

**An Account of Ts'kw'aylaxw Philosophy and Use of Water in the Central Interior of
British Columbia**

Jessica Stephens-Whale

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Abstract

Since Contact, the Pavilion Indian Band (Ts'kw'aylaxw) have struggled in obtaining sufficient water to participate in subsistence and cultural practices. This has been a result of acts enforcing productive use while defining it outside of the context of Pavilion Band member uses. In many cases, disregard of Aboriginal title and Indian Reserve Commissioner's allocations have amalgamated to ignore First Nation needs and rights to water. In this paper water licenses allocated to the Pavilion Indian Band and white settlers such as Smith and Bryson of Bryson Cooperative Farming Association and the Carson family of Diamond S. Ranch have been analysed and presented as a narrative illustrating these inequalities within licensing allocations. The results showed that despite the Band's long standing occupation of Pavilion land, there are twelve licenses that hold priority over their allotments. Additionally, licenses have been issued and re-issued without consultation with the band and accord to western perspectives of what productive use is defined as. The effects of viewing water as a fixed resource for the Pavilion Indian band has resulted in unfair and unequal access to water for the Band. Uneven development and cultural deprivation are consequences that bands experience when unable to access sufficient amounts of staple needs to live healthy sustainable lives.

Introduction

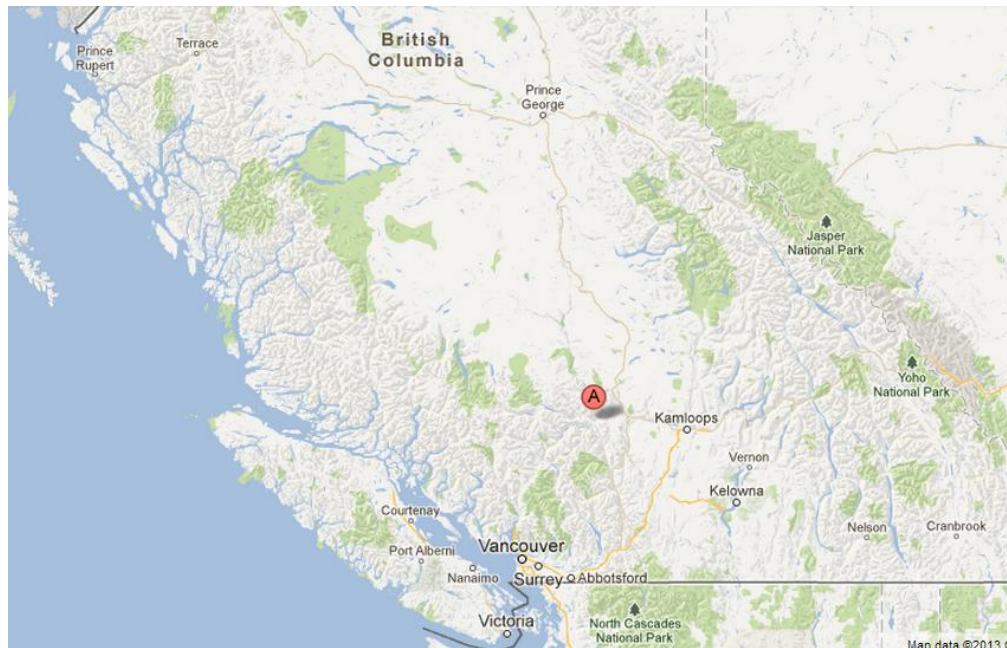
Water and land for the Ts'kw'aylaxw are undeniably linked and epitomize the livelihoods, culture, and spirit of the band. Ts'kw'aylaxw more commonly known as the Pavilion Band, literally translates to frozen or burned ground in Stl'atl'imxets, an interior Salishan language used by the Lillooet people.¹ Due to the area's extreme seasonal variation and aridity, water is scarce and highly valued by the band. However water's importance runs much deeper than subsistence alone. The Ts'kw'aylaxw have a strong spiritual connection with water. They hold the belief that water acts as the lifeblood of mother earth. Life for the Ts'kw'aylaxw emerged in the beginning from water and that life is carried away with the course of the river.² They believe that water is healing and can purify their souls. They believe that water is biotic and has a soul that should be shown respect and treated with dignity.

These beliefs and practices however are unrecognized by the state both in today's and in the past's water management practices running contrary to typical first nation understanding. Why is it that these values are ignored or classified as unscientific? How has this altered perspective of water affected First Nation communities? These are important questions that I

¹ Teit, The Jesup, 461.

² Ibid.,

have been asked to investigate in a case study concerning the Ts'kw'aylaxw in Pavilion, British Columbia. From examining the bands issued conditional and final water licenses for Pavilion Creek and comparing them to white settler water licenses, I have been able to trace a chronological history illustrating a constant white settler preference in water allocations made for Pavilion Creek and its tributaries. This preference has led to un-even development in the area resulting in inequalities between band members and white settlers in Pavilion. This inequality is apparent both in the past and present day lives of the Pavilion band.



*Figure 1. Map of British Columbia, Canada where A marks Pavilion Indian Band location.
Source: Map data ©2013 Google*

Cultural Background of Ts'kw'aylaxw

The Ts'kw'aylaxw belong to the Lillooet band. According to Lillooet band members, Lillooet was divided long ago by mythological half man half animal beings called transformers. Transformers were skilled in shamanism and used their powers to split the band in two.³ The lower Lillooet became the Lil'wat, and the upper Lillooet the Stl'atl'imx encompassing the people living along the Fraser River between 25 mile house and Leon Creek (See Fig. 1).⁴ Although considered Lillooet, the Pavilion band also have strong ancestral ties to the Shuswap and the Thompson Bands. Close relationships were maintained through trade and intermarriage and all

³ Kennedy, *Ethnographic*, 1977

⁴ *Ibid.*, 1977.

three bands preformed similar cultural, spiritual and subsistence practices. For example, fishing practices such as using bag netting were commonly used by both the Lillooet and the Thompson additionally the bands dried fish in a similar manner. Lillooet was an excellent place to do so. To dry fish well, fish must be lean and conditions must be dry. Due to the bands upper reaching position along the Fraser River, fish were smaller, moreover Pavilion being located in the interior makes it an arid region. Salmon fishing was the main source of food for the Pavilion people and was also a valued commodity.⁵

Food was not just harvested from the water however, many Aboriginals in the area cultivated crops like beans and potatoes and manufactured ditches to irrigate.⁶ These ditches predate first European contact in Lillooet where the band used clay to build these irrigative canals. As white settlers began to arrive, ranching and agriculture remained an important part of Pavilion Band livelihoods. Interestingly, James Teit describes certain characteristics bands in the Shuswap region embodied and the Pavilion people were characterised as good horsemen, manly, bold, warlike, proud, cruel, aggressive, fond of sport, and vain⁷. The Pavilion people were also noted for being excellent ranchers and workers.⁸ Water not only functioned as a staple for subsistence off the land but as well was an active part of Pavilion spiritual life. Water was believed to be a purifier and the Ts'kw'aylaxw would purify themselves by either bathing in sweat houses to release bad spirits and toxins, or by drinking the water. Mary, an elder from the Thompson Indian band described how her people would drink water until they vomited and would continue to drink water until they felt purified of bad spirits.⁹ Water had the capacity to do this because it was alive. Water is believed to have a spirit and a soul. Pavilion members would pray to the water and bring it gifts like tobacco, food and coins.¹⁰ They showed the water respect and appreciated the life giving properties it possessed.

History of Water Licensing in Pavilion Creek

Things slowly began to change for the Ts'kw'aylaxw however with the arrival of the first newcomers to the area. In 1808, Simon Fraser was the first European to travel up what is now

⁵ Kennedy, *Ethnographic*, 1977.

⁶ Blackstock, *Grasslands*, 28.

⁷ Teit, *The Jesup*, 470.

⁸ Drake-Terry, *Yesterday*, 140.

⁹ Blackstock, *Water*, 5.

¹⁰ *Ibid.*, 6.

the Fraser River and reach Lillooet.¹¹ Simon Fraser was hoping to explore the Columbia River but ignored the advice provided to him from the Shuswap, leading him astray to meet with the Lillooet. He arrived near Bridge River, a tributary of the Fraser and traded medicine for supplies such as a canoe and salmon.¹² This area is considered by the Chicoltin and Lillooet as the junction separating the two bands traditional hunting territories.¹³ This visits duration was short lived however, and Fraser quickly moved on from Lillooet. It wouldn't be until 1858 that another European would set foot in Lillooet. The territory in which the Pavilion people reside is classified by James Teit as a part of the Bonaparte division. Existing within the dry belt of British Columbia, the area is well known for its grass lands and was so named "bunch-grass country".¹⁴

When discussing First Nation land and water claims it is important to understand what is Aboriginal title? One way to describe it is as *sui generis* - a unique interest in land.¹⁵ For water, this meant recognition that water plays an important historic role in Ts'kw'ayalxw occupation of the territory. This interest does not always constitute special rights however, and a lot of confusion exists over what constitutes aboriginal title. For example, a band may have reserved rights to land or water but for only traditional uses. To describe title in such constricting temporal limits however is not always fair and doesn't accommodate for changes over time.¹⁶

With the continued arrival of white settlers to the area in the 1860's who were attracted by ranch land and gold mining, Governor James Douglas insisted on the need to develop a licensing scheme in British Columbia that functioned not around Riparian rights, but around mining development. At this time, there were very few settlements in the area except for Indian reserves and due to the nature of mining and agriculture, constant and reliable access to water was necessary.¹⁷ The Land Ordinance Act of 1870 came to be, and made recording any claims to water in British Columbia necessary.¹⁸ It also applied a benefit of use which meant that claims should only be made if they are necessary for the improvement of the land. Laws were

¹¹ Drake-Terry, Yesterday, xv.

¹² Ibid., 15,16.

¹³ Teit, The Jesup, 543.

¹⁴ Ibid., 456.

¹⁵ UBCIC, Water Rights, 24.

¹⁶ Ibid., 24.

¹⁷ Doran, History of Rights, 1.

¹⁸ UBCIC, Water Rights, 33.

passed that allowed for the diversion of water for productive or "useful purposes" only.¹⁹ Traditional customs such as purifying practices like sweat houses according to these new laws would not be classified as a practical use of water, and the province went about allocating water accordingly.

Peter O'Reilly was appointed the Reserve Commissioner for the Lillooet people. Upon his visit to Pavilion in 1881 he reserved the longest exclusive fishery which spanned 15 miles along the Fraser River. He was criticized however for still not reserving enough land and enough good land for sufficient agricultural production.²⁰ While there, O'Reilly also allotted water rights to the Ts'kw'aylaxw in the Minutes of Decision (1881).

*Pavilion Tribe: Minute of Decision August 4th, 1881, constituting Pavilion Reserve No.1: ..."One hundred inches of water from Pavilion Creek are set apart for the use of the Indians."*²¹

This allocation would be applicable to the 124 acres that were estimated to be arable on Indian Reserve (IR) No. 1. However, this allocation was the most the band would ever receive and would not exist for long. In 1884, disputes began to arise between the government and water licensing branches. The government did not feel that the Indian reserve commissioners had the authority to allocate water rights to the First Nations and refused to recognise them.²² So the Amended Land Act of 1884 came to be. This act was created in order to attract settlers and agricultural activity and it did so by redistributing the land. Additionally, the act refused to make any provisions for the allotment of water on Indian Reserves. This act was amended shortly after however in 1888 and a provision was made to require a record of *all* water rights.²³

With the amended Land Act of 1888, it became clear that water rights on Indian Reserves had to be investigated. The Water Act of 1909 appointed a board who would investigate water licensing issues and assess the validity of water records.²⁴ This investigation however led to the McKenna McBride Commission of 1913 which allowed commissioners to re-allocate land. For many reserves, land was cut off, however land was also accumulated and thus was the case for

¹⁹ Doran, History of Water, 1.

²⁰ Drake-Terry, Yesterday, 141.

²¹ O'Reilly, Minutes of Decision, Binder 6, 545.

²² Doran, History Water, 8.

²³ Ibid., 3-4.

²⁴ Doran, History of Water, 5.

Pavilion. However this was not necessarily so beneficial. Although in total 47,059.99 acres were removed and 87,291.17 acres were added, that value of land removed was worth up to \$1,553,704.72 while the value of land that was added was only worth \$444,838.80.²⁵ Although I could find no major cut offs for the Pavilion band, the nearby Seton lake reserves No. 3 and 4 lost a total of 49 acres.²⁶ The effects of the commission however are apparent for the Pavilion Band in the quality of land they were allocated. In a meeting held between Chief Bob, Commissioner McKenna and an Indian Agent in 1914, Chief Bob recalls IR No. 1 to be increasingly composed of white people. The Chief lamented however that if they were allocated more land for timber and pastures they would be satisfied. As well they stated that the reserve required an additional 100 inches of water to be able to produce food as at the time their allotment was unsatisfactory.²⁷

When examining water licenses, one of the most important things to look for and understand are dates of priority. The licensee who holds the earliest date of priority holds preferential access to water over all subsequent licenses. This means that before others with later licenses get access to water, the licensee who holds priority must be able to receive their share completely.²⁸ Considering many creeks under this policy have been over allotted means that other license holders may not receive much or any of their allotted share. When looking through priority dates and licensing for Pavilion Creek I found that Smith and Bryson have two water licenses which are both quite large, the first allowed for the diversion of up to a maximum of 528 acre feet to irrigate 264 acres of lot 21 (See Fig. 2).²⁹ The second allowed for the diversion of 1480 acre feet to irrigate 370 acres of lots 58, 59, 60, and 61 (Fig. 2).³⁰

Another rancher/settler in Pavilion were the Carson family who held quite a number of licenses that amounted to large maximum diversions. All I found were held by a Mrs. Eliza Jane Carson and the first, CL 1047 amounted for 320 acre feet to irrigate 160 acres of lot 19 (Fig. 2)³¹, the second was for 284 acre feet irrigating 142 acres of lot 20,³² the third was for 266 acre feet,

²⁵ UBCIC, Recommendations, 7.

²⁶ UBCIC, Cut-Off, 6.

²⁷ Lytton Agency, Meeting, 101, 102.

²⁸ Ogston, Riparian, Ch. 22.

²⁹ BC Gov, Scan License, C001045

³⁰ Ibid, C001026

³¹ Ibid, C001047

³² Ibid., C001022

irrigating 133 acres of lot 20,³³ and the last was for 110 acre feet, irrigating 55 acres of lot 19 (see Fig. 2).³⁴

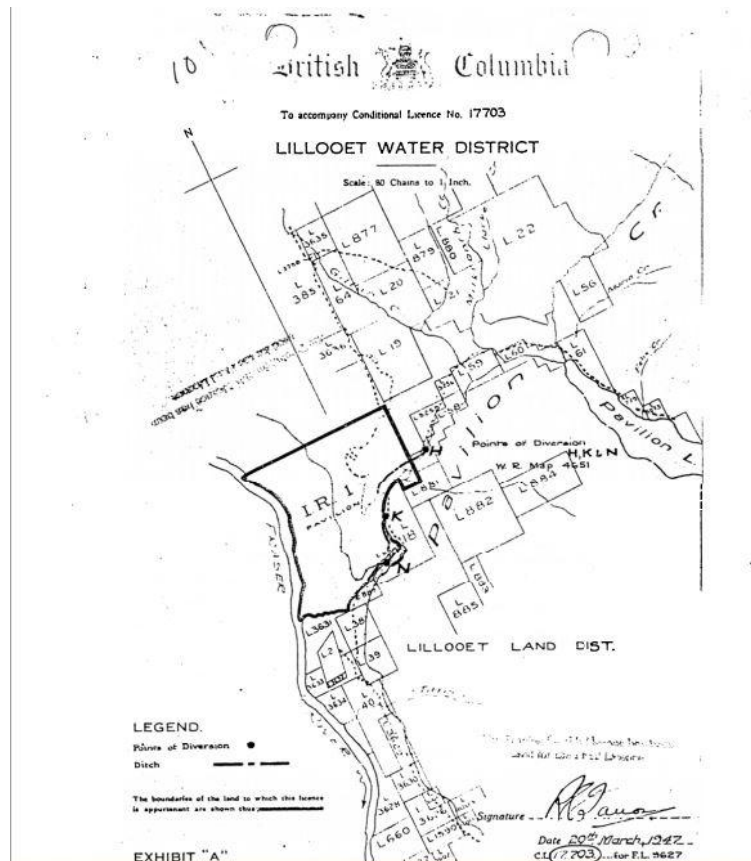


Figure 2. Map of the Lillooet Water District. Bordered bold is the Pavilion Indian Reserve No. 1. Photo as well shows some of the district lots that were mentioned in conditional water licenses above. Lots 19 and 20 that belonged to the Carson family who owned Diamond S. Ranch, and lots 58, 59, 60 and 61 owned by Smith and Bryson of Bryson Coop Farming Association.

Source: Robinson, FN Water Rights. Attachment 3. No. 17-15-1. CL 17703.

In 1921 however it appeared that fortunes would change for the Pavilion and other bands. The Indian Water Claims act was implemented. This was a breakthrough as up until then, the province of British Columbia did not recognize First Nation water allotments or rights.³⁵ This meant that allotments made by the Indian Reserve Commissioner in 1881 would be included as true water records, the province however did not follow through with this promise.³⁶ As is

³³ Ibid., C001028

³⁴ Ibid., C001046

³⁵ Ogston, Riparian, Ch. 22.

³⁶ Doran, History Water, 8.

evident in allocations made after the Indian Water Claims Act some of which will be described below.

In 1920 it was proposed that a ditch be built that would transport water from Hat Creek (a tributary of Pavilion Creek), through IR No. 3 for storage for irrigation on Pavilion Lake. A letter written by an assistant engineer M. Balls dated November 20, 1920 stated however that due to the water shortages occurring in the Hat Creek watershed, irrigation would only be allowed between October and May, when it is the least necessary for irrigation. Additionally, because of this and the date of priority held by other license holders besides the Indian band, the chances of the reserve benefitting from this ditch would be unlikely.³⁷

In 1921, letters between an Indian Agent and the assistant deputy and secretary of Indian Affairs J.D Maclean show concern over a ditch being built through IR No. 3 that is being constructed without permission from the band. In a series of letters, the agent explains that the band does not stand to benefit from this diversion and will more likely cause adverse affects to the quality of their land.

The First letter I found was addressed Jan 11, 1921

*In connection with granting the Pavilion Water Commission a right-of-way on the Pavilion Reserve No. 3 for the construction of an irrigation ditch, I beg to inform you that after further investigating this matter it has been discovered that the Indian residing on this reserve would not benefit to any extent by the passage of this irrigation ditch on their reserve although a considerable area of good land would be rendered useless by the construction of same.*³⁸

After no response, the Indian Agent sends yet another letter dated May 4th, 1921.

*[...] I see the work is being started on this and the Indians are objecting to having the ditch run through their Reserve No. 3 without being guaranteed any water from it.*³⁹

Again the Indian agent received no reply and sent yet another letter dated May 20th, 1921.

[...] the Indians living on Reserve No. 1 claim that Mr. Bryson of the Pavilion Water Board advised them that they were to be given water for the privilege of going through Reserve No. 3, and that the board had also been given permission to cut logs on the Indian Reserve for building the flume.

³⁷ Indian Affairs RG 10 T-7545 987.31.5.46.3. Proposed Irrigation Scheme for Pavilion District.

³⁸ Ibid., 443293.

³⁹ Ibid., 552336.

Up to the present time I have had no instructions from the Department in regard to the matter and that I thought it strange that instructions would be given to these people to proceed without my knowledge. I explained your letter to them and they felt very sore about it as they stated that it is the No. 1 Reserve that needs the water so badly. It is the only one upon which the water from this project can be used.

I would like to refer you to Mr. Ball's report on the subject dated November 5th, and addressed to Mr. Swan. You will notice that in paragraph No. 2. he states that there is little possibility of land on Reserve No. 3. deriving any benefit from the ditch.⁴⁰

Regardless of these pleas, the ditch was built and IR No. 1 and IR No. 3 were to continue to have later priority to these water sources.

Conditional license 7169 was implemented on June 11, 1920. The license allowed the diversion of 310 acre feet a year of which 2,500 gallons of water daily could be used for domestic purposes.⁴¹ In 1927 a strategically added section to the Indian act was implemented which prohibited first nations from disputing or persecuting a claim for the benefit of his or her own tribe.⁴² Then in March of 1936 FL 9627 replaced the prior 1923 conditional license 7169. This license decreased the allowable diversion for irrigation to 145 acre feet a year of which only 1,000 gallons a day can be used for domestic purposes. This license also limited the irrigation to only 58 acres as opposed to the 124 acres which had been previously covered in past licenses.⁴³

In May of 1938 Julia Bob who claims to be the Grand Daughter of Chief A. Bob of the Pavilion Reserve sent a letter to the Indian Department in Ottawa requesting a duplicate be sent to her of the Indian Bands water rights on Pavilion Lake. In June she was sent a duplicate which stated that the Band held the precedence date Feb 13, 1891 and that twelve other licenses exist on Pavilion lake that hold priority over theirs (Table. 1). Their correspondence ended after her copy was received. Julia Bob wrote that she wanted the duplicate as proof. She stated, "so as I will have something to show that we have the right".⁴⁴ Due to her script I had trouble deciphering if there were any reasons why she needed proof of right to water from Pavilion Creek. I would have liked to research this case further but due to time constraints I could not. The twelve licenses that take priority over the Pavilion Indian Bands are listed below in Table 1.

⁴⁰ Indian Affairs RG 10 T-7545 987.31.5.46.3. 553130.

⁴¹ Robinson, FN Water Rights, Attachment 3. No. 2836. CL 7169.

⁴² Doran, History Water, 8.

⁴³ Robinson, FN Water Rights, Attachment 3. No. 0241245. FL 9627.

⁴⁴ Indian Affairs RG 10 Vol 8750, File 987/8-16-46-1.

License Number	Date of Priority	License Holder	Acre Feet per Annum	Acres
CL 1029	Nov 11, 1867	John Butler Tiffin	110 acre feet	44 acres
CL 1047	July 15, 1868	Eliza Jane Carson	320 acre feet	160 acres
CL 1023	Nov 6, 1868	Phillip Gurigan	162 acre feet	65 acres
CL 1025	Nov 13, 1868	M.E. Clark	222 acre feet	89 acres
CL 1022	May 17, 1870	Eliza Jane Carson	284 acre feet	142 acres
CL 1028	March 23, 1876	Eliza Jane Carson	266 acre feet	133 acres
CL 1045	Dec 14, 1876	Smith and Bryson	528 acre feet	264 acres
CL 1046	July 25, 1884	Eliza Jane Carson	110 acre feet	55 acres
CL 1026	May 1, 1885	Smith and Bryson	1480 acre feet	370 acres

Table 1. Lists the licenses, license holders, and license details such as how many acre feet can be extracted per year and how many acres are allowed to be irrigated. These particular licenses were chosen as they all have priority dates that precedes the Pavilion bands license. This is important to note because before the Pavilion band can obtain their licensed share, these license shares must be fulfilled. Source: Index of Scanned Water license.

<http://www.env.gov.bc.ca/wsd/water_rights/scanned_lic_dir/002500/>

After FL 9627, band members were unimpressed with the new allocations and a meeting was called for in Victoria on January 27, 1947 held between the band, Diamond S. Ranch and Bryson Cooperative Farming Association to pool and reissue the licenses.⁴⁵ In March of that same year CL 17703 was issued in place of FL 9627 permitting the band to divert up to 200 acre feet per year for 66 acres of IR No. 1.⁴⁶ As noted earlier, water license holders are expected to use allocations in a productive capacity by either using it to irrigate crops or to "improve" the land in some way. In June of 1952 during an inspection it was found that little had changed on the reserve since the 1936 FL 9627 had been issued and as a result FL 14679 was implemented to replace the most recent CL 17703. This new final water license decreased the allowable maximum diversion to 174 acre feet to irrigate only 58 acres of IR No. 1.⁴⁷ This process is not consultative and displays keenly how the Pavilion Bands title to water has been ignored and continually disrespected. Up till the present, this license issued in 1952 is still used and acts as the only final license from Pavilion Creek for the Pavilion Band.⁴⁸

⁴⁵ Robinson, FN Water Rights, 9.

⁴⁶ Robinson, FN Water Rights. Attachment 3. No. 17-15-1. CL 17703.

⁴⁷ Ibid., FL 14679.

⁴⁸ Water Licenses Query, Pavilion Creek.

Conclusion

In Pavilion Creek, water licenses have historically been allocated for the benefit of white settlers. Laws created in the Land Ordinance Act dictated that water should be used only in a productive capacity thus giving preference to ranchers, farmers and miners. In this paper, I explored numerous water licenses held by the Pavilion Indian Band and white settlers for Pavilion Creek and its tributaries. When exploring the Pavilion Indian Bands water records I realized that twelve licenses hold a date of priority that supersedes the bands. I found that a Mrs. Eliza Jane Carson of Diamond S. Ranch held four such large licenses and similarly, Smith and Bryson of Bryson Cooperative Farming Association held two even larger licenses. The Pavilion Bands water licenses for Pavilion Creek have been re-allocated without consent or consultation by the government. Moreover the government distributes licenses to those who planned on investing in the land in either mining or agriculture. The licenses presented in this paper illustrate the realities and consequences of Acts and commissions performed at this time and offer a glimpse into the lives of the Pavilion Indian Band. The effects of ranches, private property and white settlement meant the Pavilion people could not control the land like they once did. The ranges upon which they once hunted were now filled with cattle that were owned by ranchers.⁴⁹ Water quality is another persistent issue on many reserves. Today, Indian Reserves are 90 times likelier to not have piped water than average Canadian communities, as well they experience more frequently drinking water advisories.⁵⁰ This inequality quite likely stems from past actions that have consistently treated First Nations as inferior and it is evident that acquiring enough water on reserves of a good quality, is still an issue today.

⁴⁹ Blackstock, Grasslands, 33.

⁵⁰ Phare, Lifeblood, 12.

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At the moment, this project is to be put on hold, but when it becomes time to continue researching this question Angie Bain and her researches are planning to visit Pavilion, speak with elders and gain better insight on the Aboriginal perspective which can't always be derived from analysing water licenses. I believe this as the next step in researching will allow for a more complete analysis of the topic.