place that in effect make Crown control possible. Mine proposals, particularly that of New Prosperity, involve the life or death of the fish in Fish Lake—a fact that is taken for granted or not fully considered. This was crucial in the Prosperity and New Prosperity proposals, because both involved the draining of lakes for mine waste. This chapter also discussed the significance of resource regulations, like debate over Schedule 2 of the *MMER*, and argued the limitations of a process like environmental assessment to fully engage with non-technical data. I suggested that through environmental assessment, distinct ways of knowing, including data presented in the Tsilhqot'in language, get lost in translation, yet ought to remain included.

Lastly, I argued in Chapter 6 that though the politics of environmental assessment allowed for a successful rejection of the New Prosperity mine proposal, the ways in which environmental assessment plays out remain fundamentally rooted in a settler colonial system that functions within the politics of reconciliation. This is not to say that Tsilhqot'in voices were not heard loud and clear during the environmental assessment process. Nor is it to argue that these voices did not play a major role in rejecting the mine project, twice. Rather, the chapter demonstrated that environmental governance in Canada is based on the violence and everyday

nature of land dispossession and argued that environmental assessment does not undo this ongoing and troubled relationship.

Yet the mine was significantly rejected, demonstrating that CEAA can still represent the views of First Nations. I argue that mechanisms of consent should be available far earlier, during the mineral-staking stage. As this dissertation shows, land dispossession is rooted in the fundamentals of settler colonial ideology, still presumed legitimate by and through the state. Gavin Bridge has argued that resource geographers largely neglect the significance of the state in resource conflicts (Bridge, 2014), and I hope to have shown how the politics of environmental assessment are considered a reconciliatory politics based on legal concepts that remain steeped in accumulation by dispossession, though this dispossession remains unrealized.

7.1 Application of Findings

This work shows how Canadian mineral regulations are rooted in racist articulations of the law that make the dispossession of Indigenous lands appear neutral and just. It builds on calls to reform free entry mineral staking (Campbell, 2004; Clogg, 2013; Stano, 2013) and transform how mineral properties throughout Canada are regulated (see Peerla, 2012, for example). There is now momentum to reform free entry mineral staking federally, including in the most recent case, *Ross River Dena v. the Yukon* (2013). The momentum to reform uncovers the illogic of contemporary policy decisions around mineral staking and participates in mineral reform debates.

Further, the project demonstrates how mechanisms of consent would be beneficial in the early stages of mineral staking. Of concern here is precisely how Indigenous opposition is incorporated into environmental assessment processes. Environmental governance processes,

such as Traditional Ecological Knowledge studies or community hearings for a mine, include aboriginal consultation but do not necessarily provide a veto right or space for Indigenous consent. This veto right should be available to Indigenous people at the very beginning of mineral projects, during the exploration stage.

Free Prior Informed Consent is a tool used by Indigenous people and non-governmental organizations such as Amnesty International. Amnesty presented on Free Prior Informed Consent at the environmental assessment hearings in solidarity with the Tsilhqot'in Nation. Free Prior Informed Consent is enshrined in the United Nations Declaration of the Rights of Indigenous Peoples and requires consent of projects—put simply, it is the right to say 'no' (Laplante & Nolin, 2014).

An analysis of the environmental review process and the discourse surrounding this process reveals how Indigenous rights to land and culture, or aboriginal title, is considered through the environmental review process. The liberal judicial system is the platform upon which environmental assessment takes place, and this allows neither consent nor a veto right to development that takes place on unceded lands. For example, TML was able to reapply after the 2010 project was rejected, and thus the New Prosperity project was instigated. This was widely criticized by First Nations in British Columbia and NGOs working in solidarity with Indigenous groups including the Tsilhqot'in, and it is another avenue of policy debate relevant to this research.

7.2 Limitations and Future Research

The political position I set forth positions the dispossession of Indigenous lands as a central concern. This fills a gap in geographical literature and thought on Indigenous people in

Canada, which largely de-centres this dispossession and thus participates in its erasure. Part of this political position informed my methods of engagement. The research methods I used in this project, as outlined in the Introduction, could have been improved with more time, which would have afforded a different protocol agreement. My research agreement could have borrowed from those utilized by the UBC First Nations Studies Program or the Indigenous Governance program at the University of Victoria. Possible avenues of future collaborative research co-directed by and with the Tsilhqot'in Nation or one of the Tsilhqot'in communities, such as Xeni Gwet'in or Yunesit'in, include research on the utility of the Tsilhqot'in title case for Tsilhqot'in peoples and questioning some of the day-to-day ways in which the decision affects health, education, or resource use.

A second potential avenue of future research concerns waste and tailing impoundment areas and builds on the segment of this work that addresses Schedule 2 of the *MMER*. In August 2014, the largest tailings pond disaster in the history of Canada took place at Mount Polley near Quesnel, British Columbia. I am pursuing work on mining waste and the regulation of tailing impoundment areas like Schedule 2 of *Mining Minerals and Effluent Regulations* discussed in this thesis. This future work could elaborate how accumulation and waste come together to form “capitalism’s other,” which relates the work of Rosa Luxemburg and Silvia Federici referenced in Chapter 2.

Thirdly, the Tsilhqot'in people have declared an area of land adjacent to their title area a tribal park. There is significant opportunity to further research how this assertion and designation ends up moving forward. I am particularly interested in questions around how the conservation movement supports this project, as it is one that privileges Indigenous self-

determination, an area of inquiry mainstream conservationists have only recently begun to take seriously.

7.3 How Does Settler Colonialism Disposess?

I have drawn on mining laws and the principles enshrined in the B.C. Gold Fields Act (1859) and the current Mineral Tenure Act (1996) in order to argue that settler colonialism continues into the present day but remains incomplete and in many cases unrealized. Mining law and the transfer of the ownership of minerals from Indigenous lands creates an inherent contradiction grounded in liberal and legal foundations of ownership (Hoogeveen, 2014a). This contradiction is realized throughout both failed and successful resource extraction projects, and I have centred the significance of settler colonialism and Indigenous resource sovereignty in order to better explain these processes.

The Canadian state's ongoing maintenance of settler colonial systems—its negation of Indigenous claims to territory during the mining process—is practiced through resource laws. Resource extraction principles have been reproduced over generations, and the assumed neutrality of these practices functions through the legitimacy of state-based governance. In this work, I have argued for a re-imagination of sovereignty as a system rooted in Indigenous resource control and self-determination. Part of this re-imagining relies on an understanding of how resource laws were created at the onset of British colonialism in what is now referred to as British Columbia. I outlined the creation of mining laws via the region's earliest settler mining codes and Governor James Douglas's forging of regional state boundaries, beginning with the granting of mining licenses. This provides an understanding of what resource regulation 'inherits' in order to function today. The resource laws that industry has inherited and

maintained are based on asymmetrical power relations, Western legal orders, and capital accumulation that allows for the continued lobbying efforts of, for example, the mining industry. Mining regulations survive in their fundamental form of free entry mineral staking, yet this mechanism in particular remains deeply contested by First Nations and is currently being uprooted through policy reform that has yet to transform the regulatory environment in British Columbia.

I have built on scholarship that outlines the ongoing nature of primitive accumulation, while also showing that settler colonial dispossession is in direct tension with Indigenous claims to resources. This tension, I emphasize, exists within and outside state-sanctioned processes. The environmental assessment process for the New Prosperity mine proposal at Teztan Biny on Tsilhqot'in lands did not adequately take into consideration the Tsilhqot'in Declaration of Sovereignty, nor did the process respect the Nemiah Declaration. These declarations both counter the settler narrative of resource regulation. In the end, I call for a placing of these declarations at the centre when it comes to mining projects that are to be considered. This has yet to happen, because the structural nature of Canada's resource laws remains steeped in the logic of colonial sovereignty born from a settler legal system. Yet colonial sovereignty disintegrates in the spaces between oppressive regulatory systems. These spaces exist and will continue to do so. In this thesis, I have detailed how mineral regulations functioned historically in order to illuminate one of the fundamental problems that faces the minerals industry today — First Nation opposition to resource projects. I have outlined how, when opposition to mining occurs, it remains rooted in territorial conflict that could be addressed at the onset of the mineral staking system.

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Appendix A

May 15, 2013

To the Tsilhqot'in National Government,

My name is Dawn Hoogeveen. I am writing to introduce myself, to request Tsilhqot'in participation and support for my research, and offer my time as a volunteer for the TNG. I am a PhD candidate in the geography department at UBC. My research background is in resource governance and particularly mining laws that infringe on indigenous resource sovereignty in Canada. One of the things that sparked my interest in this research was doing an internship with MiningWatch Canada in 2006. Since then I have been working on mining issues as an activist and an academic.

In 2008 I finished a Master's thesis on free-entry mineral staking in the Northwest Territories. This inspired me to learn more about how free-entry mineral staking functions more broadly, like here in British Columbia. My proposed PhD final project includes an analysis of the ongoing Environmental Assessment process for the "new" Prosperity mine proposal at Teztan Biny on your territory. The project links the EA process to the colonial history of free-entry laws vis-à-vis B.C.'s Mineral Tenure Act.

This letter is inspired by conversations with JP Laplante. He has suggested some specific volunteer work I could do for the TNG that could work well together with my academic work. For example, I could write a media article to submit to a mainstream publication like the *Walrus* or a shorter piece (or a series of shorter pieces), like an Op-Ed. This could raise public

awareness about the ongoing conflict over the proposed mine and how this is a symptom of larger issues over land title and rights in your traditional territory. Another thing I am able to do is to help organize a speaking event in Vancouver.

I am currently able dedicate about four or five hours a week to this work. For example, I would be happy to spend Wednesday afternoons doing research and writing on this proposed work from here in Vancouver, while I continue my PhD studies. If you have any questions about my work, my background, or me, please don't hesitate to ask.

Sincerely,

Dawn Hoogeveen

Appendix B

“Consent Form” for UBC study on Mining regulation and EIA in British Columbia: The case of the Prosperity mine proposal

The purpose of this project is to examine the implications of changes in the Canadian Environmental Impact Assessment Act. The study asks how effective current Environmental Impact Assessment measures are in light of the case of the new Prosperity proposal.

You are being invited to take part in this research study because of your expertise in the area of indigenous rights protocols and resource governance, particularly in light of the EIA procedures that have taken place in the case of the proposed new Prosperity Mine.

Study Procedures:

If you chose to take part in this study, it will involve one twenty – thirty minute interview. With your permission, the interview will be tape recorded. Recordings and transcripts will only be available to the research investigators.

There are no known potential risks involved in this study. Potential benefits include greater knowledge about the strengths and weaknesses of Environmental Impact Assessment on a provincial and federal level. Participation in this study is, of course, voluntary.

Contact for information about the study:

If you have any questions or desire further information with respect to this study, you may contact Dr. Juanita Sundberg.

The **principal investigator** for this study is Dr. Juanita Sundberg, Associate professor at UBC Department of Geography, 604-822-3535. The **Co-Investigator** Dawn Hooegeveen, a PhD candidate in the Department of Geography at UBC, 604 822-2663. This research will be used in Dawn Hooegeveen's PhD project. Dawn will also write a policy relevant summary of her research findings on mining regulation in British Columbia, that will be available to research participants.

Contact for concerns about the rights of research subjects:

If you have any concerns about your treatment or rights as a research subject, you may contact the Research Subject Information Line in the UBC Office of Research Services at 604-822-8598 or if long distance e-mail to RSIL@ors.ubc.ca.

Consent:

Your participation in this study is entirely voluntary and you may refuse to participate or withdraw from the study at any time.

Your signature below indicates that you have received a copy of this consent form for your own records.

Your signature indicates that you consent to participate in this study.

Subject Signature

Date

Appendix C

1 9 9 8 General Assembly of the Chilcotin Nation A Declaration of Sovereignty

Territory

From the Fraser River to the Coastal Mountains and from the territory of the Stl'atl'imx Nation to the territory of the Carrier Nations is Tsilhqot'in Nen (Chilcotin country). The heart of our country is the Tsilhqox (the Chilcotin River) and its tributary lakes and streams. This has been the territory of the Tsilhqot'in Nation for longer than any man can say and it will always be our country; the outlying parts we have always shared with our neighbours – Nuxalk, Kwakiutl, Lillooet, Carrier and Shuswap –but the heartland belongs to none but the Tsilhqot'in.

Our mountains and valleys, lakes, rivers and creeks all carry names given to them by the Tsilhqot'in people: Anaham, Niut and Itcha, Chilko, Taseko and Chilanko, Tatla, Nemiah and Toosey. Our territory is that which is named in our language. All living things in our country – animals, birds, insects, amphibians, reptiles, worms and flies, fish, trees, shrubs, flowers and other plants – also bear the names given to them in the language of the Tsilhqot'in.

Affinity

The Tsilhqot'in is part of the greater nation of the Deni whose language is spoken in territories that extend from Hudson's Bay to Alaska and Asia, from the northernmost forests to the equator. The Apache and Navajo are Deni. The Sekani, Taltan, Gwich'in, Nahani, Kaska, Tsu T'ina (or Sarcee) and the Sayisi Dene (or Chipewyan) are Deni. So are the Carrier, the Hare, the

Lhinchadene (Dogrib people), the Tatsandene (Yellowknife people), the Kawchodene (Hare people), the Dunne-Za and the Dene-Dhaa. The Deni Nation is vast and we are part of it. We are the Tsilhqot'in.

The Illegal Colonization of our Nation

The first white men to enter our country did so only with our permission and when we told them to leave they left. When men settled in our country without permission, we drove them out.

When the Queen of England extended to our nation the protection of her law, by including our territory in the colony of British Columbia in 1858, she did so without our knowledge or consent.

Since this time, whilst our people were suffering from the effects of European diseases, our country has been invaded and despoiled. Our people have been deceived, impoverished, oppressed, exploited, imprisoned and maligned. Our sovereignty has been encroached upon and our jurisdiction ignored. Yet we have survived and once again we thrive.

We are the Tsilhqot'in and we declare to all men and women that we are an independent nation, proud and free.

We accuse the government of the United Kingdom of breach of trust.

We accuse the government of Canada of invading the territories and jurisdiction of a neutral state whose sovereignty it is bound, by its own laws, to defend and protect. We accuse the government

of the province of British Columbia of invading our territories and plundering our resources in clear violation of its own laws and ours.

We accuse all three governments of conspiring to invade our nation; of conspiring to destroy the foundations of our ancient way of life and to oppress our people; of crimes against land, air and waters over which they have no jurisdiction; of permitting the slaughter of the native wild-life; of encouraging or ignoring the over-harvesting of our forest, lakes, rivers and mountains and the destruction of our natural gardens and orchards. We accuse these governments of repeated and shameless violation of their laws and of international agreements and covenants.

Jurisdiction

The Tsilhqot'in Nation affirms, asserts, and strives to exercise full control over our traditional territories and over the government within our lands.

Our jurisdiction to govern our territory and our people is conferred upon us by the Creator, to govern and maintain and protect the traditional territory in accordance with natural law for the benefit of all living things existing on our land, for this generation and for those yet unborn.

We have been the victims of colonization by Britain, Canada and the Province of British Columbia. We insist upon our right to decolonize and drive those governments from our land.

Terms of Union

We have often declared our willingness to negotiate terms of union with Canada. We repeat that

offer now. We make only one condition: the process for negotiation and the final settlement must carry the consent of the Tsilhqot'in Nations.

We have asked the United Nations to supervise discussions between the Tsilhqot'in Nation and Canada to assist us in our decolonization. We feel that international assistance is necessary because Canada has stolen our lands and continues to have an interest in maintaining control over them. It is difficult to ask a thief to sit in judgment of his theft.

Should the negotiations prove fruitful, they will define the terms and conditions of the union of the Chilcotin Nation with Canada. However, if Canada again refuses to negotiate or chooses to bring unacceptable conditions to the negotiations, the Tsilhqot'in Nation will consider itself free to pursue whatever course of action it may decide upon. That will no doubt include the assumption of our rightful place in the United Nations' Organizations and other international groups, either as an individual nation or as a constituent member of a federation or alliance of nation-states.

"Non-Status" Tsilhqot'in

To all those people who know themselves to be Tsilhqot'in but who have been denied recognition by Canada the Tsilhqot'in Nation declares that they will be granted Tsilhqot'in citizenship and that they should inform their local band (or regional) office of their desire to be so recognized.

“Indian Reserves”

The Tsilhqot’in Nation declares that the reserves established by Canada and British Columbia for the use and benefit of “Indians Bands” in the Tsilhqot’in are inadequate and illegal, having never been approved nor consented to by the Tsilhqot’in people. The Tsilhqot’in Nation declares that all so-called Crown Land within Tsilhqot’in traditional territory is forthwith reserved for and owned by the Tsilhqot’in Nation.

Declarations

To the governments of the Crown, the Tsilhqot’in Nation declares that they should henceforward honour their trust and obey the Royal Proclamation of 1763 as the supreme law in their relations with us.

Especially, to the government of the province of British Columbia the Tsilhqot’in Nation declares that it should henceforward cease and desist its lawless plunder of the resources of our country.

The Tsilhqot’in Nation declares that, as of December 11th, 1997, the laws enacted by Canada and British Columbia will have no force or effect in the Tsilhqot’in Nen and that the laws of the Tsilhqot’in Nation and its constituent communities will prevail.

Holders all holders of licences, permits, deeds and other documents issued by those governments must seek the permission of the Tsilhqot’in Nation to continue the operation of their interests in Tsilhqot’in Nen. They can do so by contacting the appropriate local community office during

regular office hours and asking to speak to the Chief. Local community offices are located at 'Esdilagh (Alexandria), Tl'esqox (Toosey), Yunestit'in (Stone), Tl'etinqox (Anaham), Tsi Deldel (the Alexis Creek Community at Redstone), Xení (Nemiah Valley) and western Tsilhqot'in Nén.

Recognition

The Tsilhqot'in Nation requests the recognition of all nations of the Earth, the understanding of the people of Canada, the trust and goodwill of the people of British Columbia and the active co-operation of all indigenous peoples.

Respect

To those people who have settled amongst us in our country the Tsilhqot'in Nation declares that we bear no enmity towards you, as long as you respect us: it is the policies and practices of the governments, the courts and the churches of Canada that have done us so much harm and that must now change. We do not blame you; we ask you to understand that change must now take place and we invite you to assist us to the best of your ability. We invite you to work with us to make the Tsilhqot'in a better place for all our children. We govern according to principles of consent. We ask you to understand that what we are saying is not unique or peculiar to the Tsilhqot'in Nation: it is happening throughout the Americas. The period or era of colonization and neo-colonialism is passing; the Fourth World is emerging.

Chief – Anaham Indian Band

Chief – Alexis Creek Indian Band

Chief – Nemiah Valley Indian Band Chief – Stone Indian Band

Chief – Toosey Indian Band

Chief – Alexandria Band

April 17th, 1998

Note. This declaration was first signed by the Chiefs of the Tsilhqot'in on May 2nd, 1984, namely: Chief Thomas Billyboy ('Esdilagh), Chief Arnold Solomon (Tl'esqox), Chief Andrew Harry (Tl'etinqox), Chief Ervin Charleyboy (Tsi Deldel), Chief Roger William (Xeni) and Chief Tony Myers (Yunestit'in).