

CAPACITY TO MANAGE WATER RESOURCES
-Perspective for the Sechelt Nation

by

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ABSTRACT

The capacity to determine the future of any community depends on the extent of options available. This thesis describes the historical development of control over water resources, and how this impacts on the Sechelt Indian Bands (SIB) capacity to determine their future interests. Water management is a concern for the SIB both in terms of their being able to determine their future development, but also for non-consumptive issues such as maintenance of their fisheries.

The construction of management authorities via legislation has curtailed the capacity for the SIB to define the development of Sechelt lands and participate in the management of water. The *Sechelt Indian Band Self-Government Act* was negotiated by the Sechelt people to expand control over the development of Band lands and resources. This municipal model of self-government, although it affords some benefits with respect to community access of water, is constrained by the continuance of licensed priority allocations, overlapping bureaucracies, and the Provinces focus on program (versus area) management.

The Provincial the Chapman/Gray Integrated Watershed Management process, was reviewed to ascertain whether, by their participation in this process, the SIB has wrested any control over water and water management. The discussion highlights that: within the process extractive industries are still a priority, this can be a prohibitively protracted experience, and that the responsibility conferred on the water purveyor does not enable the authority to deliver quality water. This affects the Bands capacity to actualize their community vision.

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Chapter 1

RESEARCH FOCUS AND METHODS

1.0 Introduction

"Who is it? What's this about?" She said as she squinted at the paper in front of her.

"It's Sherry. You know, Edna's daughter. Tommy's niece. She's asking us about the water."¹

Listening to the elders, I nervously sat waiting as they arranged themselves around the very large table and nodded their greetings to me. Overhearing the explanation of 'who I was', was both reassuring and disconcerting in the same moment. On the one hand there is the acceptance that I am not altogether an 'outsider' as far as the people of the Sechelt Nation are concerned. On the other hand, being a Department of Indian Affairs (DIA) card-carrying member of the Sechelt Nation puts the academic issue of water resources as they pertain to the lives of Aboriginal² people in an altogether too personal realm.

In this thesis, I, Edna's daughter, Tommy's niece, have conducted a case study of the water management developments by the Federal, Provincial, and District governing bodies and the Sechelt Nation. But is this truly about water management? Not really. In fact it's more about people management. People who are striving for constancy, predictability, and some measure of assurance. So with that focus in mind I would like to take you to the people and the

¹ Sechelt Indian Band ELDER. Interview. Pretape. Sechelt Band Lands. 16 November 1995.

² For the purposes of this document the terms Aboriginal, Native, Indian, and First Nations will be used interchangeably to mean the people living in North America pre-columbian contact, including their descendants. In the same manner non-Native, whites, colonialists shall as a group be used interchangeably to represent those not of the first group.

reasons why a study on this topic was conducted.

One has only to look at the locations of the major cities of the world to understand the importance of water in the development of community and culture. The culture of the Sechelt Nation is associated with a region referred to as the Sechelt Traditional Territory (see Figure 1.1).

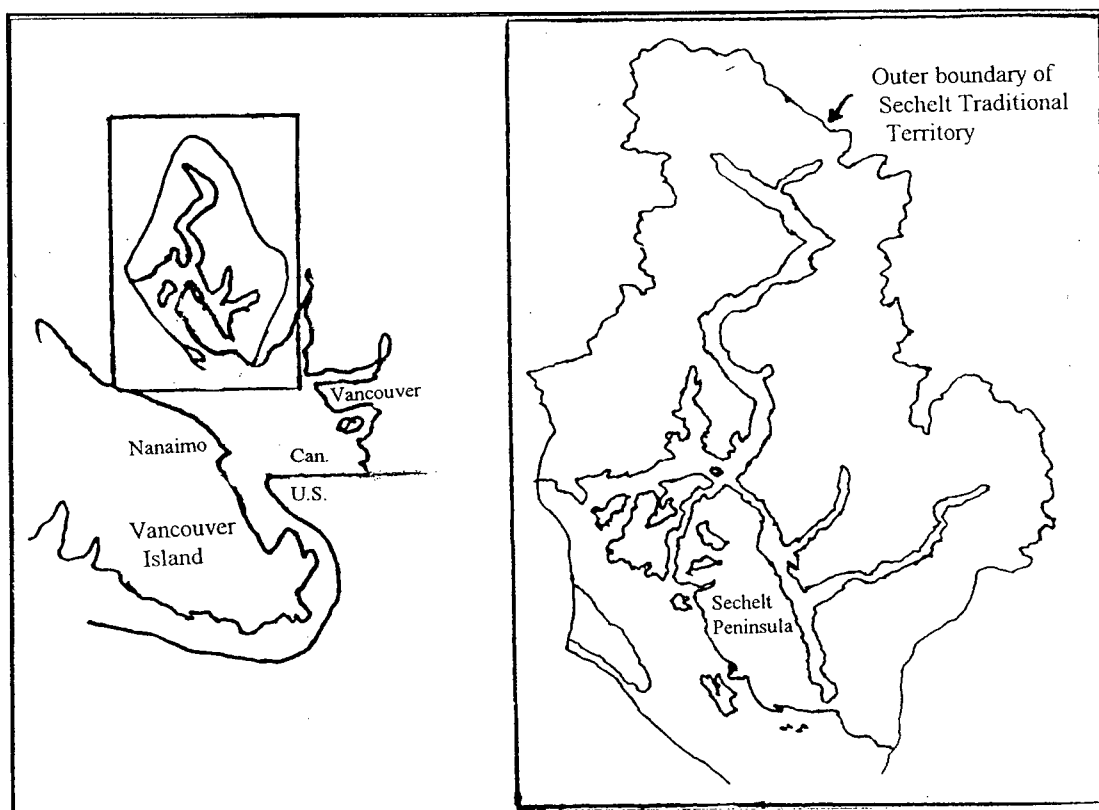


Figure 1.1 Schematic representation of the Sechelt Traditional Territory (STT). Smaller inset (left) illustrates proximity of STT to the City of Vancouver and Vancouver Island.

Today the larger resident population of the Sechelt Nation live on Sechelt Indian Band Land #2 (SIBL#2) whose main freshwater source is Chapman Creek. The importance of Chapman Creek to the Peninsula's community water supply is exemplified by the pressure exerted to initiate a Provincial level management process. This exercise in comprehensive management, provided an excellent framework to look at the

opportunities for, and barriers against, water management by the Sechelt Indian Band.

1.1 Research Question

Several over-arching decisions made in terms of the 'common good' or larger economic considerations have adversely affected many First Nations communities³. These decisions, and their effects, are often made without or beyond the control of the local community. Many of the pieces of legislation which have been implemented for such considerations (e.g., the *Water Act*) are a second layer of bureaucracy that the First Nations must navigate to be involved; the first layer is how the various pieces of legislation need to be negotiated through the *Indian Act*. First Nations have been seeking redefinition or restructuring of institutions to affect a shift and have more local control over resources. The underlying belief here is that it is the communities of interest that should have the most direct voice in the allocation and use of natural resources⁴. It is for this reason that the members of the Sechelt Nation have opted to remove themselves from that first layer of bureaucracy, the *Indian Act*, and now

³ As one example, Kemano I, a hydroelectric project resulting in the flooding of the entire traditional site of the Cheslatta people, was approved by the provincial government without consultation with the local community. A report commissioned by lawyer Murrey Rankin on phase two of the project suggested that further development would be merely incremental. Pat Moss. in *First Nation Rights to Water*. (Pacific Business and Law Institute, 1995) 15.47.

⁴ Owen Furseth & Chris Cocklin, "Regional Perspective on Resource Policy: Implementing Sustainable Management in New Zealand," *Journal of Environmental Planning and Management* V.38N.2 (1995): 181.

need to determine how, with their new model of governance, they can alter the legislative constructions of the past century and involve themselves in water management within their territory. This thesis is therefore a case study of Sechelt governance, the legislative constructions, and management lessons for this region, as they pertain to water. In accord with Yin's (1994) view that a case study should be contemporary and involve a "how" or "why" question, this thesis is directed towards answering:

How has the construction of the existing water management authorities affected the capacity of the Sechelt Nation to actualize self-governance over the people and water within the Sechelt Traditional Territory (STT)?

The contemporary aspect of the case study pertains to the general management efforts that have been ongoing within the STT as well as the specific project focused on developing a consensus-based structure of management for the Chapman and Gray Creeks and their watersheds implemented in 1990. For this thesis the phrase "existing water management authorities" includes groups or individuals that presently have the power to give orders or take action over the control and organization of water resources.

The aim of this chapter is to present the reasons for pursuing this line of investigation, the direction the investigation took, and what is covered in the following chapters. I begin with the *Objective* and the *Rationale*, which respectively describe what I had aimed to do, and what possible good reason would there be in doing this.

1.2 Objective

The specific objective of this research was to examine watershed management development and resultant options that the Sechelt Indian Government District (SIGD) have with respect to water. The Chapman and Gray watersheds are designated as *Community Watersheds* which in British Columbia are defined by the criteria that the water source must have a drainage area no greater than approximately 500 km², and water use must be licensed by the Water Management Division, Ministry of Environment, Lands and Parks (MoELP), for community water use. The designation and use as a community watershed present management opportunities and limitations that may not be otherwise available. This process was examined to look at what the management authorities are and how Sechelt's governance model be employed to address these issues.

1.3 Rationale

With the recent decision on the part of the Provincial government to participate in negotiation of land claims within British Columbia, there has been a development in social circumstance, that is, a new evolving relationship of provincial citizens with First Nations Communities. In order to enable informed decision-making it is important to understand the unfolding role of First Nation people, in this case the Sechelt Indian Band (SIB), in the political management of resources. Governance of resources in B.C. falls under the mandate of various Federal and Provincial

departments. How this governance is shared and carried out affects the manner to which First Nations governance may be incorporated. With this condition in mind this research aims to spell out the various factors influencing the capacity for the Sechelt Indian Government to involve itself in control and management of water resources.

1.4 Research Method

The direction of this research was dictated by five questions, which were:

- 1) What historical processes have lead to the present structure of water delivery on the Sunshine Coast?
- 2) What are the particular and peculiar conditions which are invoked as a result of the Sechelt Act?⁵
- 3) What are the current options to water acquisition for this area? (ie wells, alternate local stress sources)
- 4) What broader perspectives need to be identified that would impart greater participation by the Sechelt Indian Band (SIB) in the management of water delivery?
- 5) How could the Sechelt Indian Band achieve (increase?) effective participatory management?

The material is presented in an *Explanation-building* mode for the case study analysis⁶. As is the circumstance with this method, the final explanation is a result of a series of iterations. The first three questions above were used to derive a basis for looking at allocative volumes of water for the Sechelt. From this platform interviews were conducted with a commercial water user, the SIB Elders, and representatives of the Sunshine Coast Regional District (SCRD) (i.e., the community water purveyors). It was after these interviews that it became clear that "how much" was not the question, because for some water bodies the volume is already 'spoken for' or

⁵ This was how the question was originally formed. To be correct the Sechelt Act is actually the *Sechelt Indian Band Self-Government Act*.

⁶ Robert K. Yin, *Case Study Research: Design and Methods*. 2nd Ed. (Thousand Oaks: Sage Publications, Inc., 1994) 110-113.

fully recorded. Research that is relevant to the community was an important driving factor and so the insights gained from these interviews fuelled an exploration of primary material within the SIB water files, the SCRD environment files, and a literature review of the foundation of Aboriginal Water rights. Having reviewed these sources the iteration then resulted in an examination of what structures may be barriers to the Sechelt's access to water, which was the basis for the final five interviews conducted with representatives familiar with infrastructure history and engineering, watershed planning and plan implementation, and water planning and rights from a provincial management perspective. The results of this research are presented in form of a narrative, with the interviews used throughout to describe and defend the final explanation.

To obtain authorization from University of British Columbia's ethics review committee, I stated in the review application that the interviewees would not be named in any document. The interviews are coded in the sequence of their occurrence (e.g., 01, 02), and if there was more than one person being interviewed at the same time they were given a secondary number (e.g., 02:14). Any reference to these interviews are therefore given as: [Perspective solicited], Interview code (*interview number*):(*number of respondent*)⁷, *Tape recorded transcript*, Interview by author, [Place of Interview], [DD Month year], [Page number] (as the information

⁷ No number if there was only one person present for this interview. Refer to Appendix 1 to find their coding assignment.

appears on the document transcribed directly from the tape of the interview).

The Interviews were of an open-ended nature. Before each interview began I gave the title of the research proposal which had been:

*OPTIONS OF MANAGEMENT FOR THE CHAPMAN CREEK WATERSHED -
Perspectives for the Sechelt Nation. A Masters thesis proposal.*

I then also mentioned that I was a member of the SIB. This may have affected the responses given, but I felt it was important to reveal some aspect of my orientation on the topics being discussed. At some level I felt that the bias that I might put onto what they would be saying would thus be balanced by their personal censorship of what was being said, despite the assurances of anonymity.

1.5 Limitations and Scope

This research and analysis come from a purposive foundation. It has been my goal to go further than simply revisiting the historical processes that have occurred. My goal was to analyze, as a member of the SIB, what has occurred at Sechelt so this information may facilitate steps taken by the Band to address the concerns they have in the management of the natural systems in the Sechelt Traditional Territory (STT). In some ways this is both about limitations and scope. For example I am not looking at the SCRD or the District of Sechelt's administrative changes, nor whether there is any purpose to the SIB's government being involved.

The SIB Self Government has been criticized for falling short of the goal of constitutional entrenchment objectives

for self-government⁸. The debate regarding this model is thus only entertained insofar as it pertains to the options it provides for water management for the Sechelt Nation. The debate regarding constitutional entrenchment of self government is left for other works.

Bartlett (1988) has written an extensive study on the litigious nature of Aboriginal Water Rights. Aboriginal Water Rights are thus an exhaustive subject and so the discussion in this thesis is presented in a brief overview fashion to provide some insight of the legal and legislative framework.

1.6 Organisation

First Nations people talk of their history as extending into time immemorial, and so it is with that history that this case description begins. Chapter two presents a brief story of the Sechelt Nation and how it came to have Sechelt Indian Band Land #2 as the focal governance centre, and documents the political management of resources both human and water resources. The rest of chapter two is a directed literature review aimed at presenting how enacted statutes impinge on Aboriginal Management of Water. The legacy of the position to advance colonization is what the Sechelt Indian Band must grapple with, and chapter two sets the context of that legacy, when looking at the Indian Act, Aboriginal Title and Aboriginal Water Rights.

The Sechelt Indian Band Self-Government Act and the

⁸ David Hyatt "The Sechelt Indian Band Self Government Act" Presented at the Native Rights Seminar, Osgoode hall Law School, 1986, in *Sechelt Indian Band Self Government Information Package*. Sechelt Indian Band. Unpublished. 1996. 25.

Sechelt Indian Government District Enabling Act are companion statutes which empower this form of Self-Government. The unique nature of this form of Self-Government is, in part, the result of a strong working relationship with the surrounding community. Chapter three looks at Sechelt Self-Government, the provincial water management framework, and local water governance so as to project how the SIB might actualize future community plans.

Chapter four examines the latest effort towards comprehensive management in the Chapman watershed. The

Chapman and Gray Creeks Integrated Watershed Management Plan (C/G IWMP) that was initiated in 1990 has been an ongoing six year process that attempted to develop a consensus-based framework. Figure 1.2, adapted from the May 1996 draft, shows the boundaries of the *C/G IWMP*.

The opportunities and limitations revealed through this process are discussed in terms of what SIB's options for

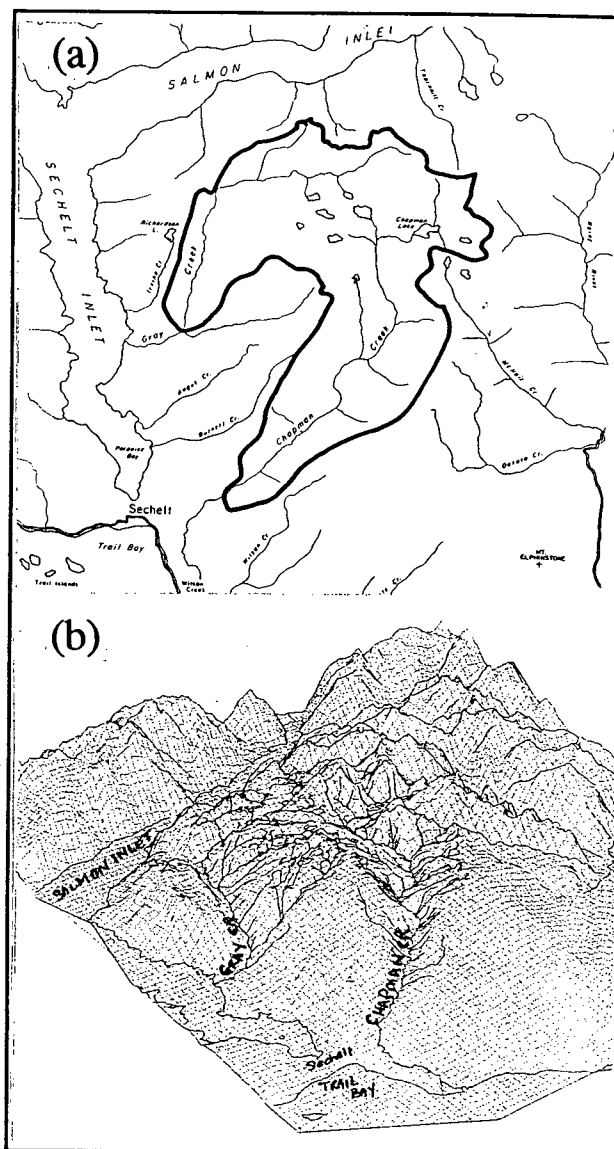


Figure 1.2 Integrated Watershed Management Planning region for Chapman and Gray Creeks represented in (a) two dimensional, and (b) three dimensional format.

participation are in the management of water resources.

Chapter five briefly summarized the discussion in the chapters two, three and four, and reiterates some of the broader implications for the Sechelt Indian Band. In addition, this chapter gives a few recommendations for future research that pertain to, but go beyond, the scope of the material presented here.

Chapter 2

DEFINING THE SECHELT AND THEIR RIGHTS TO WATER

2.0 Introduction: The Sechelt and Local Stewardship

Local control over local resources is often the refrain heard from resource managers who are struggling to deal with the concern(s) of their region. More often the issues concern who is defined as local, and to what extent individuals, groups, or organizations can exert their authority. These questions have become more contentious as many court judgements have gone in favour of Native communities¹. That the Native people are members of the local region is usually not the concern. Rather, opponents of Aboriginal government have stated that their opposition lies in the determination of 'managers' based on race, or how much local control is appropriate. The Brundtland Commission (from the World Commission on Environment and Development in 1987) expressed the importance of Aboriginal communities:

These communities [so-called indigenous or tribal peoples] are the repositories of vast accumulations of traditional knowledge and experience that links humanity with its ancient origins. Their disappearance is a loss for the larger society, which could learn a great deal from their traditional skills in sustainably managing very complex ecological systems. It is a terrible irony that as formal development reaches more deeply into rain forests, deserts, and other isolated environments, it tends to destroy the only cultures that have proved able to thrive in these environments. The starting point for a just and humane policy for such groups is the recognition and protection of their traditional rights to land and the other resources that sustain their way of life - rights they may define in terms that do not fit into standard legal systems... These groups' own institutions to regulate rights and obligations are crucial for maintaining the harmony with nature and the environmental awareness characteristic of the traditional

¹ *Claxton v. Saanichton Marina* [1989] 3 C.N.L.R. 46 (B.C.C.A.), *Pasco v. C.N.R.* 56 D.L.R. (4th) 404 Leave to appeal granted 1989., *R. v. Sparrow* 49 S.C.J.; 70 D.L.R. (4th) 385; 3 C.N.L.R. 172 (S.C.C.).

way of life. Hence the recognition of traditional rights must go hand in hand with measures to protect the local institutions that enforce responsibility in resource use. And this recognition must also give local communities a decisive voice in the decisions about resource use in their area.²

This chapter is written with the assumption that effective long-term management requires local stewardship, and local stewardship can only occur when people have a strong relationship with their surroundings. The shíshálh³ people have had such a relationship. Shíshálh is the traditional name for the group of Native people now legally defined as the Sechelt Indian Band. It is the relationship between the people and the land, rather than the race of the people, that is relevant to this chapter. The focus for the next part is to establish the Sechelt Nation from their historical context and set the basis of their rights to water and water management.

2.1 From Pre- to Post-Colonialism with shíshálh Water Management

2.1.1 Historical Occupancy

The shíshálh, or as in the anthropological literature, the Sechelt people, are described as a sub-group of the Coast Salish tribes. The Sechelt tribes constituted a distinct linguistic group whose traditional homesites were located along the Sechelt Traditional Territory (STT) since

² Claudia Notzke, *Aboriginal Peoples and Natural Resources In Canada* (Ontario: Centre for Aboriginal Management Education and Training (CAMET), Claudia Notzke, and Captus Press Inc., 1994). 4.

³ Sechelt Indian Band: Culture Department, *kem áw (Full Circle) Shíshálh Culture & Land Claims* Unpublished. 1995. 2. "The correct term for the resident First Nations people of the region from the Native language sháshishálem. The town and district take their name from the early European spelling, Sechelt. The orthography used to write sháshishálem does not use capital letters."

time immemorial. Physical evidence suggest occupation of the region for at least 2000 years⁴. According to Peterson (1990), legends exist which assert the presence of "Native Indians prior to and during the last glacial period"⁵. The migration of the shíshálh was confined to a relatively small region. During the spring to fall seasons the tribes of the shíshálh would be accessing resources covering areas from mountain peaks (for mountain goats) to ocean floor (shellfish and kelp). The winter was the time of gathering for the tribes. The winter dance and potlatches, which meant reaffirmation or transfer of leadership, determined territorial access to all manner of resources, including water. Water, an integrative resource, was used for cleansing ceremonies before competitions⁶, to grow family and community gardens⁷, as a harvesting region for important fish species, and for common domestic use. Management of the region's resources was shaped by a class structure. The capacity to actively be involved in the governing of the community was dependent upon the individual's formal status, and status was determined by the accumulation of wealth as well as intangible rights such as being bestowed with

⁴Heritage Research Group. *Review of SECHELT INDIAN BAND Comprehensive Claims Proposal*. (Ganges, B.C.:The Office of Native Claims), 1985. 16.

⁵Lester Peterson, *THE STORY OF THE SECHELT NATION* (Madeira Park:Harbour Publishing) 1990. 6.

⁶SIB Elder. Interview code 02:10. Tape recorded transcript. Interview by author. Sechelt Band Lands. 16 November 1995, 8.

⁷Benny Joe, interview by Delores Paul. Transcribed pages. 1987. Sechelt Indian Band Culture Centre:Sechelt Nation History.

ancient names and stories⁸.

2.1.2 Traditional Division of Resources

The class structure of the Sechelt Nation during the early colonial invasion period consisted of three general divisions. Position in the KWAHT-KWAHT-AHM' (aristocrat)⁹ or the KWASHSS-TWAYT'-AHSS (commoners) class depended largely on behaviour and ability. The SHAY'-OHTS (slaves), the third level, represented very little function because slaves were people who were not descendants of the Sechelt Nation. Participation in raids, from which slaves were acquired, was not prevalent with the Sechelt. Popular myth regards the Native peoples "as nomadic wanderers hunting and gathering fortuitously with little or no attachment to place"¹⁰. Contrary to this idea territorial delineations among the Sechelt are evident in such myth statements as:

"You have a Whale in your lake, but we do not have a Whale. The Beaver has built a dam to keep the whale out of our lake." (my emphasis)¹¹

By the mid-nineteenth century there were five main territorial regions, named for the main villages. The villages were the SLAHLT, TSHOH'-NYE, HUHN'-AH-TCHIN, KAL-PAY'-LAIN, AND KLAY'AH-KWOHSS¹² (see Figure 2.1). At this time the people were coping with the strain of adapting to a

⁸ Heritage Research Group, 1985. 12.

⁹ Peterson, 1990. 36.

¹⁰ J.E. Michael Kew and Julian Griggs. "Native Indians of the Fraser Basin: Towards a Model of Sustainable Resource Use," in *Perspectives on Sustainable Development in Water Management: Towards Agreement in the Fraser Basin*. edited by Anthony H.J. Dorsey. (University of British Columbia: Westwater Research Centre, 1991) 20.

¹¹ Peterson 1990, 17.

¹² Peterson 1990, 32.

new economy while many of their people were dying. The traditional economy, maintained via the potlatch system, was altered as new capacities for acquiring wealth were introduced with the fur trade, fishing, and logging industries. The initial approach, around 1850¹³, of representatives of the Church to convert the people to Catholicism was rebuffed. By 1860¹⁴,

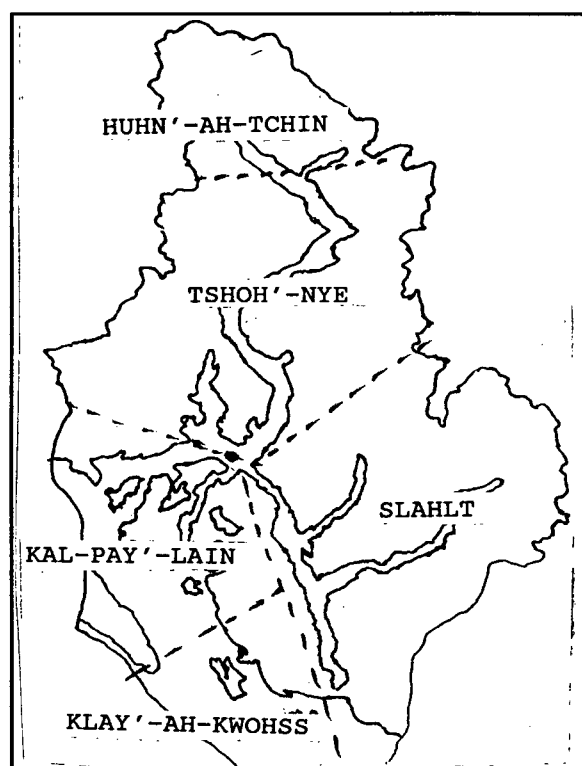


Figure 2.1 The five territorial regions of the Shíshálh as recounted in Peterson 1990.

community stability was upset by ravages of the population as a result of small-pox and tuberculosis. Despair and incomprehension of the diseases that had spread through the communities persuaded the Chiefs to reconsider the Church. Use of the existing traditional governance hierarchy facilitated a rapid religious conversion of the shíshálh to Catholicism.

Of the 20,476 hectares (approximately) of land that the shíshálh lived with and on (the STT), representatives of the 1876 Joint Commission designated twenty-two parcels of land to be set aside as Indian Reservations. Three more Reserves

¹³ Clarence Joe, Interview edited by Frank Fuller. Unpublished. *Amalgamation*. (Sechelt Indian Band: Culture Centre Files). 1980.

¹⁴ Clarence Joe, 1980.

were added in 1900 and the McKenna/McBride Commission brought the total parcelled allocation to thirty-three (see Figure 2.2) amounting to approximately 1000 hectares.

The chiefs of the five main territories opted to establish a central body of government on Indian Reserve Number two, amalgamating the members of separate villages.

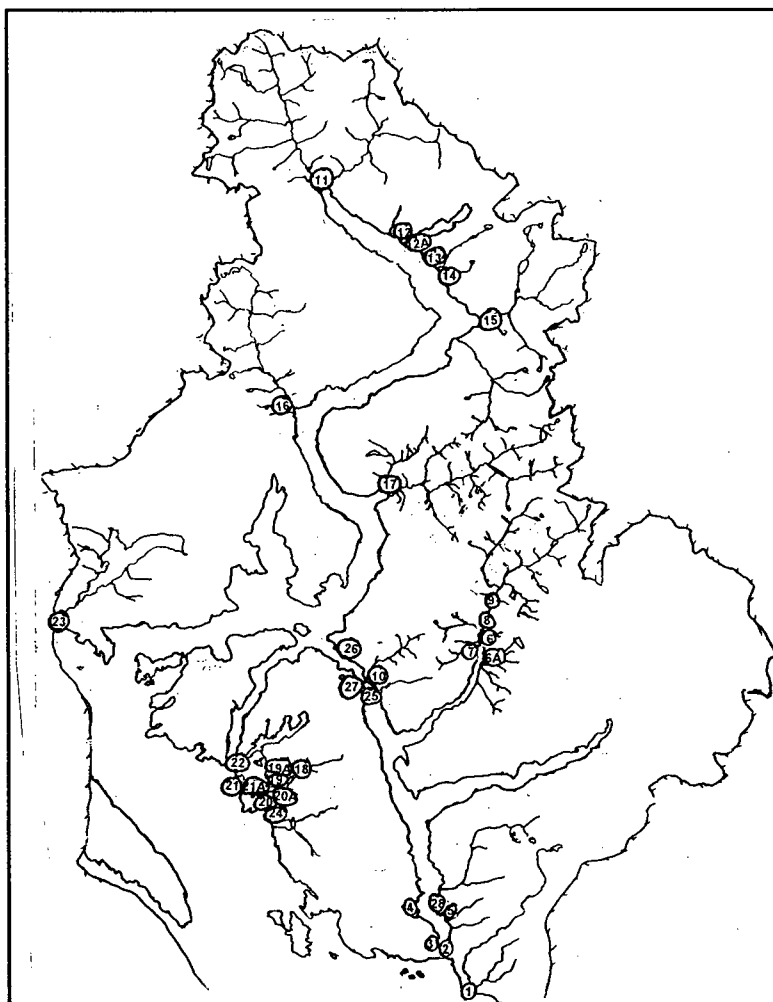


Figure 2.2 Location of the thirty-three parcels of land designated as Indian Reserves within the Sechelt Traditional Territory.

2.1.3 The Flume to the Water Mainline

Where formerly the shíshálh lived in *longhouses*, colonialism and religious conversion introduced separate dwellings for schooling, religion, and housing with a diversionary water system to supply the people utilizing these dwellings. A reservoir system was developed by the

Indian Band around 1889 or 1890¹⁵. The water was brought down from Chapman Creek (formerly called Mission Creek) in a flume and stored in a reservoir on the reserve. These vee shaped structures (flumes) were a common method of diverting water. They were also built to project water from bluff faces to be collected in baskets without leaving the canoe¹⁶. Around 1900 the Sechelt Band replaced the first flume on Chapman Creek with another, which, in addition to serving their own needs, carried water down to provide for the needs of non-native people. Another example of the Sechelt Nations' early participation in infrastructure development included the work of the people from the reserve at a relief camp to put in a pipe to replace the flume with a piping system¹⁷.

In 1892 the *Water Privileges Act* declared the right to the use and flow of all water in any stream to be vested in the Crown in the right of the province¹⁸. This is the foundation of the regime that exists in the Province today whereby the capacity to use water is dependant on the

¹⁵ Helen Dawes. *Halloween Dawes' SECHELT*. (Madeira Park: Harbour Publishing) 1990. 100.

¹⁶ SIB Elder. Interview code 02:10/09/13. Tape recorded transcript. Interview by author. Sechelt Band Lands. 16 November 1995. 8.

¹⁷ SIB Elder. Interview code 02:01. Tape recorded transcript. Interview by author. Sechelt Band Lands. 16 November 1995. 3. This respondent gave the time for this to have happened to be "during Chief John's time". Chief John was one of the original people mentioned as Chief Councillor in 1920, and there is a Chief John recorded up to 1945 for reference see Heritage Research Group, 1985. Appendix 5 "Summary of Sechelt Band Councils, 1920-1985".

¹⁸ Ministry of Environment, Lands and Parks. *Stewardship of the Water of British Columbia: A Review of British Columbia's Water Management Policy and Legislation*, vol. 9 *Background Report*. Province of British Columbia. 1993. 6.

possession of a licence. Elders of the Sechelt Indian Band recall holding a licence for a certain volume of water for Chapman Creek¹⁹. The Vancouver Daily World published a notice that the Sechelt Indians intended to apply for a water record for two creeks flowing into Porpoise Bay²⁰. The diversion point was to be six miles from the mouth. The Ministry of Environment water licensing records have the earliest water licence for this particular region to be the one issued to Union Steamships Ltd. in 1929 for the local waterworks. The priority of water acquisition is decided by the date of issuance, often referred to as the policy of *first in time first in right*²¹. The water legislation is tied to the colonial developmental history of the province. The initial statutes adopted to regulate water diversion were developed to reduce conflict in the nascent mining industry. Water licensing was created to protect established interests from settlers and prospectors who would arrive later. Consequently, the first to apply for licensing has first right to appropriate the water. However, the policy of *first in time first in right* perpetuates the ideology that the First Nations were not first in time, at least with respect to water use, because for many systems they do not possess the primary license for their territory. This is

¹⁹ SIB Elder. Interview code 02:10. Tape recorded transcript. Interview by author. Sechelt Band Lands. 16 November 1995. 5.

²⁰ Vancouver Daily World, Notice Document 10, Tuesday June 3, 1890.

²¹ Ministry of Environment, Lands, and Parks. "Water Allocation". *Stewardship of the Water of British Columbia*. (Province of British Columbia, 1993) 7.

certainly the case with the Sechelt. So, it is an important literal distinction to state '*first enabled*'.

For convenience Union Steamships constructed a flume, and eventually the community water supply system, along the same route that the Sechelt people had established. The founders of the non-native community located the township centre west of SIBL#2, which meant that the township's water supply from Chapman Creek would have to run through reserve lands (see Figure 2.3).

The Band Council agreed to allow a portion of this parcel of land for an easement, and for this consideration would be paid in the form of water for domestic and fire purposes to the Band members²². The community reservoir remained on reserve lands and this route became the mainline

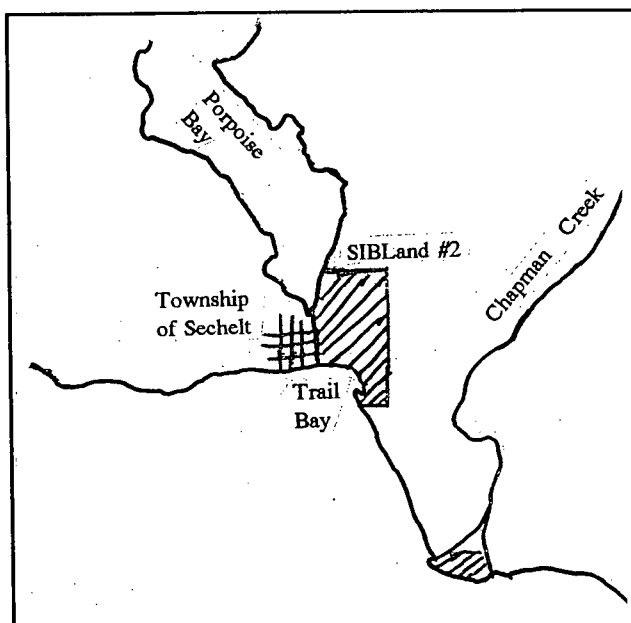


Figure 2.3 Map showing the relative locations of Chapman Creek and Sechelt Township to SIBL#2.

for the water infrastructure. Around the early 1950's there was an attempt to change the terms of the agreement by imposing a fee for water delivery to Band members. The Chief of Council responded by demanding that Union Steamships Ltd.

²² His Majesty the King & Union Steamships Ltd. 3rd April 1929. Sechelt Indian Band: Water files.

remove all of their pipes from Band lands²³. The matter of a fee was then dropped, and the terms are still being honoured today. The Band pays for pipes going into Band buildings and the SCRDC (having signed on to these terms with the purchase of the community waterworks licence from Union Steamships Ltd.) delivers the domestic and fire requirements of water. The members of the Sechelt Nation entered into an agreement for water delivery which met the needs of the growing non-Native community, but this arrangement afforded rights, as a result of priority water licences, to the licensee rather than to the Band.

The shíshálh have invited liberal changes to the community governance structure over the past one hundred years. They have amalgamated the resources of several territories, gradually moved from a hereditary council to an elected council, and with the Self-Government Act adopted a municipal style governance structure. Yet there are many opportunities that the shíshálh were not afforded as a result of living within the constraints of legislation imposed upon them by a colonial administration that unquestioningly assumed its own right to determine resource allocation. By the fact of historical occupation there are "inherent rights" that as yet need to be translated into the continuum of resource use and responsibility. Despite this, the opportunity to orchestrate the regional growth has been impinged upon by pieces of legislation such as the *Indian*

²³ SIB Elder. Interview code 02:14. Tape recorded transcript. Interview by author. Sechelt Band Lands. 16 November 1995. 9.

Act and the *Terms of Union* wherein British Columbia joined the Dominion. The perception that the Province of British Columbia could unilaterally dictate the rights and situational resource access is still alive, in that water resources have for many streams been fully recorded. Despite the prior occupation of Native people, the priority for water is given most often to non-Native licence holders.

2.2 Laws and Legislations Advantaging Colonialism

Within Canada there are two types of laws that determine one's right to use water: common law, rules that have been passed down through English courts, and statutory law, the rules that are established by the legislatures of the country or province²⁴. The persons creating legislation are elected representatives of the voting populace and as such pieces of legislations manifest political agendas. The earliest agenda for the BC legislature involved the entrenchment and perpetuation of non-native rights above those of the first occupants²⁵. Attempts to change this were only minimally considered, as with the enactment of the *Indian Water Claims Act*, and only in such a way as to not upset the status quo, as exemplified by this statement from the Chief Inspector of Indian Agencies in BC:

The legislation passed represents the limit to which the Government of the Province were prepared to go at the present time as there were many obstacles in the way of complying with

²⁴ H. Rueggeberg and A.R. Thompson, 1984, "Water Law in Canada, Report for Federal Inquiry on Water Policy," in notes for *Natural Resources Law* (Law 356 1994), compiled by Dr. Andrew Thompson & Martin L. Palleson. The University of British Columbia. 654-656.

²⁵ It should be recognized that First Nation did not acquire the capacity to vote provincially until 1949 and federally until 1960.

my requests in full, as this would have involved placing the Indians' claims ahead of the records of a great number of white users and the Minister informed both Mr. Ellis and myself that any Bill carrying such a proposal would meet with strenuous opposition of the floor of the House...²⁶

It has taken over a hundred years for the Province of British Columbia to acknowledge Aboriginal claims, and the parsimonious attitude of the late 19th century is the foundation for Provincial legislators today.

This next section looks at Aboriginal Title in British Columbia, at first hotly denied, then considered sufficiently abolished, and finally begrudgingly discussed. The importance of Aboriginal Title with respect to water lies in the established provincial regime wherein rights to water are appurtenant to the land.

2.3 Water Appurtenant to Land: Readdressing Aboriginal Title

The average person responds to the theft of their personal possessions with disbelief and amazement. "This can't possibly be happening" and, "how could someone insult me by totally disregarding my ownership of this [item, possession, place]" are common responses. This affront is something that is difficult to fully understand until it happens personally. Can we put ourselves in the position of understanding the same affront as a Nisga'a Chief faced and voiced to the Joint Commission on Indian lands as early as 1887 when he said:

They (the white man's government) have never bought the land from our forefathers; they have never fought and conquered our people and taken the land in that way, and yet they say now

²⁶ Union of B.C. Indian Chiefs, *Indian Water Rights in British Columbia, A Handbook* Foreword by Chief Saul Terry, president (Vancouver: Union of B.C. Indian Chiefs, 1991) 36.

that they will give us so much land: our own land!²⁷

This Chief is understanding, in part, what is today called Aboriginal Title.

There is much debate as to the definition of Aboriginal Title. Some of this debate stems from questions such as: By asserting Sovereignty, do the rights and claims to the land by the people indigenous to the area become null and void? Is the Aboriginal Right to land subject to the underlying Sovereign claim? Or, is the Sovereign claim practically that of an administrative claim, where the colonial governments have a responsibility to ensure that the original title, that of Aboriginal title, is not interfered with unless ceded or surrendered? What these (outstanding) questions show is that the scope of Aboriginal Title has not been clearly outlined. The scope which has been struggled for and is the basis of the discussion in this thesis is stated by Aldridge:

Aboriginal Title includes a recognition of nationhood, a recognition of law-making abilities, a recognition of jurisdiction, and a recognition of collective ownership of the land.²⁸

In *Delgamuukw v. British Columbia*²⁹ (1993), Justice Lambert's dissenting judgement stated that Aboriginal Title in the Province of British Columbia was supported by common law,

²⁷ Rob Robinson, "Aboriginal Title: The Nishga and the Land," in *ABORIGINAL TITLE, RIGHTS, AND THE CANADIAN CONSTITUTION - Proceedings of a Symposium*. Victoria, BC eds. Keith Jobson and Richard King. (University of Victoria, 1983) 2.

²⁸ James Aldridge, "Aboriginal Title: the Constitution and the Charter," in *ABORIGINAL TITLE, RIGHTS, AND THE CANADIAN CONSTITUTION - Proceedings of a Symposium* Victoria, British Columbia eds. Keith Jobson and Richard King. (University of Victoria, December 1983) 38.

²⁹ *Delgamuukw v. British Columbia* [1993] B.C.C.A. 1395. 146-177. This judgement was filed 1993 with the BC Supreme Court with the Leave to Appeal granted to the Supreme Court of Canada May 1994. This was heard June 1997. The judgement is still pending.

continues to exist, and is derived from customs and practises that existed at the time of colonial assertion of sovereignty, but not "frozen" or limited to the use or practise that existed at the time of that assertion. The political leaders of the Province of British Columbia denied the recognition of such title until 1990, when the BC Government agreed to enter into negotiations over Crown land. The fact that Aboriginal Title existed within BC was evident with the negotiation of fifteen treaties from 1850-54 (Fourteen on Vancouver Island, often referred to as the Douglas Treaties, and the extension of Treaty 8 in the northeastern part of BC). The fourteen *Douglas treaties* on Vancouver Island were originally negotiated to remove the burden of Aboriginal Title on the Crown within BC. This process was halted due to economic constraints and from then on treaty-making in BC stood still for over one hundred years.

The *Terms of Union*, by which BC was admitted into Confederation, stimulated lengthy debate over the policy of this former Crown colony with regard to Indian Lands. The quantity of land that the Dominion government had surveyed for reserves in the 1860's was condemned by BC's Lieutenant-Governor Joseph Trutch. The general policy for land allotment was for approximately 10 acres to the head of every Indian family in the Colony³⁰. To give a comparison, Treaty Number Three (the Lake of the Woods region) allotted six hundred and

³⁰ John Leslie & Ron Maguire, *The Historical Development of the Indian Act* (Indian and Northern Affairs Canada: Treaties and Historical Research Centre, 1983) 57.

forty acres per family of five, and in BC, settlers were able to pre-empt 160 acres per family (the option for Natives to pre-empt land was subject to the permission of the Governor. No evidence exists for any of these applications having been approved³¹). The Dominion Government's concern that BC had not acknowledged Indian rights, or land titles, and that they had no written code regarding Indian Land policies, prompted a request that BC allot eighty acres for each Indian family of five and adjust accordingly the size of established reserves in the Province³². The Province responded that the land requirements were satisfied but allowed for future reserve allotments, not exceeding twenty acres for each family of five. The position taken by Trutch was that:

The Canadian system as I understand it, will hardly, work here - we have never bought out any Indian claims to lands nor do they expect we should - but we reserve for their use and benefit from time to time tracts of sufficient extent to fulfil all their reasonable requirements for cultivation or grazing.³³

A Joint Commission was established in 1875 which attempted, without success, to effect a more 'liberal' land policy for the Native people of BC. Reserve Commissioner G.M. Sproat anticipated the results of the position taken by the Province when he stated in 1879 that an uprising of Native people in BC

would not be a revolt against authority, but the despairing action of men suffering intolerable wrong, which the Provincial Government will take no steps to remedy.³⁴

³¹ Vina A. Starr, *Indian Title to Foreshore on Coastal Reserves in British Columbia* (Canada: Department of Indian Affairs and Northern Development, 1985) 11.

³² Leslie & Maguire, 1983. 57.

³³ Leslie & Maguire, 1983. 59.

³⁴ Leslie & Maguire, 1983. 58.

Dissatisfaction with the Province's unwillingness to acknowledge Aboriginal Title provoked the Native leaders in BC to send a delegation in 1906 to speak to the Privy Council of England³⁵. An attempt was made to deal with the grievances put forward by setting up a commission now known as the McKenna-McBride Commission. Aboriginal Title was not up for discussion, but rather the Commission was mandated to deal only with the ongoing complaints regarding reserve sizes. By setting these terms of discussion the governments of Canada and British Columbia adopted a limited approach, and thus failed to lay to rest the conflicts between Native and Non-native people. Petitions by the Allied Tribes of BC protesting the decisions of the McKenna-McBride report led to legislation in 1927 making it illegal to hire lawyers for the purposes of pursuing land claims. This was rescinded in 1951. Up to 1951 the provincial government dictated the position taken over land policy with the voicing of Native people and the Federal government given minimal consideration. A prominent court case, commonly referred to as the *Calder* case, led to a change of Federal government policy.

The next sections look at various prominent cases and legislation that have induced the Federal and Provincial governments to readdress their position on Aboriginal Title and Rights.

2.3.1 Common Law Effect on Land policy

In 1996 the Nisga'a people experienced the elation of

³⁵ Paul Tennant, *British Columbia: a place for Aboriginal peoples?* (Vancouver: University of British Columbia, 1983) 85.

achieving an agreement they felt they could live with after over two decades of negotiations. That they were negotiating at all was a result of the landmark case initiated in their territory, that being *Calder v. Attorney General of British Columbia*³⁶. Of the seven judges deliberating this case, six stated that Title had existed in British Columbia, and three of them held that it continued to exist. Regarding Title one of the seven judges did not comment, but rather decided that their claim was inappropriately put forward. Since the judgement was not strictly in favour of *Calder* the Provincial position was that the court supported their long held position. This position, briefly summarized, was that if Aboriginal Title did exist it had been removed as result of subsequent legislation. The Provincial perception of Aboriginal Title had merely moved from denial of existence to purporting its abolishment. In contrast, the Government of Canada established a policy to negotiate outstanding claims in the Northwest Territories, Yukon, and Quebec.

The impetus required to encourage the Provincial political leaders to modify their stance on their responsibility to the Native people of BC was provided by a series of judicial decisions³⁷. Another case in 1984, namely *Guerin v. Regina*³⁸, went largely in favour of the Native

³⁶ *Calder v. Attorney General of British Columbia*, [1973]S.C.C. 313, [1973]4 W.W.R.1 34 D.L.R.(3d)145.

³⁷ Barbara C. Souther, *Aboriginal Rights and Public Policy: Historical overview and an analysis of the Aboriginal Fisheries Strategy Masters Thesis*, (Simon Fraser University: Natural Resources Management, 1993).

³⁸ *Guerin v. Regina*[1984] 13 D.L.R. (4th) 321.

community. With this case eight of the Supreme Court Justices found the Government of Canada (Regina) liable in damages for breach of their *fiduciary* duties. Fiduciary duty had been described as a trust-like obligation. This judgment interprets the *Indian Act* to be legislation that imposes an obligation on the Crown to act for the benefit of the Indians³⁹. In 1985 the BC Court of Appeal granted an injunction to halt logging in the ancestral territory of the Clayoquot and Ahousaht Bands. An interlocutory injunction was granted, in 1987, in favour of a Kwakiutl hereditary Chief and his Band to halt logging on Deer Island, the basis of which arose from the continued rights that exist from Aboriginal Title. The Canadian National Railway's proposed twin tracking project was prevented, with support of the courts, by Chief Pasco and other supporting First Nations in 1989. Formerly it had been the contention of BC's non-Native political leaders that addressing Aboriginal Title would wreak havoc on the industries of BC. These various judgements demonstrated that simply denying acknowledgement of Aboriginal Title was not the solution. In 1990, the Province of British Columbia announced that they would negotiate land claims.

2.3.2 The Modern Treaty Process

As part of the agreement for Sechelt's negotiated Self-Government it was stipulated that "...this was in no way to abrogate any existing Aboriginal or treaty right..."⁴⁰. The

³⁹ Guerin [1984] page 323.

⁴⁰ *Sechelt Indian Band Self-Government Act*, 1986. Section 2(2)3.

treaty rights have yet to be negotiated for the Sechelt Nation. Due to the number of different Native communities in BC, the six-stage process⁴¹ is conducted by different "teams". According to the Federal Treaty Negotiation Office publication, *Treaty News*⁴², the Sechelt claim is conducted with Team South #1⁴³. As of July 1996, the Sechelt people had arrived at stage 4, that is, the Negotiation of an Agreement-in-Principle. The Nisga'a negotiations were underway before the construction of this comprehensive claims process but sits as the latest example of a treaty to be negotiated in BC. This agreement sets a dangerous precedence, in that it delivers water agreements that may be inappropriate for the Sechelt Traditional Territory (STT). The Nisga'a has subjected their allowable water allocation to be determined from that available after conservation, and after the volume allocated for existing water licenses. The existing water licences themselves are not subjected to conservation. So, even though this makes sense as a matter of course, the licenses of non-Natives should be unilaterally modified to adopt the same limitation (i.e., a requirement for conservation) so that the imbalance being addressed by treaty-making is not perpetuated. The licensed demand within the STT is considerable and

⁴¹ The six stages are: (1) Statement of Intent (2) Preparation for Negotiations (3) Negotiation of a Framework Agreement (4) Negotiation of an Agreement-in-Principle (5) Negotiation to Finalize a Treaty (6) Treaty Implementation

⁴² Federal Treaty Negotiation Office, *Treaty News* July 1996 Vol 3, No2 (Canada: Vancouver) 5.

⁴³ There are six "teams" which are: Vancouver Island, South #1, South #2, North-Central, North-Coast, and North-east. There had been a negotiating team for the Nisga'a treaty process but this was outside of the British Columbia Treaty Commission process.

continues to advantage the new settlers to the region at the expense of meeting the needs of the Sechelt Nation Bartlett (1988) states:

If it is held that aboriginal title generally had been extinguished by the mass of public lands legislation and Ordinances, then the water rights would fail as an incident thereof.⁴⁴

Aboriginal Title, long denied in the Province is now on the table for discussion. There are many concerns to be negotiated. The terms of resource access and the degree of involvement in the management of these resources are two of the issues. In addition there is the fundamental concern regarding legislation written by non-Natives that generally provide an advantage to non-Natives. This next section looks at Aboriginal Water Rights and how these might be affected by historical legislation in BC.

2.4 Three Sources of Water Rights for Aboriginal Communities

As part of his judgement in *Calder*, Justice Hall indicated that the use of water was an integral part of the "historic occupation and possession" declared by Chief Justice Dickson in his judgement of the same case. From this, Aboriginal Title is interpreted to be derived from common law from historic use and occupation. This landmark case enabled a shift in the political momentum and as a result Aboriginal Rights became entrenched in the Canadian Constitution nine years later with section 35 (1):

(1) The existing aboriginal and treaty rights of the aboriginal

⁴⁴ Richard H. Bartlett, *ABORIGINAL WATER RIGHTS IN CANADA: A Study of Aboriginal Title to Water and Indian Water Rights* (Calgary: Canadian Institute of Resources Law, 1988) 174.

peoples of Canada are hereby recognized and affirmed.⁴⁵

At the First Minister' Conference in 1982 the Prime Minister was pressed to go further and expressly set forth Aboriginal Title in the Constitution. The Prime Minister (Pierre Trudeau) stated "Aboriginal Title is already there; Aboriginal Title is one of the Aboriginal Rights, therefore it is contained implicitly".⁴⁶ Bartlett (1988) concludes that Aboriginal Water Rights are an aspect of Aboriginal Title. The Federal government's intent (if there is any authority in the words of the then Prime Minister) was that Aboriginal Title is an implicit aspect of Aboriginal Rights. Despite this circularity Notzke (1994) goes on to say the three sources of Aboriginal Water Rights are:

- (1) They are an integral part of native people's aboriginal title to their ancestral lands.
- (2) Indian water rights result from the establishment of a reserve, either by treaty or by executive action (Order-in-Council)
- (3) Native people enjoy riparian rights derived from their occupation of lands adjoining a body of water.⁴⁷

Riparian rights exist for all Canadians, unless mitigated or abolished by statute. However, rights derived from Aboriginal Title or reserve establishment are uniquely Aboriginal. Constitutional entrenchment of rights are an important means of protection. The matter that Native people must be concerned with is, whether the two colonial governments of Canada (Provincial and Federal) recognize the

⁴⁵ Constitution Act, 1982.

⁴⁶ Aldridge, James. "Aboriginal Title: The Constitution and the Charter," in *Aboriginal Title, Rights, and the Canadian Constitution: Proceedings of a Symposium Victoria, B.C.* eds Keith Jobson and Richard King (University of Victoria, 1983) 36.

⁴⁷ Notzke, 1994. 8.

particular right in question to be existing.

2.5 Derogation of Water Rights: Neither a Child of the Fed's or the Province

The purpose of legislation regulating water allocation was to bring some order to an otherwise chaotic situation⁴⁸. The capacity of the First Nation to be involved was hampered by the wrangling that occurred between British Columbia and the (then) Dominion. Article 13 of the *Terms of the Union* bestowed on the Dominion the charge of Indians, and the administration of lands reserved for their benefit⁴⁹. The Province however, was not forthcoming with the prompt transfer of lands. In addition this Government was decidedly resistant to acknowledging and providing water resources in an equitable fashion to Natives as that being bestowed to non-Natives.

2.5.1 Natives Excluded from Legislative Opportunities

The gold rush fervour in the late 1800's in BC brought conflicts as substantial volumes of water were being diverted for mining⁵⁰. To deal with this the first piece of legislation regarding water was enacted, the *Gold Fields Act, 1859*⁵¹. This is the foundation to the present policy that water must be used "beneficially"⁵² (i.e., involves consumptive uses). In 1865 the *Land Ordinance* qualified the common law right of

⁴⁸ Jack Farrell, *British Columbia Water Law*. Paper presented at First Nations Rights to Water Conference, April 5 & 6, 1995. (Vancouver: Pacific Business & Law Institute) 19.1.

⁴⁹ Bartlett, 1988. 25.

⁵⁰ Farrell, 1995. 19.1.

⁵¹ British Columbia Ministry of Environment, Lands, and Parks. *Stewardship of the Water of British Columbia: A Review of British Columbia's Water Management Policy and Legislation*. Vol 9 Background Report. (Province of British Columbia, 1993) 2.

⁵² Farrell, 1995. 19.2.

riparian land owners with this substitution of a statutory right. It was made explicit that the Native people in BC were barred from asserting rights available from this legislation, in that it applied to pre-emption⁵³. The opportunity to pre-empt land was a privilege not enjoyed by First Nations in BC. This has both positive and negative repercussions. On the one hand, the First Nations were explicitly removed from enjoying the rights allowed others. On the other hand, as the legislation is therefore only concerned with settlers, it has derogated aboriginal rights only to the extent that it has issued privileges. This piece of legislation therefore has not explicitly abrogated Aboriginal Rights.

The same year that the *Terms of Union* was being signed (1870) a provision was added to the *Land Ordinance 1865*, declaring the requirement for a statutory water record⁵⁴. Though the province was conferring rights via a water licence, First Nations were still sitting in administrative no-man's-land. Six years later, in 1876, many of the Sechelt reserves were designated. In this same year (1876) the various statutes dealing with Indians were consolidated resulting in the creation of the *Indian Act*. Having the Dominion in charge of Indians, and administration of lands reserved for them, introduced barriers not endowed on non-Natives. In addition, the *Indian Act* resulted in the creation of bureaucracies that the Sechelt Nation had to establish additional sophistication

⁵³ Bartlett, 1988. 174.

⁵⁴ *Stewardship, Background Report*, 1993. 6.

to negotiate through. For this reason it's construction is discussed briefly

2.5.2 The *Indian Act*

The *Indian Act*⁵⁵ was, until 1986, the regulatory document encompassing the rules of the Sechelt Nation. This legislation covers the registration of status membership, possession and trespass of reserve/treaty lands, administration of wills, lessees, revenues, capacity of band bylaws, council rules and representation, taxation, trade or barter and education. The *Indian Act* derives its power from section 91(24) of the Constitution Act, which states:

s. 91 ...the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, -
(24) Indians, and Lands reserved for the Indians.⁵⁶

Recommendations of the Bagot Commission (1844), Protection Acts of Upper and Lower Canada (1850), and the Act for the Gradual Civilization of the Indian Tribes in the Canadas (1857) set the foundation for the *Indian Act of 1876*⁵⁷. The policy direction adopted as result of these documents was that the Indians were to be introduced and confirmed to Christianity, educated as subjects so that the "blessings of civilization should flow among.." ⁵⁸. The legislation created the definition of an "Indian" and set up an overseeing authority for land until such time as they were "capable" of managing their own affairs. Finally, a system of

⁵⁵ *Indian Act R.S., 1985, c.I-5*

⁵⁶ *The Constitution Act, 1987, R.S.C. 1985, App.II, No.5.*

⁵⁷ Leslie & Maguire, 1983. 24-28.

⁵⁸ Leslie & Maguire, 1983. 22.

enfranchisement was created, where the Indians could achieve the full privilege of civilization, that is, to be of the same standing as the "whites". It was assumed that Native people would adopt an agrarian lifestyle. The philosophy operating at this time was that a culture based on an agricultural way of life would represent an evolution for primitive people⁵⁹. The arrogance of this philosophy either obstructed the capacity for legislators to recognize the complex Native governance structures, or to discount them because they countered the objective of colonialism⁶⁰, or both. In 1986, *Sechelt Indian Band Self-Government Act* was passed transferring fee simple title of Sechelt reserves to the Sechelt Nation while the underlying radical title remained with the Federal Crown. Without Title the Sechelt Nation was unable to procure a mortgage to develop large community infrastructures and therefore could not fully exercise water options available to other developing communities.

2.5.3 Abrogation of Water Sechelt Water Rights

Most of the Sechelt Indian Reserves were designated in 1876. However, they were not surveyed until 1916, and it was another twenty-two years (1938) before the Provincial government conferred administrative authority for Sechelt Indian reserves to the Federal Government by means of an Order in Council. The Chief Commissioner of Lands, with the approval of the Lieutenant Governor in Council, was empowered to

⁵⁹ Hugh Brody, *Maps and Dreams* (Vancouver, BC: Douglas & McIntyre, 1988) 51.

⁶⁰ Brody, 1988. 49

authorize allocations of water passing through a reserve. In 1888 the Superintendent of Indian Affairs filed a statement of the water requirements for several interior Indian Reservations⁶¹. Procuring approval from the Lieutenant Governor in Council was demonstrated to be a problem. For example, by the time the William Lake reserve obtained permission to draw water from a stream on the basis of that 1888 list, twenty years had passed. Between 1888 and 1908 settlers were accorded water rights for that same water body to the extent that it could not support both claims. The settlers' claims were upheld (e.g. *first enabled first in right*).

In 1897 the *Water Clauses Consolidation Act* deemed a water right appurtenant to the land or mine for which it was obtained. The purpose of this was to ensure that licences were not commodified. Riparian proprietors had until 1916 to file a claim, after which a riparian right was abolished (except for the general right of the public to use water for domestic purposes)⁶². By 1916 the Sechelt reserves were just being surveyed, many of which located riparian to water bodies, but no licenses were obtained.

The debate continues as to whether these and subsequent legislation have abrogated Sechelt's water rights. The capacity for the Federal government to appropriate and convey water rights even in absence of express reference thereof was

⁶¹ Bartlett, 1988. 179.

⁶² *Stewardship, Background Report*, 1993. 8.

upheld by the Privy Council⁶³. This judgement is important for Indian Reserve lands because it meant that the Federal government could set aside water allocations to meet the purpose of the reserve. The province expressly denied this application outside of the strip of land ever after referred to as the *Railway Belt*. Bartlett concludes from *A.G. v. Western Highbie* that general legislation applicable to Crown grants (lands made available to settlers) is not applicable to most reserves⁶⁴. This stems from the fact that with reserves there is no real conveyance of ownership. His Majesty the King remains the owner, whether it is Crown in right of the Province, or Crown in right of the Dominion. Thus it is the contention, that without federal authority (i.e., the trustee of Indian affairs), that Provincial legislation does not hold force and effect for Indian lands. The *Scott-Cathcart Agreement*, from which administrative control was transferred to the Dominion, affords the Provincial government capacity to expropriate lands for the purposes of conveying water over, through or under Indian lands, but only to the extent that the expropriation does not exceed one-twentieth part of the whole reserve, and there is a requirement for the payment of a "reasonable compensation". Bartlett's summary states that although the agreement recognizes the right of the Province to administer water privileges on Indian lands, the scope, extent and compensation accorded to the First Nation is still left

⁶³ Bartlett, 1986. 36.

⁶⁴ Bartlett, 1988. 193.

unresolved⁶⁵.

Notzke names the dominant issues regarding Aboriginal Water Rights (AWR) to be: the quantum of the Indian right, the legitimate uses to which the water guaranteed by the right can be put, and the priority of the right in relation to the rights of non-Indian user⁶⁶. These issues contain the scope of Aboriginal Water Rights, and the next section looks at the laws and legislation which address that scope.

2.6 Quantum, Use, and Priority Depends of Source of Aboriginal Water Right (AWR)

All three issues of quantum, use, and priority are suggested to depend on which of the three sources (stated in section 2.4) the AWR stems from. Water rights resulting from Aboriginal Title may have been restricted, whereas water rights from executive action may be larger in capacity than would otherwise exist from Aboriginal Title. Riparian rights may have been limited, depending on whether or not those rights had been abrogated prior to 1982.

2.6.1 Aboriginal Title as Source of AWR

Determination of water rights derived from Aboriginal Title depend on whether Title is interpreted to come from the Crown's capacity to legislate land uses, versus the capacity derived from "historic use and occupation". The question that has not been answered, at least in the case of the Sechelt Nation, is whether rights are reserved for their collective use because they have never been surrendered, or whether

⁶⁵ Bartlett, 1986. 212.

⁶⁶ Notzke, 1994. 10.

rights which the Crown has not reserved still exist. This is the general focus of the evaluation of Canadian and U.S. common law⁶⁷.

2.6.1.1 Rights Interpreted from Crown Reservation of Aboriginal Title

One interpretation of Common Law, is that Aboriginal Rights that stem from the Crown reserving those rights, are restricted in scope to "traditional" uses. The terms of the *Royal Proclamation, 1763* were reviewed in *St.Catherines Milling and Lumber Co. v. The Queen*⁶⁸. In this case the Privy Council decided that the "tenure of the Indians was a personal and usufructuary right, dependent upon the good will of the Sovereign" (emphasis added). The Nova Scotia Supreme Court, in their judgement for *R.v.Isaac*, pronounced that a "usufructuary right" to land is merely a right to use that land and its "fruit" or resources. What all this means, is that without the will of the Sovereign (i.e., the Crown reserving Aboriginal Rights or Title) Title to land does not exist. If that goodwill is extended, the right of the Aboriginal does not include "ownership" of the resources. The Right only includes some capacity to use those resources. Further Justice Steel,

⁶⁷ Bartlett (1988) gives the following explanation as to the use of U.S. Common Law: "It should be noted that this examination of aboriginal water rights in Canada draws heavily upon United States jurisprudence. This reliance is demanded by the recent practice of the Supreme Court of Canada and by the paucity of judicial consideration in Canada. Significantly, the history of the aboriginal peoples and their relationship to governments in the United States, and the development of water projects and water law in the United States, closely parallel the situation in Canada. It might be said that, in the area of law respecting aboriginal peoples' rights to land and water, there is a law common to both jurisdictions. 6.

⁶⁸ *St. Catherines Milling and Lumber Co. v. The Queen* (1888), 14. App.Cas.46(P.C.).

stated in *A.G.Ont.v.Bear Island Foundation*⁶⁹ that

aboriginal land rights consisted of the rights of temporary possession, use or enjoyment of the advantages of the property belonging to the Crown, so far as may be had without causing damage or prejudice to the property.⁷⁰

In addition he decided that Aboriginal Title was confined to "traditional uses for basic survival and personal ornamentation". Traditional uses included the right to trap and fish, as well as rights to use water for transportation, traditional irrigation, and domestic consumption⁷¹.

Essentially the extent of Aboriginal Rights were described as, "the right of Indians to continue to live on their lands as their forefathers lived"⁷². The U.S. case *Arizona v.*

California supports the view that rights are derived from the reservation of rights by the government, which serves to limit quantity of use. While this judgement supports the conservative position in the aforementioned cases, it expands this position by suggesting that the reservation of rights includes modern uses, as well as traditional uses. On the matter of priority, judgements from this position (i.e., that the Crown is responsible for the reservation of Rights) deem the priority for traditional uses to be "time immemorial", and for all other uses to be dependant upon the date of application, or date of reserve establishment. From this interpretation the Sechelt would be limited to water required

⁶⁹ *Attorney General for Ontario v. Bear Island Foundation*, [1985] 1 C.N.L.R. 1 (Ont. S.C.)

⁷⁰ Bartlett, 1988. 8.

⁷¹ Bartlett, 1988. 9.

⁷² Bartlett, 1988. 9.

for domestic uses, but this could include personal cultivation, and water required for traditional purposes.

2.6.1.2 Water Rights interpreted from Historic Use and Occupation

The second position is that Aboriginal Title is derived of from the "historic use and occupation" of the Aboriginal People. Two principle cases from the United States declared that: treaty was a reservation of rights from Title that already exists⁷³ and; prior to reserve establishment Indians had command of all beneficial use of the lands and waters (whether the use be for hunting, grazing or for agriculture)⁷⁴. "Command" of all beneficial uses contradicts the narrow "traditional use" position. In *Guerin*⁷⁵ the judges expressed that First Nation's "sui generis" (generally meaning uniquely defined) interest is only confused from interpretation based on traditional property valuations. For clarification *Rights* and *Title* should be considered from two points. First, that the Indians Rights and Title are inalienable unless surrendered and; secondly, if surrendered, it rests upon the Crown to deal with the land on behalf of the interests of the Indians. Starr's analysis of the Province's capacity to enact legislation affecting Native communities determined that, Native interests in the land is a prescriptive right, that is:

A title by prescription was acquired by the enjoyment of a right from time immemorial, or time out of mind, from which an

⁷³ Bartlett, 1988. 10.

⁷⁴ Bartlett, 1988. 11.

⁷⁵ *Guerin v. Regina*[1984] 13 D.L.R. (4th) 321.

original grant was implied.⁷⁶

This position supports a broader scope definition of uses that stem from Aboriginal Rights and Title. On the issue of quantity, US common law has determined the volume to be, that required to service "practicably irrigable" acreage.

Practicably irrigable, the US solution to 'how much', has recently been defined from an economic context (i.e., if given an unlimited volume of water one could make a rainforest from a desert, but this is not "economically" practical).

R. v. Sparrow (1990)⁷⁷ was a case which considered the protection conferred by section 35(1) of the constitution. In this decision it was stated that existing Aboriginal Rights "must be interpreted flexibly so as to permit their evaluation over time"⁷⁸. A flexible interpretation of water uses stemming from existing Aboriginal Title is that all uses are yet protected for the SIB. Figure 2.4 depicts a summary of how quantity, use, and priority, are interpreted with these two positions on the derivation of Aboriginal Title. To be considered in violation of section 35(1) the burden of showing interference is on the Native people, but once shown the Crown must show that; 1) the interference was reasonable, 2) that it does not pose undue hardship and 3) does not deny preferred

⁷⁶ Starr, 1985. 14.

⁷⁷ *R. v. Sparrow* [1990] 3 C.N.L.R. 160.

⁷⁸ Notzke, 1994. 9.

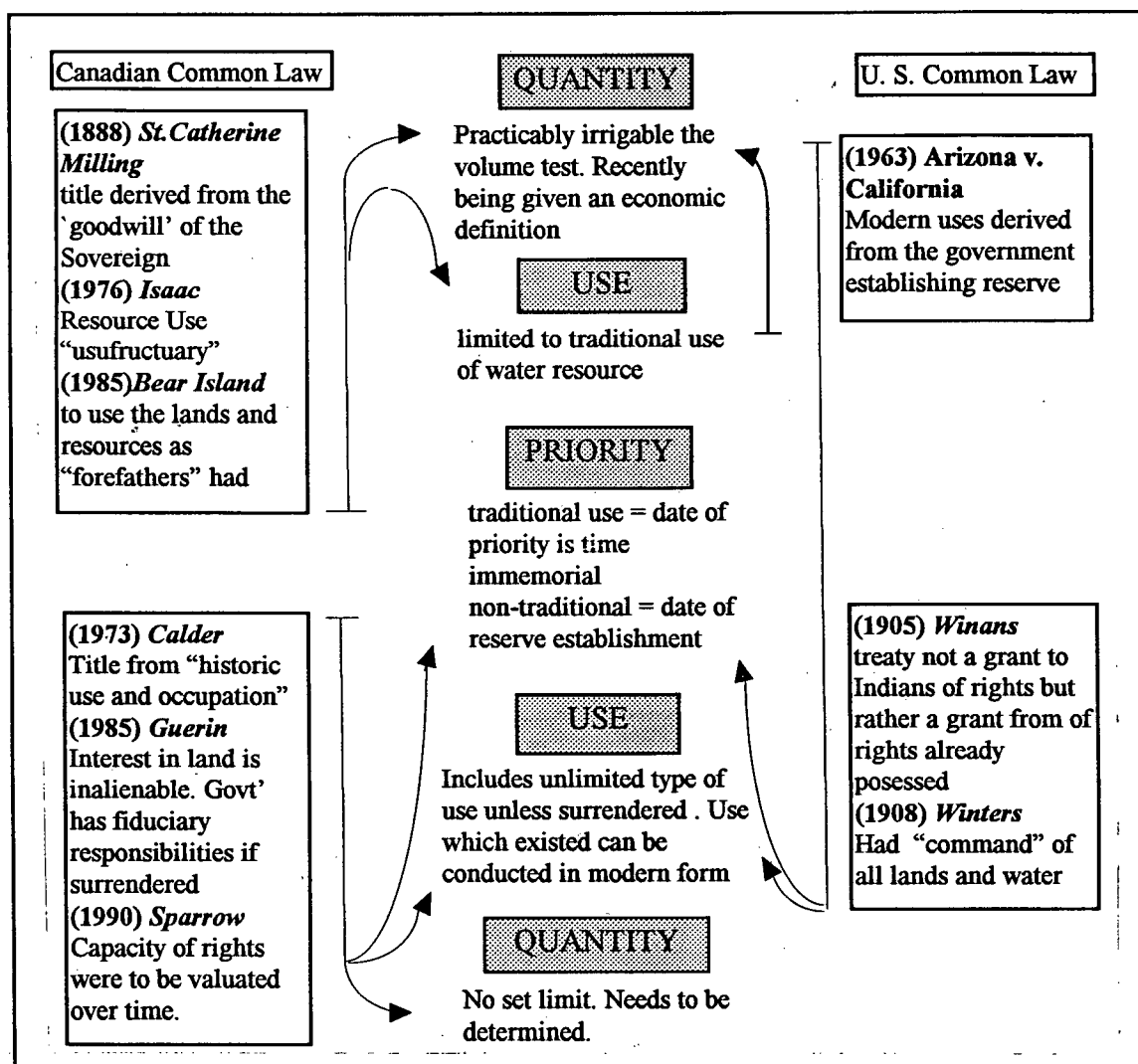


Figure 2.4 Interpretation of the three issues of Aboriginal Water Rights (i.e., quantity, use and priority) whose source is Aboriginal Title

means of exercising the right. Three cases⁷⁹ that went to the Supreme Court of Canada in 1996 determined the test for a provisional violation of section 35 (1):

whether the affected activity is an element of a practice, custom or tradition integral to the distinctive culture of the

⁷⁹ *R. v. VanderPeet* Paper Judgment 23803; QL [1996] S.C.J. 77, *R. v. N.T.C. Smokehouse Ltd.* Paper Judgment 23800; QL [1996] S.C.J. 78, *R. v. Glandstone* Paper Judgment 23801; QL [1996] S.C.J. 79. Law Library Update. August 27, 1996 Supreme Court of Canada 'Reasons' received electronically; paper judgments to follow.

aboriginal group claiming the right.⁸⁰

Water rights derived from Aboriginal Title, particularly the volume of water necessary for domestic consumption and the amount for fish conservation needs, therefore enjoy constitutional priority to Provincial legislation. These uses most certainly are activities "integral" to the distinctive culture of the Sechelt Nation. Bartlett's analysis of Aboriginal water rights determined that those rights which are from Aboriginal Title may be limited to traditional use but the purpose of reserve establishment may broaden the scope of that definition. The next part of this discussion, therefore, regards water rights from reserve establishment as result of Executive Order.

2.6.2 Reserve Establishment via Executive Order: Effective Water Rights

Water rights derived from treaty or Executive Order in Council (hereafter executive order) are said to be similar. The difference is that, with treaty, it is assumed that the Aboriginal people would have participated in the determination of those rights for which they would reserve unto themselves. This is not the case with executive order. In British Columbia, the burden of Aboriginal Title, for the most part, had not been removed by treaty. Reserves were established via executive order. The Native people were briefly consulted as to determination of reserve locations but the extent and terms were dictated by the Provincial Government.

⁸⁰ Law Library Update. August 27, 1996 Supreme Court of Canada 'Reasons' received electronically; paper judgments to follow.

Common law interpretation of rights from executive order determine these to be based on the intent in setting the reserve aside. The intent expressed by Douglas for the fourteen original treaties was to:

meet their wishes in every particular and to include in each reserve the permanent Village sites, the fishing stations, and Burial grounds, cultivated land and all the favourite resorts of the Tribes and in short to include every piece of ground to which they had acquired an equitable title through continuous occupation, tillage or other investment of their labour.⁸¹

As discussed earlier, subsequent governments took a far more parsimonious approach to the determination of land allotments. The purpose for reserve establishment is clear, in that the desire was to enable non-Natives to appropriate land. What the intent of the reservation was *for the First Nations* though, is not clear. I.W. Powell (Indian Superintendent for British Columbia) had expressed:

There is not, of course, the same necessity to set aside extensive grants of agricultural land for Coast Indians; but their rights to fishing stations and hunting grounds should not be interfered with, and they should receive every assurance of perfect freedom from future encroachments of every description.⁸²

Access to the fishery and hunting regions was paramount and was the trade-off for the establishment of small Indian Reserve sizes. This trade-off was not upheld in action by the Province. Fishing rights and hunting have both been highly marginalized. Countering this perception of what Indian Reservations were for, the fact that a large purpose for Indian Reservations was for cultivation is evident in the

⁸¹ Bartlett, 1988. 44.

⁸² As quoted in: Reuban M. Ware, *FIVE ISSUES FIVE BATTLEGROUND: An Introduction to the History of Indian Fishing in British Columbia 1850-1930* (Sardis: Coqualeetza Education Training Centre, 1983) 14.

repeated queries from the McKenna/McBride Reserve Commissioners. The questions often asked were: Whether the Indian Reserve was under cultivation? and if so, To what extent?⁸³. With either consideration, Aboriginal Water Rights whose source is executive order confers a priority for domestic cultivation and use. The priority for water uses would be the date of the Reserve establishment.

In addition, the Sechelt possess strong legal standing to enforce that measures of conservation for fish, and fish habitat are met, given the judgement in *Pasco v. Canadian National Railway*. *Pasco* halted a twin-tracking development when the court determined that, the First Nation's proprietary right to the river was strengthened by their fishing rights. The judgement for *Saanichton Marina Ltd. v. Claxton* upheld that, uses which interfere with a treaty right to fish could be restrained. The Sechelt, based on the purposes of the reserve determination, therefore, has strong force and effect in limiting any draw on water, especially licensed uses which would impinge on their Aboriginal Right to fish.

2.6.3 Riparian Rights

The *Water Act* was the culmination of several statutes enacted to effectively remove any riparian or prescriptive right. There are several activities involving the management of water which could affect lands riparian. For lands next to rivers management which could impose downstream impacts might include: flooding of lands due to sudden release of dammed

⁸³ Royal Commission on Indian Reserves Transcript of Evidence. Province Of British Columbia. Volume 17. 246-279.

waters; washing away of downstream riparian vegetation as result of upstream riprap channelization; reduced water quality from improper access to water by upstream users; and reduced flow overall due to water diversion. Lakeside riparian properties can be impacted by: damming the outflow, resulting in loss of land above waters; loss of quality of drinking water due to effluent loading from surrounding habitation; and draw down of water if recharge rates are low. In general, riparian rights have been reduced for quantity. However, precedence exists which affords the ability to protect water quality from deterioration by upstream uses. Rueggeberg (1984) wrote that:

many lawyers believe, that in the interests of water quality, the riparian owner's right to sue for injury where an upstream user might be discharging harmful contaminants is still a powerful means of preserving high quality conditions.⁸⁴

This right to sue for injury exists for all Canadians. It is therefore an action that the Band might need to consider to protect their interests in the water resources.

2.7 Political Perceptions: Affects on Actualizing Rights

Many Canadians are beginning to understand that the rights of the First occupants have been, and are still being ignored. This is a result of the hard work of many Native leaders who have sought to readdress the colonization agenda. The dynamic struggle between First Nations to have their rights recognized, and the non-Natives to advance their claim on the 'new world', has effected graduated changes in the 'perception' of Aboriginal Title and Aboriginal Water Rights.

⁸⁴ Rueggeberg, 1984. Law notes pg 659.

Figure 2.5 (next page) illustrates this author's interpretation regarding general non-Native perception of Native rights in response to the various legislative changes mentioned throughout this chapter. Non-Native perceptions have affected the Native capacity to assert their rights. The point of this diagram is to illustrate that perceptions of Aboriginal Title and Aboriginal Water Rights are not synonymous. Previous to contact Aboriginal Title is given as solid black, which moves finally to white (meaning the perceptions were that the Aboriginal Water Rights or Title were considered to be effectively obliterated). There has never been any doubt as to First Nations' right to the fish in the Province. It was the reason given for the constraint applied in the issuance of reserve sizes⁸⁵. But as Ernie Crey, Executive Director, Lower Fraser Aboriginal Fisheries Commission, expresses:

I regret to say that our experience, as we have tried to restore a very minimal degree of self-government in our fisheries, has left many of us on the Lower Fraser River quite shaken...I say this because we have faced a degree of hostility and resistance to our efforts that raises a very serious question. If this is what we face when we talk about fish - and a tiny, tiny fraction of the West Coast's fisheries resources at that - what happens when we start talking about land? What happens when we start talking about forests?⁸⁶

What about water?

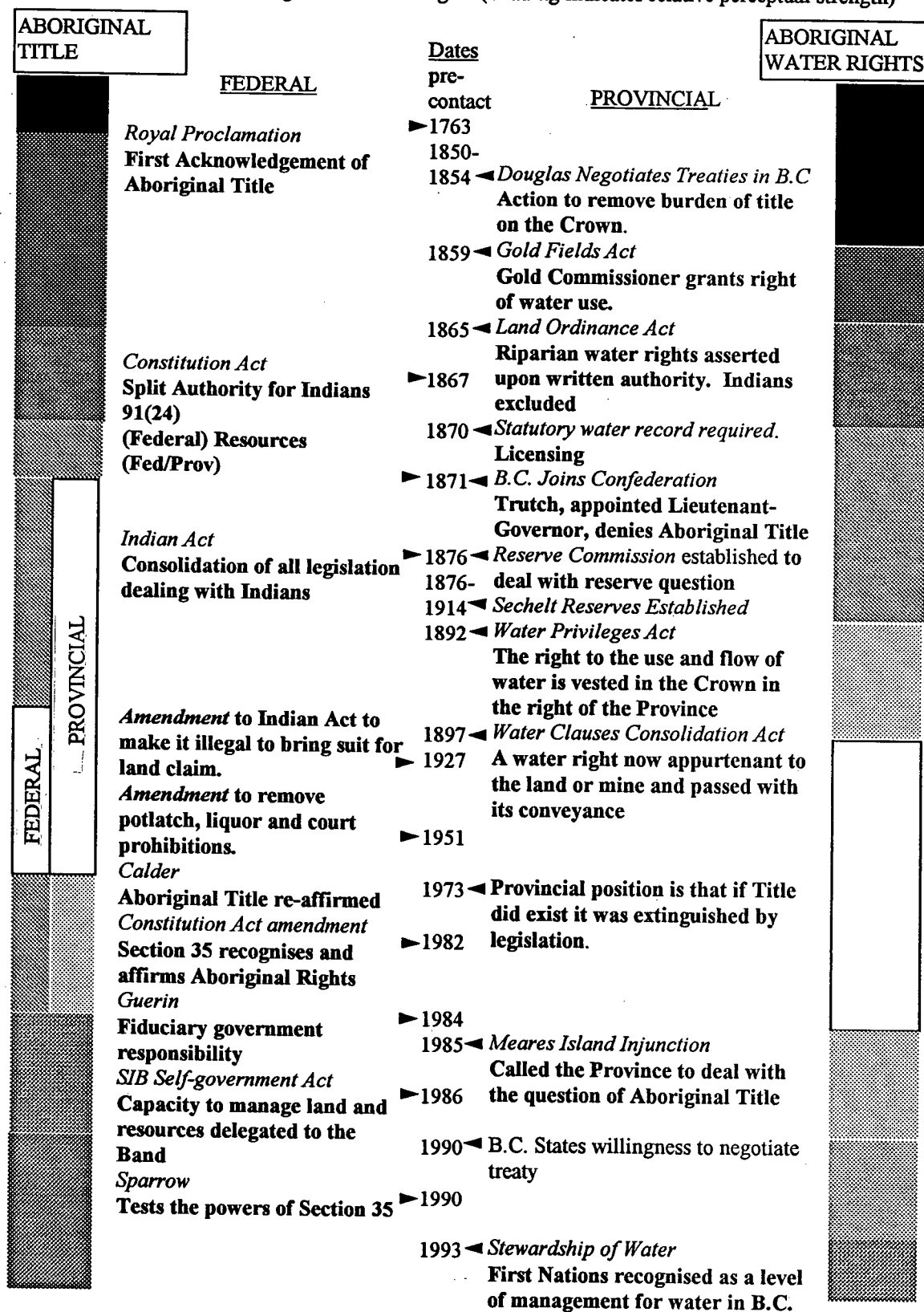
2.8 Summary

The Sechelt have demonstrated resiliency in adapting to the changes they have witnessed, and took part in, over the

⁸⁵ See note 82.

⁸⁶ Ernie Crey, *Aboriginal Commercial Right to Fish*. Presented at First Nation Rights to Water Conference, April 5 & 6 (Vancouver: Pacific Business & Law Institute, 1995) 11.1.

Figure 2.5 Legislation and Actions that have altered the non-Native political perceptions of the existence and degree of Aboriginal Title and Rights (Shading indicates relative perceptual strength)



past century. This chapter has documented some of the evidence for territorial management by the shíshálh within their Traditional Territory. That there was regional divisions within the Sechelt Nation is evidenced by the various myth statements, as well as by the opposition originally voiced to amalgamating the governance of the regions. The long-term occupancy of the shíshálh, their experience with regional management, and adapting governance capacity is the basis for the Sechelt Nations management of water resources.

Co-operative water delivery arrangements established between the Band and the surrounding non-Native community has affected the Bands opportunity to designate the terms of their community development. The reason this has occurred is the result of a *first enabled first in right* water licensing regime established by the Provincial Government. Whether this is the final word depends on the capacities enabled via the treaty process.

The scope of Aboriginal Title or Aboriginal Water Rights have not been defined. The foundation of Aboriginal Water Rights stem from three sources which are: Aboriginal Title, Executive Order-in-Council, and Riparian Rights. There are three dominant issues regarding Aboriginal Water Rights, that of *quantum*, *uses*, and *priority* of water access. Interpretation of Aboriginal Rights from the perspective that it is incumbent on the Crown to reserve those rights, tends to restrict *uses* to those defined as "traditional", and uphold the *priority* designated by Provincial legislation. Title derived from the principle of "historic use and occupation" gives a broader

scope to the interpretation of rights. Aboriginal Water Rights from this view does not limit the type of water use, nor quantity, but where priority for traditional use is time immemorial, non-traditional is generally limited to the date of reserve establishment. Rights derived from Executive Order depend on the purpose to which the reserve was set aside. The priority for water is, in this case, the date of reserve establishment. Riparian rights have been effectively abrogated within British Columbia, at least with respect to quantity. The ability for the Sechelt Nation, as a downstream user, to protect water quality via litigation still exists, and is a powerful means of preserving high quality conditions.

The future for Native community development depends on their capacity to realize rights afforded as first occupants. The ability for the Native community to actualize their Aboriginal Rights has been affected through the assertion of Federal and Provincial political will with changing legislation. That these Rights exist is not the issue. Rather, the challenge is how we might, in future, look to meeting the needs of non-Natives without further compromising the Native community.

Chapter 3

GOVERNING OF WATER: ISSUES OF CONSTRUCTION, OPTIONS FOR THE SIB

3.0 Introduction

As of October 9, 1986, the *Indian Act* Sechelt Indians and Sechelt Indian Reserves ceased to exist. The *Sechelt Indian Band Self Government Act* (hereafter *Sechelt Act*) created in their place the Sechelt Indian Band with the Sechelt Band Lands. The Sechelt Nation has opted to develop this model of self government to address several cornerstone objectives. These objectives included: accessing control over membership, gaining autonomy over all people resident on Sechelt Lands, acquiring Title to Sechelt Lands, and administrative stream-lining as a legal entity¹.

Native leaders had noted that by 1983 the Sechelt Band was the only one to be delegated every possible authority under the *Indian Act*². The Sechelt Band leaders found that, despite this, many development plans were stifled as a consequence of dealing with the Department of Indian Affairs (DIA) bureaucracy. The Provincial Government had amended the *Municipal Act* in 1960 to enable Indian Reserves to incorporate as "Indian Municipalities". This option was never pursued due to the concern that this would advance Provincial jurisdiction onto reserve lands affording, no

¹ Tom Paul, "ASSESSING THE RISK: A Two way Street," in *Sechelt Indian Band Self-Government Information Package*. (Sechelt Indian Band: Unpublished, 1996) 1.

² David Hyatt. "The Sechelt Indian Band Self-Government Act. Presented at the Native Rights Seminar, Osgoode Hall Law School. 1986," in *Sechelt Indian Band Self Government Information Package*. (Sechelt Indian Band: Unpublished, 1996) 3.

protection over Provincial political will³.

While the *Sechelt Act* does not recognize the full extent of SIB's aspirations, it was the best compromise that could be worked out with the Federal and Provincial governments at the time. The *Sechelt Act* delegates the responsibilities held by the Federal Government for the Sechelt Nation, and their lands, to the SIB Council.

Bartlett expressed that:

The ambit of powers which could be conferred under the *Sechelt Act* is not insubstantial, but the affirmation of provincial power over the lands and the limited ambit of the power to tax suggest that self-government is not a proper description. The regime is more properly termed self-management and community government."⁴

It was the intention of the Sechelt Band to increase their capacity for integration of administration and management, rather than becoming a separate entity. Consequently, many of the services and servicing arrangements existing prior to the enactment of the *Sechelt Act* remain the same. The changes involve primarily, the administrative arrangements. The existing water management authorities have not changed as result of this piece of legislation, but the capacity for the Band to determine future community growth has. The purpose of the following discussion is to: outline management considerations that would promote the involvement of the Sechelt Nation and then; describe governing options that would promote the objectives for which the *Sechelt Act*

³ John P. Taylor & Gary Paget. "FEDERAL/PROVINCIAL RESPONSIBILITY AND THE SECHELT: Paper prepared for the National Conference on Federal and Provincial Governments and Aboriginal Peoples. Carlton University, Ottawa. 1988" In *Sechelt Indian Band Self Government Information Package*. (Sechelt Indian Band. Unpublished, 1996) 4.

⁴ Claudia Notzke, 1994. 184.

was adopted. One of the arguments presented to the opposition of enabling more management by Native communities is that, they lack the experience or skills necessary to carry out the task. It is for this reason that the chapter begins with a discussion of criteria, derived from the analysis of Coast Salish communities, to consider for sustainable water management. Given that the various First Nations communities no longer possess exclusive territorial control the discussion then turns to suggested action that would be necessary to mitigate the loss of further options for the Sechelt Nation. The hierarchy of governance, Provincially and locally, is discussed to illustrate that it is, in part, the resultant bureaucratic complexities which affects the Bands capacity to be involved in water management. Finally the SIB governance structure and options for managing the water resources is presented.

3.1 Developing a Land Ethic: Lessons from Some Locals

Change in our lives is simply an aspect of living. Growing as individuals we physically undergo changes throughout our lives. For some, change is angst-ridden, while for others it is a source of excitement. Having knowledge of upcoming changes, or perhaps the capacity to initiate and direct these changes can mitigate that angst to some extent. But this is not always possible, particularly if the changes are driven externally at the community, regional, or global level. Conflicts can arise when two or more groups feel their interests (frequently economic), are best served by changes which are essentially incompatible

with each other⁵. These conflicts generally become more difficult to resolve when the courses of action directing the changes are defended or criticised on value-laden or moral grounds⁶. As change is inevitable, setting a plan for a course of action and forecasting impacts is one way to deal with, and even possibly reduce conflict. The question is, given that there are differences in values, how do we make reasoned choices which will not limit our future potential? Kew and Griggs (1991) proposed using a set of features, developed from an analysis of the Salish indigenous cultural system, as criteria to assess whether the management promotes the short term over the long term considerations. These features are discussed in the next section with the criteria underlined.

3.1.1 Features of Coastal Native Communities

The Sechelt Nation has occupied the same region for thousands of years with their various communities bounded to certain regions. This is given as a condition for the first criteria for sustainable resource use, that is, there must be a commitment to place⁷. The long-term association to place fosters a sense of belonging, a state of being

⁵ Vince Gardiner and Paul Herrington. "INTRODUCTION: Environmental Issues and the Water Demand Forecasting Workshop," in *WATER DEMAND FORECASTING: Proceedings of a Workshop sponsored by the Economic and Social Research Council*. edited by V.Gardiner and P.Herrington, (U.K.,Norwich, 1986), 1.

⁶ Gardiner and Herrington, 1986. 1.

⁷ J.E. Michael Kew and Julian R. Griggs, "Native Indians of the Fraser Basin: Towards a Model of sustainable Resource Use," in *Perspectives on Sustainable Development in Water Management: Towards Agreement in the Fraser River Basin* ed. Anthony H. J. Dorsey (Vancouver: University of British Columbia, Westwater Research Centre, 1991) 38.

proposed as necessary to reinforce feelings of dependency on one's environment and thus respect for it.

The Sechelt Traditional Territory was, at the time of contact, divided up into five regions, comprising territorial delineations. Kew and Griggs (1985) describes such regional delineations as:

a series of independent units with what we might call permeable boundaries that were not entirely self-sustaining, but which approached that condition.⁸

The access and harvesting of resources was regulated and allowed to particular members of the Nation. This feature, that of local control and defined access, is proposed to promote self-reliant groups. These groups, when necessary, can act towards a coordinated effort. The criteria for assessing sustainable resource use in this instance is that "the use system must demonstrate relative closure with regulated access and an identified community of users with a shared ethic of resource use".⁹

The shíshálh had bestowed spiritual embodiment on all facets of their surrounding landscape. Spirits, which were a part of their total environment, could affect their food gathering capacity, cause illness, and determine status in the community. Humans were therefore not considered dominant to the environment, but rather an ethic of mutual dependency was fostered. The First Nations had developed an ideology of

⁸ Kew & Griggs, 1991. 39. In this article they were describing a group of First Nations linguistically defined as Salishan. The kinship characteristics were of the same structure as what is being discussed and so for this discussion adopt their argument.

⁹ Kew & Griggs, 1991. 39.

themselves as a part of their surroundings. Kew and Griggs say this meant that they were "skilled in *applied* resource use within a working *theory* of ecology"¹⁰. In addition, the lesson for sustainability that can be learned from this, is that sustainable use requires developing an understanding of the ecological feedback mechanisms on a visionary scale. This criteria is called the ethic of reciprocity¹¹.

Historically, the resources that the shíshálh gathered ranged from mountain goat to mussels, from birds to berries, though perhaps not within the same season as this would be dependant upon availability. They set aside foods, such as dried fish, and collected medicinal plants as they could. To access these favoured resources required an intimate knowledge of natural cycles, and expertise in assessing the production capacity of the resource. The Salishan would practise selective harvesting of deer, beaver, and moose by killing males and non-breeding females¹². Regarding conservation Gottesfeld points out that:

In the past it was common to assume that hunting and gathering peoples had insufficient population or insufficient technological ability to alter the balance of their environment and so had no need of conservation.¹³

There is evidence to suggest though, that the culture groups of the Lower Mainland possessed capacity to diminish many coastal resources. One example is the weir construction on

¹⁰ Kew & Griggs, 1991. 40.

¹¹ Kew & Griggs, 1991. 40.

¹² Kew & Griggs, 1991. 36.

¹³ Leslie M. Johnson Gottesfeld, "Conservation, Territory, and Traditional Beliefs: An Analysis of Gitksan and Wet'suwet'en Subsistence, Northwest British Columbia, Canada," *Human Ecology* 22, no. 4 (1994): 445.

salmon-bearing streams that had the potential to completely bar the migration of fish¹⁴. Another is given by the fact of low fecundity within mountain goat populations. The low birth rates would only enable limited harvesting, certainly much less than enabled by the harvesting capabilities of the community¹⁵. This reliance on a broad range of resources, combined with the variation in harvesting effort, are features from which to derive criteria of Scope and Integration¹⁶. This means that resource acquisition should integrate different sectors, and seek to adapt to fluctuations in resource supply. Kew and Griggs suggest that doing this requires that harvest levels be maintained below "maximum capacity"¹⁷.

The final criteria from which sustainable resource use might be assessed is how much local control¹⁸ is enabled. Traditionally, the conducting of affairs for the shíshálh had been done through their governance hierarchy (briefly discussed in sections 2.1.1 and 2.1.2). Decisions were reached using, what today would be described as, a "consensus" strategy. Discussions would take place in a manner that each member present would give their considered opinion, one that would not discredit their status, and from

¹⁴ Kew & Griggs, 1991. 36.

¹⁵ Gottesfeld, 1994. 458.

¹⁶ Kew & Griggs, 1991. 41

¹⁷ Kew & Griggs, 1991. 41.

¹⁸ Kew & Griggs, 1991. 38.

all the opinions decisions would be made for the community¹⁹. It is recognized that more human effort is contributed to ventures over which they have greater control. The shíshálh, exerting their control effectively became stewards of the region. This stewardship is most likely to occur if the people of the local area have direct decision-making capacity.

These features have in the past contributed to the continuance of the shíshálh within the traditional territory. The criteria suggested will be discussed in relation to how this pertains to water management from an optimal perspective, from the Provincial regime and then as a factor of today's local management.

3.2 Overarching Water Management Considerations

The SIB has adopted the *Sechelt Act* model to achieve greater control over their resources and the ability to manage them. The five criteria derived from indigenous cultural systems (i.e., Local control, commitment to place, closure, ethic of reciprocity, and scope and integration) convey the importance of understanding the resources, their needs, and our place in providing for them, or impacting on them. It is this authors assertion, given the information divulged during various interviews, that for the Band to participate in the management of water resources, there needs to be an understanding of: the existing structure; consideration of the factors driving change, so as to

¹⁹ Peterson, 1990. 41.

mitigate the human impacts; and permanent legislative mechanisms, so that the Band can have a reasonable degree of security that their efforts will be realized.

3.2.1 Science: The Safety Net for 'Economic' Management

With the present water management systems, the criteria that we have moved the furthest away from is that of *ethic of reciprocity*. The overarching philosophy dictating today's management regimes is that of human dominance over nature. Although there is more information about biological systems, where problems arise is as stated with the following:

I see almost all of our problems in terms of management are at the cusp between the science and the social science. Almost everything that is going wrong is going because, for one reason or another, for a long time science controlled everything, did everything.²⁰

Further that,

Degradation of water supplies has been countenanced based on our faith in science and the overriding concern for the economy of our province.²¹

An important reason for concern with today's climate of management has to do with the driving forces that dictate what is important to conserve. To merely preserve a wilderness area for the sake of the area itself does not receive favourable response, nor much allocation of funds. The underlying management premise usually concerns the human benefits can be derived from management. We are yet unable to incorporate readdressing our urban environment to include habitat restoration for areas that have been highly

²⁰ C/G IWMP Implementation (local rep). Interview code 07. Tape recorded transcript. Interview by author. Sechelt, BC. 13 February 1996. 12.

²¹ Chuck Weatherill, et.al.. *Tetrahedron LRUP, Water: Final Report of the Water Subcommittee*. December 1993. 28.

urbanized. The "critical streams" focus on halting the destruction of streams that have some species specific or commercial fishery potential, or is the community's potable water supply, has the effect of creating ghettoization of streams. Chapman Creek is the potable water source for the SCRD piping system. The C/G IWMP represents one example of how this ghettoization can be mitigated. Yet, those streams that are considered having presently no fish, or are not "under the microscope" because they are not the drinking water source, are not given any resources. This sends the message that to enable a development project, one must annihilate the natural production potential of the stream! If city planners and managers were required to develop the habitat potential to a minimum percentage of the land base (e.g., a minimum ratio requirement that relates development to waterways), and development was restricted until that quota was met, then finances would be redirected to replan the landscape. As it stands now, it is merely considered a lost opportunity instead of an unmet obligation. This system pits developers against those people looking to ensure species conservation. Maintenance of a quota, which was part of the intentioned purpose of zoning, can foster a more collaboration planning effort on a district level.

3.2.2 Managing for: The Resource? The Region? Human Needs?

There are two levels of management to consider for water. One level pertains to the resource itself and the multiple demands on it (relating to scope), and the second concerns the area of the resource (need for integration).

Focusing on the resource requires an understanding of the production capacity of the resource and how management will affect other resources (i.e. how establishing a reservoir might affect low flow volumes for fishery considerations). Area-oriented management draws from the resource-orientated management and relates this to the dynamics of the local regional and national demands²². Area-oriented management at a watershed level is often referred to as "integrated" watershed management. Integration is challenging because it requires the incorporation of such factors as²³:

- the need to develop our understanding of larger systems, in terms of the natural settings (biophysical), and human machinations (socio-economic and political-institutional).
- expanding spacial boundaries (tributary-river links and riverine-marine links.
- long-term consequences of actions. Need to address future concerns and have the prerogative to reverse some past commitments.
- the demand for research to close gaps in knowledge of behaviour of human and natural systems.
- that there is pervasive uncertainty and so to some extent management will involve facts and values.
- the increasing debate over the ethical and moral precepts used to govern both the bio-physical and socio-economic systems.

Mitigation of the human effects requires an understanding of the emerging needs so that we may be able to forecast water issues, and facilitate the changes that promote avoidance of stream ghettoization. Some forecasting considerations include understanding shifts in settlement

²² Kenneth N. Brooks and others, ed., *HYDROLOGY AND MANAGEMENT OF WATERSHEDS* (Iowa:Iowa State University Press, 1991) 210.

²³ A.H.J. Dorsey. "SUSTAINABLE DEVELOPMENT PRINCIPLES FOR WATER RESOURCES MANAGEMENT IN CANADA: TOWARDS A NEW CONSENSUS," in *Resolving Conflicts and Uncertainty in Water Management: Proceedings of the 45th Annual conference of the Canadian Water Resources Association*. ed. Dan Shrubsole (Ontario:Canadian Water Resources Association, 1992) 1.3-1.5.

patterns (demographic factors), budgeting restrictions (socio-economic factors), increased water quality filtration and delivery capacity (technological factors), and changes to guidelines that alter present practises in pollution (planning legislation and political factors)²⁴. Park has outlined specific factors that contribute to changes in water demand to be²⁵:

→Demographic Factors

- increasing population to region
- declining birthrate, decreasing number of persons per household
- changing population distribution (i.e., influx from cities, densification of urban population)

→Socio-Economic Factors

- increase in standard of living effects increased intolerance of low water quality and demands for amenity access
- changes in household types (i.e., single family dwelling to apartment style condominiums)
- economic changes (i.e., movement away from heavy industries)

→Technological Changes

- awareness and implementation of technological development such as recycling of waste water
- changing energy situation (i.e., focus moving from coal, to hydroelectricity, to natural gas)

→Planning legislation and Political Factors

- "special area" designations both by zoning and provincial initiatives like the protected area strategy
- grant support (i.e., for community waste reduction, etc.)

These are some of the things that the Band will need to consider in their development of management systems. Several components of planning for water management need to occur. Strategic planning requires and involves projecting capital expenditures and overall policy changes. This stage would involve the setting of objectives by determining what needs

²⁴ Chris Park, "Water Demand Forecasting and the Social Sciences," in *Water Demand Forecasting* eds. Vince Gardiner and Paul Herrington (UK:Norwich, Geo Books, 1986) 26-30.

²⁵ Park, 1986. 27-30.

to be done and looking at the possible scenarios. Investment appraisals are necessary to determine forecasted demand with attendant associated costs, and to analyze laws and bylaws which would support the planned direction (e.g., looking at regulating groundwater access as part of the infrastructure). Doing an appraisal means articulating constraints as well. These constraints may be budgetary, personnel, bio-physical, or political. How this will work on a day to day basis, or in operational planning is the final component²⁶. This includes looking at needs dynamically and temporally (i.e., according to day of the week, month, or season) using whatever techniques are available or feasible. In addition to everyday requirements, it is the peak demands on the resource which will push the need for capital expenditures, and increase operational costs. There is a certain amount of "leakage" with any system, and this has to be factored in as a water needs consideration. This raises a number of issues to be addressed. What to do in times of disruptive events, such as a drought, is a planning concern that should be addressed proactively rather than retroactively when tensions are likely to be high. There is elemental uncertainty in any planning. When looking at community growth there are circular considerations such as, whether the population drive the infrastructure and industry or is the infrastructure developed first to promote industry

²⁶ Vince Gardiner and Paul Herrington, "The Basis and Practise of Water Demand Forecasting," in *WATER DEMAND FORECASTING: Proceedings of a Workshop sponsored by the Economic and Social Research Council*. edited by V.Gardiner and P.Herrington, (U.K.,Norwich, 1986), 7-11.

and thus attract population? The strategies used will determine the outcome. Also, should the future be an outcome of the wishes of the local population and the constraints that the environment places on them?, or should various "expert" opinions be polled to present alternatives that the local community may have no experience with. It is suggested by the criteria set out in section 3.1 that the demand articulation be driven locally with assistance from experts at a higher level.

3.3 Provincial Governance of Water: The Present System

Three of the criteria previously discussed (i.e., *ethic of reciprocity, commitment to place, and local control*), advocate that sustainable management should be more locally defined. Given this, why does the local democracy "allow" the Province based management at all? From a planning perspective, this higher level management can help to coordinate interests occurring in one region with that of another. Two similar ventures within relatively close regional proximity may produce conflict, and two such similar uses may not then be the best use of valuable resources. A provincial system creates the advantage of operationalizing uniform standards for data gathering. This is another means of improving coordination so that sharing of information can promote greater understanding. Regional coordination is important for managing human systems, and additionally is required to address the transboundary issues that are a factor of the physical dynamism of the water resources. Fox (1991) suggests that it be incumbent on the

province to promote natural science research. This is necessary to increase social benefits derived from water, and to provide unbiased expertise that can assist the local management with technical information²⁷. Having suggested that provincial management is a necessary condition, the next part discusses the present legislative structure for management of water in the Province.

3.3.1 Legislative Derivation of Powers for Water Management

The *Constitution Act, 1867* splits the legislative jurisdiction for land and related resources between the Federal and Provincial Governments. Water, as with other resources, have been found to be appurtenant to the land. Thus the division of jurisdictional powers which relate to water is covered under a myriad of constitutional powers as shown in Table 3.1²⁸.

As it is not within the scope of this thesis to discuss how water management by the Band would be affected under every one of these sections. Table 3.1 is included merely to illustrate the various jurisdiction that exist between the Federal and Provincial governments. Water management is complicated by many activities, but the action that has had the most definitive regulation is that of allocating water.

²⁷ Irving K. Fox, "Institutional Design for the Management of the Natural Resources of the Fraser River Basin," in *Perspectives on Sustainable Development in Water Management: Towards Agreement in the Fraser River Basin*. ed., Anthony H.J Dorsey (Vancouver: University of British Columbia, Westwater Research Centre, 1991) 301.

²⁸ British Columbia Ministry of Environment, Lands, and Parks. *Stewardship of the Water of British Columbia: A Review of British Columbia's Water Management Policy and Legislation*, vol. 9 Background Report. 1993. 5.

PROVINCIAL JURISDICTION

- 92(5) management and sale of public lands provincially owned
- 92(10) local works and undertakings
- 92(13) Property and civil rights
- 92(16) matters of local or private nature in the province
- 92A legislative jurisdiction to make laws re exploration, development, conservation, management of non-renewable natural resources, including sites and facilities for generation and production of electricity

FEDERAL JURISDICTION

- 91(12) sea coast and inland fisheries
- 91(10) navigation and shipping
- 92(10)(a) works and undertakings connecting the provinces or extending beyond the limits of the province
- 91(24) Indians and land reserved for Indians
- 91(27) criminal law
- 108 certain enumerated public works and property
- 95 federal and provincial governments have concurrent powers over agriculture

Table 3.1 Sections of the *Constitution Act, 1867* having bearing on water resources under federal or provincial jurisdiction.

The *Water Act* is the regulating statute and this is administered by the Ministry of Environment, Lands, and Parks (MoELP). The structure of this administration is discussed next.

3.3.2 MoELP Structure: Capacity for Aboriginal Water Management

The MoELP was restructured and subjected to extensive down-sizing in 1996. This has resulted in water management essentially conducted through two of the four main divisions. These two divisions, *Headquarters and Regional* of Environment and Lands (see Figure 3.1²⁹), split the responsibilities by having Regional Offices and Resource Stewardship conducting the community coordination, while "Headquarters" manages the compilation factors such as

²⁹ This organizational structure is made from the compilation of the following sources; Robin McNeil in *Runoff* (1997), Pat Shea, MoELP, pers.comm. (1997), Lynn Kriwoken, MoELP, Facsimile (1997), BCMoELP *INTERNET* (1997).

allocation, water quality management, and serving as the data repository.

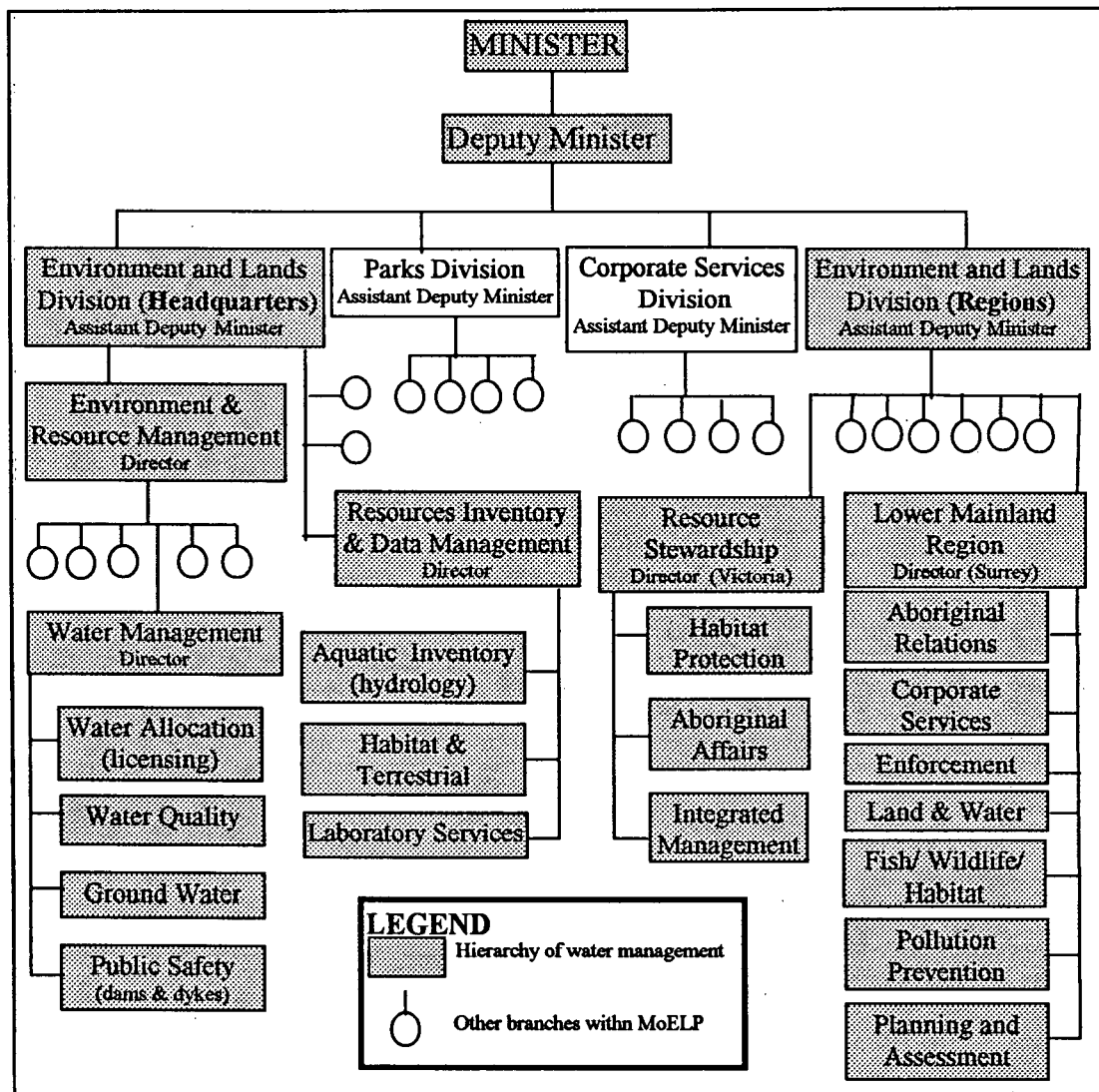


Figure 3.1 Hierarchical structure of the relevant divisions, departments and branches within the Ministry of Environment, Lands, and Parks that are involved with water management.

Management of water through the Provincial government has fallen far short of stewardship within watersheds, in part because of the complexity involved in trying to integrate the social, bio-physical and economic concerns, but also because of the propensity to become advocates of the organizational structure and level at which managers are

employed³⁰.

Figure 3.1 depicts that within the MoELP structure Aboriginal people are considered as a program or department rather than occupying a seat with any decision making capacity. The Province is divided into seven different regions, of which the Sunshine Coast area falls into the Lower Mainland region. Below the level depicted in Figure 3.1 as "Lower Mainland Region" management occurs on a program, rather than an area basis. So the closest that this structure gets to local management, is only when there are people employed under these particular programs that live within the Sunshine Coast area. During the summer of 1997 there were only two people, both from the Fish/Wildlife/Habitat program³¹, that were resident on the Sunshine Coast. In addition, the SIB is affected directly by the duties carried out by the Aboriginal Relations program and Aboriginal Affairs Branch. Their main activity is to assist with treaty negotiation, advancing the Province's side at the Treaty Negotiation table. Institutional design should ideally be constructed in such a way as to effectively manage resources according to the preferences of the public it serves. The extensive and overlapping bureaucratic jurisdictions that presently exist mean the original voice, that of the public, can be lost. This circumstance is referred to as Michel's dilemma:

³⁰ Fox, 1991, 296.

³¹ Pat Shea, Assistant Director, Ministry of Environment, Lands, and Parks. *Personal Communication*. 21 July 1997.

democratic social action is possible only through bureaucratic organization, and bureaucratic organization is destructive of democratic values.³²

The assumption though, is that First Nation's preferences are being solicited and enacted upon in the first place. As Fox notes, preferences of minorities are disadvantaged on two points: first of all the preferences themselves tend to receive limited consideration, and secondly these same groups often lack the expert assistance required to define the alternatives in an explicit fashion³³.

Although a large proportion of the Canadian population recognize that Native people have been deprived of resources which are rightfully theirs³⁴, there is still considerable resistance to the enabling of Native control over their resources, particularly in entrenched bureaucracies. Pinkerton (1992) has examined such a circumstance in Washington State. In the Pacific Salmon treaty process the US side has representatives from the Native community there to defend their issues at the negotiating table. This arrangement arose as a result of the *Boldt Decision*³⁵, where the tribes along that river were allocated fifty percent of the salmon harvest in a compromise to uphold the terms of the treaties made with the relevant Nations. It has been

³² As quoted by Fox, 1991. 296.

³³ Fox, 1991. 296.

³⁴ Fox, 1991. 298

³⁵ Fay G. Cohen "Treaty Indian Tribes and Washington State: The Evolution of Tribal Involvement in Fisheries Management in the U.S. Pacific Northwest," in *Co-Operative Management of Local Fisheries: New Directions for Improved Management and Community Development*, ed. Evelyn Pinkerton (Vancouver: University of British Columbia Press, 1989) 37-48.

with litigation not legislation that many of these efforts of the First Nation community have advanced to any degree. It took ten years for negotiations to begin on how to effect this fifty-fifty split. Getting to the negotiating stage required replacement of the head of the Washington Department of Fisheries, and six of the eight senior people in the agency³⁶. Essentially, a top down bureaucratic house-cleaning was required to enable rights that had been legally upheld by the courts. The courts are an expensive process who's outcome may not find compromise for both the Native and non-Native community. It is important, therefore, to foster those relationships which engender collaborative, and mutually beneficial, arrangements to avoid having to adopt such polarizing measures.

3.3.3 The Water Act: Limitations a Statute Effects on Management

The three main issues of water management, that of quality, quantity, and timing of flow are handled separately within the Ministry, and only as a result of a particular program. There is not, for example, any direct linking between water allocations (quantity), with fish habitat (quantity and timing of flow). Part of this stems from difficulties in prioritizing the economic/social/bio-physical needs, but also this lack of integration arises from the different legislative statutes that determine the mandate for the managing of resources. According to Scott

³⁶ Evelyn W. Pinkerton, "Translating Legal Rights into Management Practice: Overcoming Barriers to the Exercise of Co-Management." *Human Organization* 51. No. 4. 1992. 331.

(1991) the *Water Act* possesses eleven features;

- that it vests water in the province in right of the Provincial Crown,
- the priority for water uses are based solely on priority date of license,
- that the license must be put to the beneficial use under the terms of the license for full volume or the water allocated may be withdrawn,
- that the water volume is appurtenant to the land or mine for which it is applied,
- the licensed water allocation transfers with the land or mine, maintaining the original licensed priority,
- that it deals at length with quantity but does not address water quality,
- the government is bestowed the power to set aside, or reserve volumes of water,
- the Act does not speak to the maintenance of low flow volumes for fish habitat,
- there is no limit placed on the government as to how much water can be licensed from any particular water body,
- there are provisions to support the development of large scale water distributions systems for identified water districts,
- the Act is compact (i.e., issues of quantity, fish habitat, etc. dealt with elsewhere).

There are several ways that the features of the *Water Act* affects the SIB's capacity to be involved in water management. The priority licensing system was established when the mechanisms for accessing revenues was bureaucratically inefficient. Larger revenues are required to develop water infrastructures, but this was administratively prohibitive. Also, it was not until the establishment of the *Sechelt Act* that the Band could apply to have themselves identified as a municipality and consequentially be recognized as a water district. These concerns regarding the priority being based on merely date of application are even broader in scope as expressed by an interview respondent:

It's not just First Nations rights to water, it's also the fisheries rights to water that are poorly addressed under the *Water Act*. You know, the *Water Act* does not address the

optimal use of water from any perspective.³⁷

There is ranking within the Act for water uses, but this is used only to decide between conflict of priority for water licensed on the same source with identical priority dates. Managing water uses by priority allocation (i.e., with licensing) does not take into consideration the area management concerns. This includes the link between freshwater and marine systems. Traditional harvesting of shellfish, and other bottom feeders, are an important concern for the SIB and so increasing this link is essential. Integrated planning to consider marine environments is complicated by having the responsibility for inland waters lie with the Province (administered through the Ministry of Environment), whereas marine and oceans are Federal jurisdiction with the responsibility assigned to the Ministry of Fisheries and Oceans. In addition, the cumulative effects of urban development are increasingly affecting marine water quality. Urban activities fall under several jurisdictions in the planning of municipalities³⁸.

Vesting water to the Crown in right of the Province impinges on the Bands capacity to utilize this resource. However, that the government can set aside a reserve volume of water, presents a large opportunity to protect the SIB's interests in the water and its uses. Under section 44 of the

³⁷ C/G IWMP Development (provincial rep). Interview code 06. Tape recorded transcript. Interview by author. Burnaby, BC. 04 October 1996. 10.

³⁸ R.P. Côté. "Management of Coastal Water Quality and use Problems in Canada." *Canadian Water Resources Journal* (Vol. 18, No. 4, 1993), 386.

Water Act the Lieutenant Governor in Council may reserve all or part of the unrecorded water of the stream from being taken, used, or acquired. It is with a section 44 water reservation that the volume negotiated for the Nisga'a Agreement-in-Principle will be set aside (if ratified). Negotiation of the Nisga'a treaty is a process that has been ongoing since the *Calder* case in 1973. It appears that it will be 1998 before a final treaty may be signed³⁹, whereupon that reservation of water would then take effect. If it takes the same twenty-five years to implement such a strategy in the STT then, in my opinion, the Sechelt would do better to adopt an alternative strategy, by establishing themselves as a water district and developing capital infrastructure now. When a MoELP manager (that deals with First Nations water issues) was asked, given the protractedness of the treaty process, what other options were available to aid in protecting the Sechelt's future interests in water the response was:

I'm not sure that the Sechelt couldn't ask the Province to establish a reserve for them anyway. I just can't guarantee what the response would be...I wouldn't suggest that you need to go through the treaty process to get the reserve. To me what the treaty process is doing is getting some real definition about what is appropriate to reserve. So I don't, right now for example what the Sechelt might want to do is ask us to effectively reserve the entire drainage pending the resolution of the treaty.⁴⁰

This reservation could provide important protection for the Sechelt's interests in water.

³⁹ Joe Gosnell, From notes taken at presentation. University of British Columbia, MacMillan Building. 04 March 1997.

⁴⁰ Ministerial Water Planning & Rights (MoELP). Interview code 08:02. Tape recording transcript. Interview by author. Victoria, BC. 12 March 1997. 10.

Disputes on decisions that would be covered under the *Water Act* are not resolved through the courts but rather interpreted by the Environmental Appeal Board. This internal appeal structure has been criticized as being slow in responding to attempts to redesign water rights⁴¹. With the courts having no jurisdiction, and a water revolt being unlikely, it is expected that the only means to affect changes would be enactment of a new statute to address issues mentioned earlier, or the establishment of a new division of bureaucratic responsibility, one that would empower First Nations to execute water management.

Water management is complicated at the Constitutional level with the authority for water issues split between the Federal and Provincial governments. This, combined with the bureaucratically complex structure of Provincial program management, effectively excludes the Bands ability to have any practical control over the water resources in their territory. There are mechanisms present within the *Water Act*, such as the laying aside of a reserve volume of water, that could, in a small way, enable greater authority. Whether this is realized may very well depend on the Province seeing themselves as representing Native concerns or, instead adopt an adversarial role as a byproduct of the Treaty negotiations. This section has presented some of the

⁴¹Anthony D. Scott, "British Columbia's Water Rights: Their Impact on the Sustainable Development of the Fraser Basin," in *Perspectives on Sustainable Development in Water Management: Towards Agreement in the Fraser River Basin*. ed. Anthony H. J. Dorsey (Vancouver, BC: University of British Columbia, Westwater Research Centre, 1991) 376.

factors pertaining to the Provincial structure and statute for water management that has affected the Bands' capacity to be involved, the next section looks at the local issues.

3.4 Local Management: Many Seats of Government

On the Sunshine Coast there are several townships and smaller communities that have separately developed service infrastructure, and governance bodies. This coast Peninsula is characterized by having developed as cottage communities along the highway. Highway 101 skirts the west side of the Sechelt Peninsula and joins the two main routes off of the Peninsula, both requiring ferry trips. Water access for these various communities was developed independently and differently according to location of the land, and availability of water bodies. The Gibson's area, on the most southern portion, has serviced the community from two large community wells⁴². On the other end of the Peninsula, the various lakes were (and still are) the main community water source⁴³. The Town of Sechelt located on the isthmus of the coast Peninsula derives its water supply from the delivery system developed on Chapman and Gray Creeks. The Town of Sechelt is the resident headquarters of the District of Sechelt, and the Sunshine Coast Regional District (SCRD). The SCR D has, over time become the main water purveyors for the Sunshine Coast. Their capacity to do so is the result of

⁴² Infrastructure Development (Dayton & Knight: Engineering). Interview code 05. Tape recorded transcript. Interview by Author. West Vancouver, BC. 09 August 1996. 1.

⁴³ Westland Resource Group, *Final Report: Sunshine Coast Regional District Electoral Area "A" Lakes Study. Prepared for the Sunshine Coast Regional District* (Victoria BC:Project 91-003, April 1992).

the several licenses they had purchased for water flowing from Chapman and Gray Creeks.

3.4.1 Resource Commodification

A feature of the Water Act was that licenses were to be appurtenant to a land or mine. The purpose of this was to avoid commodifying water. That is, the Province did not want to have the establishment of water brokering. Despite this, where water is scarce, or the water body is fully recorded, the license may become the main bargaining component determining purchase costs in a land transaction. This was certainly the case for the acquisition of lands and infrastructure, that were purchased from Union Steamships Ltd. by the SCRD. The SCRD disputed the asking price. The only property in this exchange they felt had value, was the license. The infrastructure was, according to their assessment, severely deteriorated⁴⁴. This dispute went to arbitration, and the price was determined to be the half-way point between what was being asked, and what was offered. The message here is that these licences are a bargained commodity. To have purchased this "commodity" would have required the Band to be recognized as a water district or municipal district, and reasonable means of accessing revenues for the purchase. This was an opportunity not available to them in the past but certainly a lesson to be heeded for the future.

⁴⁴ Infrastructure development history (local). Interview code 04. Tape recorded transcript. Interview by author. Sechelt, BC. 19 January 1996. 3.

3.4.2 Waterworks, Waterworks Everywhere

The jurisdiction of the Sechelt Indian Government District encompasses, and is limited to, the SIB Lands that are dotted throughout the Sechelt Traditional Territory (STT). Other man made boundaries within the territory include the many waterworks administrative jurisdictions, and government districts. In an effort to coordinate the water demand on the Peninsula, the SCRD has opted to provide a seat for each of the five electoral areas and three municipal government districts shown in Figure 3.2.

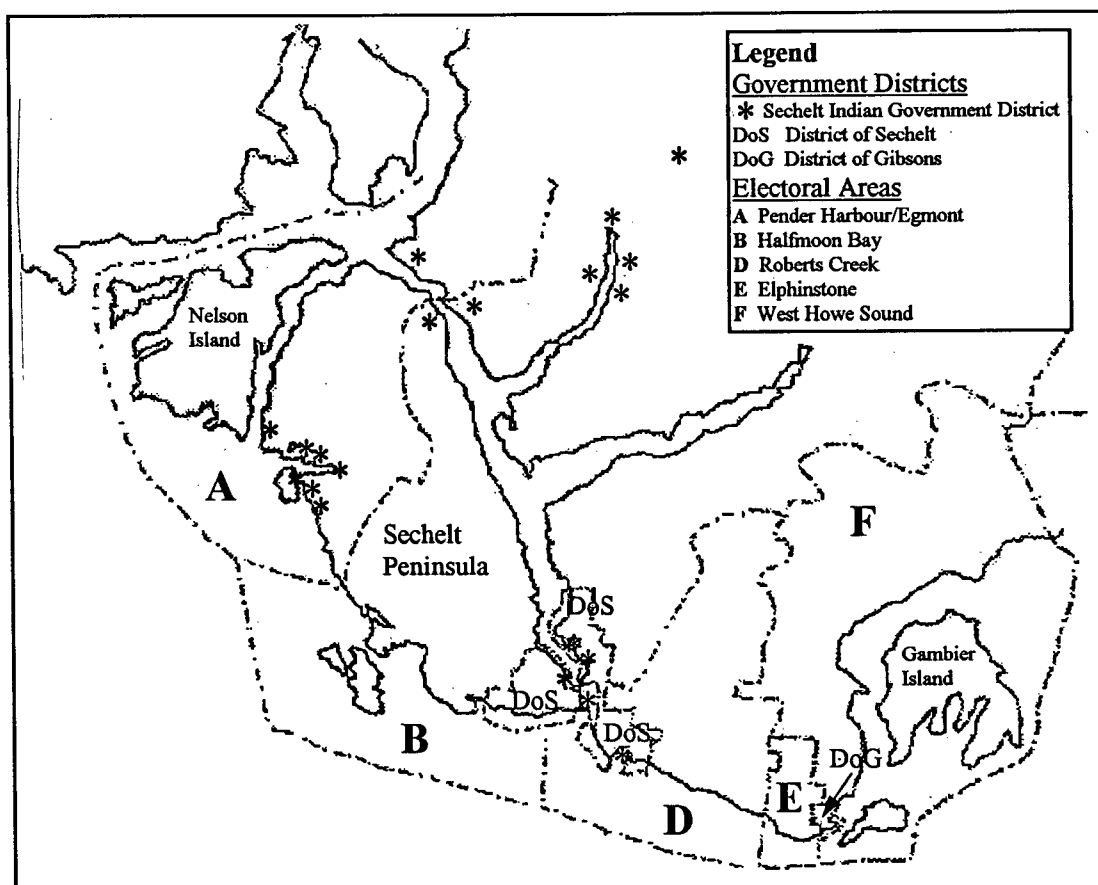


Figure 3.2 Location of the Sechelt Indian Government District on the Sechelt Peninsula in relation to other Government Districts and electoral areas.

Many of the communities located within these electoral areas have developed their own water delivery systems and

possess licenses to support them. There are ten different Band Lands located within Electoral Area A and in this small region there are four separate waterworks organizations operating⁴⁵. The SCRD servicing area extends almost linearly from Secret Cove to Soames Point and Langdale located on West Howe Sound (see Figure 3.3)⁴⁶.

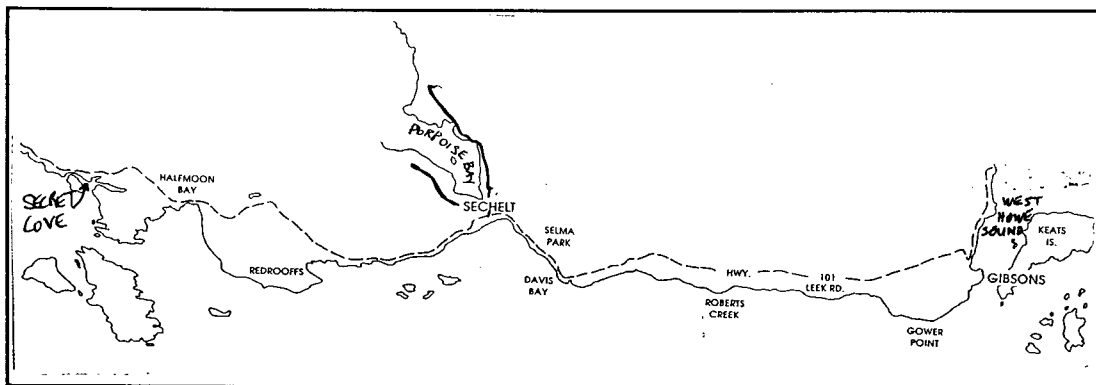


Figure 3.3 General Area covered by the Sunshine Coast Regional District piping system (i.e., from Secret Cove to West Howe Sound, and either side of Porpoise Bay).

Their area has expanded very quickly, in part because water users that had previously relied on a well supply have encountered the problem of their wells running dry⁴⁷, and also several communities have requested that they be incorporated into the system. Both past and present employees of the SCRD, that were interviewed, expressed the view that the SIB and SCRD has worked very closely since

⁴⁵ Westland Resource Group, 1992. These include the Egmont Cove Property Owners Association, Garden Bay Lake Waterworks South Pender Harbour Waterworks district, and the SCRD.

⁴⁶ Sunshine Coast Regional District, *Ten Years of Water from the Sunshine Coast Regional District Water System*, Pamphlet. (Sechelt:SCRD Public Works Department, 1993)

⁴⁷ Infrastructure development (Dayton & Knight: Engineering) Interview code 05. Tape recorded transcript. Interview by author. West Vancouver, BC. 09 August 1996. 10.

SCRD's inception (1967-1968)⁴⁸. Having a seat on the regional board facilitates the integration of interests (described earlier as important for resource sustainability and labelled as *closure*). This Board addresses the *ongoing* concerns of the community as they pertain to the SCRD, but projecting *future* demands is done by the planning board. It is with this activity, that of planning and integrating their future goals, that the Band can opt to ensure that their potential community growth is enabled. As it stands now, the Band may not be able to pursue this option because a seat on the planning board requires a contribution of at least \$40,000⁴⁹. Even if the Band funds this position it is important to remember that, although there are representatives from each electoral area on the SCRD Board, this does not mean that the SCRD speaks for the various separate waterworks associations. This still leaves the task of linking with each of them if, the Band is to protect their interests in the areas water resources and to plan for the future.

Although to some extent the SCRD and District of Sechelt (DoS) deal with a different land base, there is a duplication of services because they are both based in the Town of Sechelt. Some of the duties are placed with one or the other but several functions such as zoning, planning,

⁴⁸ Infrastructure development history (local). Interview code 04. 19 January 1996. 8. SCRD Representative. Interview code 03:02. 07 January 1996. 1. Tape Recorded transcript. Interviews by Author.

⁴⁹ SCRD Representative. Interview code 03:02. Tape recorded transcript. Interview by author. Sechelt, BC. 07 January 1996. 12.

and house-numbering are carried out by both governance organizations. Water distribution is handled by the SCRD, whereas discharge is the responsibility of the DoS, as a consequence the two activities are not tightly linked. As of January 1996 there were discussions underway to explore the amalgamation of the governance structures of the Districts of Sechelt and Gibsons, as well as the Sunshine Coast Regional District. The amalgamation would basically create one governing body for four of the five the electoral areas (labelled B-F in Figure 3.2). For the Band this could establish an efficient "one-stop" means of coordinating their interests. It could also mean that the Bands interests become essentially overshadowed as a result of a larger, self-interested bureaucracy. Which outcome would depend on the authority given to the Band within this new government.

3.4.3 Limits to Growth? Apparently Not

The SCRD system has become the largest service provider for water on the Sunshine Coast and so it is appropriate at this point to give some facts about their operation. As of 1995 the servicing population was approximately 22,000 people⁵⁰, constituting around 7300 connections. This is supported by a system that derives most of the water from Chapman Creek (84.5%), and is supplemented from Gray Creek,

⁵⁰ Dayton & Knight Ltd., *Sunshine Coast Regional District Mountain Lake Storage for 1995 Update of 10 Year Waterworks Plan* for Sunshine Coast Regional District. Sechelt, BC. November 1996. 2-1.

wells, and lake water⁵¹. The mountain lake storage system including both Chapman and Gray Creeks is projected to supply 93% of the water to the system, by the year 2005, to service just over 28,000 users⁵². In 1993, the quantity of water used from this system was 1.879 million gallons per day with the peak consumption reaching 4.5 million gallons per day⁵³. For their own administrative purposes the system is divided into eleven sectors⁵⁴, with the Band having Lands in sectors 6 (Selma Park/Davis Bay), 7 (Sechelt/Tuwanek), and 11 (North of Secret Cove, essentially Electoral Area A discussed earlier).

The method of research used to determine what was involved or what were barriers to water management for the Band was described to be "Explanation-building" (see chapter one). At the outset it seemed allocation was the issue, at least until these comments were stated by SCRD representatives which effected a shift in my conception of the subject:

I don't think we'll ever stop growth on the coast because of limited water supply. There's always ways of providing

⁵¹ Percentage supplied to system in 1994: Chapman 84.5%, Gray Creek 4.0%, Chasterwell 5.0%, Langdale Well 2.5%, Trout Lake 1.5%, Soames Point Well 2.0%, Hotel Lake 0.5%. Ministry of Environment, Lands, and Parks: Water Management Division, *Annual Water Use Report: Client No. 025194 Sunshine Coast Regional District*, Victoria, BC. 1994.

⁵² Dayton & Knight Ltd., *Sunshine Coast Regional District Mountain Lake Storage for 1995 Update of 10 Year Waterworks Plan* for Sunshine Coast Regional District. Sechelt, BC. November 1996. A-4, 2-1.

⁵³ Chuck Weatherill, et.al., *Tetrahedron LRUP, Water: Final Report of the Water Subcommittee*. December 1993. 7.

⁵⁴ These are listed as; 1)North Road-Langdale, 2)Gibsons, 3)Lower Elphinstone, 4)Roberts Creek, 5)Wilson Creek-Roberts Creek West, 6)Selma Park-Davis Bay, 7)Sechelt-Tuwanek, 8)West Sechelt, 9)Halfmoon Bay-Sargeant Bay, 10)Secret Cove, 11)North of Secret Cove. Dayton & Knight Ltd. *Sunshine Coast Regional District Mountain Lake Storage for 1995 Update of 10 Year Waterworks Plan, DRAFT* (Sechelt, BC. 1996) A-3

water. You know. We could be de-salinizing.⁵⁵

It's the amount of money that you want to spend to develop a water source.⁵⁶

This runs counter to several concerns expressed at a symposium⁵⁷ on B.C.'s waters. Actions advocated from the concerns included: the need for a comprehensive inventory of the water resources, the need to determine low flow volume for fish populations, revisiting the authority given to BCHydro to determine and regulate flow of streams, and the need to start looking at a strategy that considers water as a limited resource. One strategy was to consider the resources of the Province from a "limits to growth" strategy. That is, rather than just continue with the ideology of unlimited development in a "sustainable" manner, we adopt the approach of realizing there are bounds to development and the resources we have available to us are limited⁵⁸. Judging from the feature of the Water Act wherein the Province is able to, and does, license more water than the water body possesses, we are operating with a "no limits" approach. Assuming this approach, the problem then moves to control over access and development of water

⁵⁵ SCRD Representative. Interview code 03:02. Tape recorded transcript. Interview by author. Sechelt, BC. 07 January 1996. 20.

⁵⁶ SCRD Representative. Interview code 03:01. Tape recorded transcript. Interview by author. Sechelt, BC. 07 January 1996. 20.

⁵⁷ *New Streams of Understanding in B.C.'s Troubled Waters: Securing the Future of B.C.'s Troubled Waterways/Watersheds/Groundwater*, Organized by Capilano College Environmental Science Class of 1997 (Vancouver, BC, March 06 1997).

⁵⁸ Gordon Wilson MLA, "Keynote address," Symposium address at *New Streams of Understanding in B.C.'s Troubled Waters: Securing the Future of B.C.'s Troubled Waterways/Watersheds/Groundwater*, Organized by Capilano College Environmental Science Class of 1997 (Vancouver, BC, March 06 1997).

systems. As implied by the previous quote, the consideration now becomes a matter of economics.

The Band receives domestic and fire supply water without concern as this is the designated priority for the SCRD. Difficulties arise when priority is determined for commercial volume water users. Some commercial use of water is minimal and so is not greatly affected by variability in water flow. But other operations such as a golf course or gravel mining operation would require water in vast quantities. The Sunshine Coast Regional District has prioritized the beneficial uses for the water that they derive from their licenses. The strategies employed by the SCRD has been to set out in the terms of agreement for water delivery to a commercial operation that the water supply for the operation may be shut off with twenty-four hours notice. This means that the priority of domestic and fire supply will not be jeopardized by the development of commercial ventures in the area. For the commercial user, the short time-frame with which to respond, and the uncertainty as to when this will happen presents the water purveyors as being capricious. As a course of business, developing reservoirs and accessing other sources such as importing water or drilling wells becomes a necessity. Although industrial consumers projections can be optimistic, failure to provide water for budding industrial growth has been expressed⁵⁹ as

⁵⁹ George Archibald "Demand Forecasting in the Water Industry," in *Water Demand Forecasting : Proceedings of a Workshop Sponsored by the Economic and Social Research Council* eds. V.Gardiner & P.Herrington. (U.K., Norwich: Geo Books, 1986) 20.

a dereliction of duty. Certainly the cost of establishing and conducting business would be much less if they were to have access to reliable and ready access to a water source. Barring this, the ability to develop economic ventures would have to factor into water infrastructure costs. The capacity for the Band to develop economic ventures has been affected by the fact that the SCRD holds the priority licenses for water and also the SCRD determines the expansion rate of the local system. In the circumstance presented, although water supply may have been "unlimited" in its potential, the purveyor is limited in its capacity to react.

3.4.4 Incorporating Unforeseen Objectives

Integrating community growth plans for water has involved the various communities developing plans. These plans indicate where the services are, determining present zoning (and from this projecting future density), and then with this information calculating the volume of water required for the future. This strategy has left the SCRD in a bind due to the shift in concern regarding the maintenance of fish habitat. If there is unlimited water then the matter must be a shortfall in projecting need and in coordinating objectives. This was expressed by an SCRD representative:

Nor [does it take]... into account limiting factors that control our regional water system. How much water is in the Chapman Creek watershed? We haven't really [anticipated this], we've assumed with the ten year plan that the water will be there. That's why we're so concerned about late season flows, vegetation cover. That's why we're so concerned about our retention dams. That they work out. That's why we're somewhat surprised that the low flow issues weren't addressed at the time the ministry of the province gave us our water licences. And now its kind of viewed, in a crude way, as a bit of buy back by the province. They gave us these water licence, we applied for them. And now the province, who's responsible for fish habitat and aquatic

resources, they're saying hey, we need that water back. Yet, we've gone ahead and done all this planning for our community on that. So we're going, we've got this problem on our arm because we've got all this demand now. But now the Province is saying well we've got this low flow concern. Well why didn't they accommodate that at the time? Why didn't they say okay you can have x amount of gallons, but we've reserved three cubic metres or five cubic metres a second for low flows?⁶⁰

This statement highlights the governance problem. SCRD wants jurisdictional control of the water resources but defer the overall responsibility to higher levels of government for fish habitat. The internal adjudication structure for disputes relating to the *Water Act* does not allow for any concrete definition as to the extent of authority conferred upon the acquisition of a water license. This combined with the reticence on the part of the Provincial government to unilaterally address low flow requirements has promoted the perception that a water license equals a right to water. Action on the part of the Province which counter this perception is therefore considered irresponsible management. The SCRD, as water purveyors, has a responsibility to provide water that meets certain quality standards, but are under no obligation to provide any particular quantity. Their only obligation for quantity is that, if the water is available, the diverted water be used beneficially. Since the SCRD was licensed more water than would naturally flow, they developed (and continue with plans to do so) mountain storage structures and built various reservoirs (balancing and system storage). The revenues expended to increase

⁶⁰ SCRD Representative. Interview code 03:02. Tape recorded transcript. Interview by author. Sechelt, BC. 07 January 1996. 15-16.

potential⁶¹ flow are considered an investment to support the human habitation. The over-arching ability of the Province to appropriate the benefits of this investment, is a disincentive to investment. On the other hand, maintaining that it is solely the responsibility of the Province to deal with aspects that occur as a consequence of altering the ecosystem (i.e., in this case it is a proposed opportunistic fishery) is an open invitation for intrusion by the Province. This dilemma can be overcome by altering the present management regime for water. Promoting a coordinated watershed management structure derived from the local interests, that is mandated the responsibility of promoting the production capacity of the ecosystem would be one means of altering the present dilemma. This would differ from the present system whereby, there would be at the outset, the acknowledgement that there is a system alteration occurring, and that this alteration must promote rather than delete the ecosystem potential. Scott contends that:

The water-rights system is so simple, and so widely used internationally, that there are no insuperable obstacles to placing it under district, or regional boards.⁶²

The SCRD's experience should inform the Band of the risk inherent in the present management structure to developing resource augmentation systems. This uncertainty is a factor which could affect their capacity in self-governance as it

⁶¹ The word potential is used here to address the uncertainties of regional hydrology. The system undoubtedly increases flow as long as there is precipitation to recharge the system, but in the unlikely event that a drought should occur the flow may only be maintained or even diminish.

⁶² Anthony D. Scott, 1991. 377.

pertains to water.

3.4.5 Legal Responsibility versus Authority

The Ministry of Health has the responsibility for monitoring and enforcing water quality in public distribution systems. The water purveyors are issued standards as their legal requirement for water quality. It is unfortunate for the water purveyors, that they rarely have the capacity to control activities around the water source that could impinge on the quality of water. Tree harvesting can increase siltation in the system, locating roads riparian to a water body increases the potential of large-scale spillage and pollution run-off, and recreational activities can introduce transmittable diseases. Yet, excluding all of these activities from all water bodies that would potentially be used for domestic consumption is just impossible. Maintaining quality standards for waters from the Chapman and Gray Creeks has required considerable lobbying by the SCRD. This combined with public reaction to the alteration of favoured recreation areas was the driving force for the implementation of a watershed management process⁶³. Despite all of these efforts the SCRD, legally mandated to supply potable water, was given one (out of ten) representative "vote" on the Integrated Watershed Management Planning Team. This process and the issues are discussed at length in the next chapter, but the lesson is that, getting involved in water distribution will introduce a factor of

⁶³ C/G IWMP Development (Provincial rep). Interview code 06. Tape recorded transcript. Interview by author. Burnaby, BC. 04 October 1996. 5.

complexity that could prove to be administratively prohibitive. So far this discussion has involved externally imposed structures and legislation affecting the SIB; the next section looks internally, to how the Band governs with respect to the Band and its resources.

3.5 Development of SIB's Government Model

The leaders of the Sechelt Nation have long been versed in what the *Indian Act* empowers governments to do and more importantly what it did not enable the Sechelt Nation to do. In the early 1970's the SIB formed an alliance with the Squamish and Musqueam to redress the *Indian Act* with little return for their efforts⁶⁴. For the next fifteen years SIB focused on capturing effective economic local control by lobbying with the ever-changing ministerial faces to enact relevant statutes⁶⁵, educating the people of the surrounding districts as to how this would benefit them⁶⁶, and negotiating with the province to enable new jurisdictional compromises⁶⁷. On March 15, 1985, seventy percent of the resident Band members voted in favour of the drafted legislation, and in October 1986 the *Sechelt Indian Band Self Government Act* was proclaimed. It took another two years for the provincial companion legislation to be adopted, culminating in the official inauguration of Sechelt

⁶⁴ Sechelt Indian Band. "Submission to the Human Rights Commission," in *Sechelt Indian Band Self-Government Information Package*. (Sechelt Indian Band: Unpublished, 1996) 3.

⁶⁵ Ibid. 4.

⁶⁶ Hyatt, 1986. 7.

⁶⁷ Taylor & Paget, 1986. 14.

Self-Government on June 24, 1988⁶⁸. This model does not constitutionally entrench self-government, it was never meant to. This model works within the existing constitutional framework by the creation of a delegated federal body, the SIB Council, and empowering this body to make laws, manage, and conduct administrative matters involving the Sechelt Band Lands.

3.5.1 Legislative Framework for Transfer of Powers

For the following discussion it is important to understand that the legislature can delegate power to a lower authority, but inter-delegation, that is, the administrative transfer of powers from the Provincial to Federal, or Federal to Provincial bodies is beyond their capacity (i.e. would be unconstitutional)⁶⁹. The reason this understanding is necessary is because the Sechelt Self-Government has been called a "municipal" model of self-government, often giving the mistaken impression that the province of B.C., having jurisdiction over municipalities, has usurped authority previously possessed by the Federal government. Constitutionally it is beyond the provinces ability to do so, and this has not happened.

Increasing SIB control over Sechelt lands, and appurtenant water, involved changing the present arrangements under sections 92(13) within provincial

⁶⁸ Taylor & Paget, 1988. Appendix.

⁶⁹ Tara Wintjes to Graham Allen. "Memorandum re: Constitutionality of Section 28 of the Sechelt Indian Band Self-Government Act," in *Sechelt Indian Band Self-Government Information Package*. (Sechelt Indian Band: Unpublished, 1996) 2.

jurisdiction and 91(24) of federal jurisdiction. Section 91(24) is administered via the *Indian Act*, and the administrator, mentioned earlier, is the DIA bureaucracy. The SIB leaders opted to reduce the "middle-management" aspect of this arrangement by acquiring duties that would normally be carried out by DIA. Several factors proved to be barriers for the Sechelt to fully participate in the local economy and Band development, such as the inability to utilize the land base for securing loans, provincial taxation of non-Native members for services they were not receiving, and controlling Band membership. If they were only dealing with the Federal government the Band could have merely obtained Title to the lands. However, the Band wanted the opportunity to attract economic investment, and felt that the employment of the B.C. Land Registry and Assessment System would provide the necessary security. This required a new relationship than presently available under section 92(13) of the *Constitution Act* with the Province executing legislative changes. What resulted was the creation and enactment of the *Sechelt Indian Government District Enabling Act* (hereafter the *Enabling Act*).

With the *Sechelt Act* a transfer of title in fee simple from the Federal government to the Sechelt Band members was negotiated⁷⁰. In addition the SIB Council was established as

⁷⁰ David Hyatt, 1986 in *Self-Government Package* 1996. 9.

a legal entity⁷¹. This Council is regulated by the SIB Constitution which was approved and instated by a Band referendum. All of the lands transferred are defined in the *Sechelt Act* to comprise a newly created district called the Sechelt Indian Government District (SIGD) with the administrators for the SIGD being the SIGD Council (also bestowed with full capacity of a legal entity). Figure 3.4 presents the interrelationships between these various local administrative entities managing resources on and around Band lands.

In addition to recognizing the SIGD and avowing the power for the Council to enact laws of the province, the *Enabling Act* confers municipal benefits to the District Council and gives the Lieutenant Governor in Council the capacity to suspend taxation by the province that would be collected under the *Municipal Act* and the *Taxation (Rural Area) Act*. The *Enabling Act* provides a voice for non-Native members within the SIGD by legislating an Advisory Council made up of non-Native people resident on Sechelt lands. With most municipalities the capacity to make laws for its citizens is derived from the powers of the Province and therefore falls under Provincial jurisdiction. The difference here lies in that the SIGD may create laws equivalent to those of the Province, which is referred to as

⁷¹ This includes the capacity to; enter into contracts or agreements, acquire and hold property or any interest therein, and sell or otherwise dispose of that property of interest, expend or invest moneys, borrow money, sue or be sued and do such other things as are conducive to the exercise of its rights, powers and privileges.

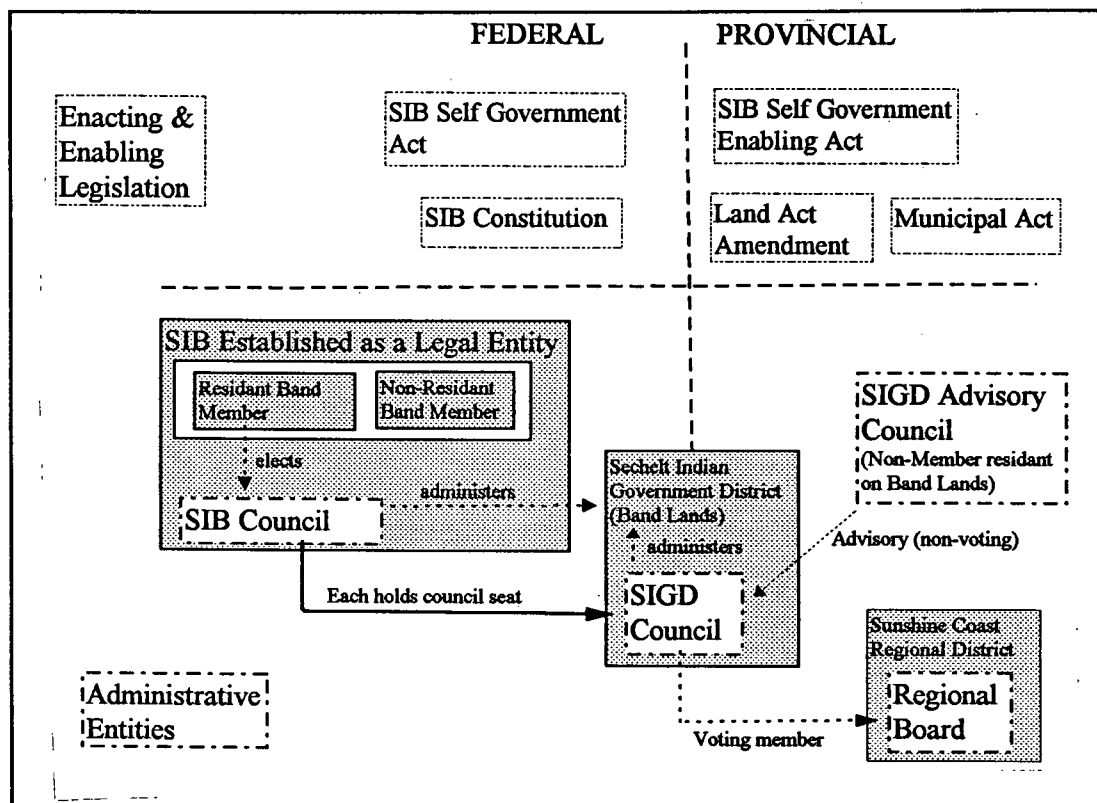


Figure 3.4 Flow chart depicting legislations enacting and enabling the local administrative entities that effect decisions regarding resources on and around Sechelt Indian Band Lands.

referential legislation, but laws created by the Province do not automatically become those of the SIGD⁷², (i.e., the laws are not anticipatory) (see Figure 3.5).

This is the distinction between the Sechelt's self-government being a "municipal model" versus a municipality. Legislative enactments (i.e., development of *Land Title Amendment Act, 1988* and the *Enabling Act*) enabled the SIGD to be incorporated into the Sunshine Coast Regional District (SCRD) service area as a "municipality" with the attendant water servicing administered via the SIGD to residents.

3.5.2 Servicing Band Lands

⁷² Tara Wintjes, 1987 in *Self-Government Package* 1996. 5.

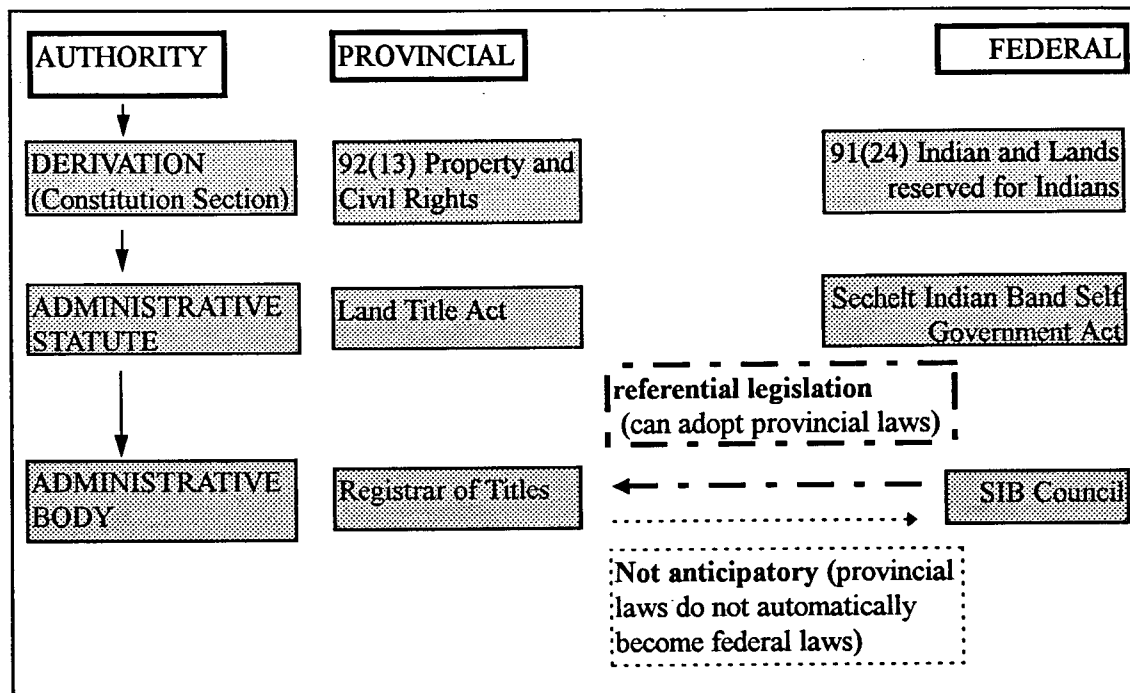


Figure 3.5 Depiction of where the Sechelt Indian Band derives their power to adopt provincial laws. The Band can adopt provincial laws, but laws enacted by the Province do not automatically apply to band lands.

The Band has opted to utilize the *Municipal Act* as the regulatory statute for development on Band Lands⁷³. Services usually provided by a municipality are administered through the SIGD with service provision arrangements integrated to the surrounding local community. The SIGD administers and provides; general government, traffic control laws, community planning, recreation/culture, economic development, and sewerage collection. Services provided by the SCRD within the SIGD on the peninsula include; sewerage treatment, building inspection, water distribution and water supply. Other services and their providers are; policing via provincial RCMP, fire protection from the Sechelt Fire Protection District (SFPD), and waste collection is done

⁷³ Taylor & Paget, 1988. 32

through a private company⁷⁴.

The Band's water needs are met to the extent that they do not conflict with SCRD's aforementioned priorities and it is solely within the SCRD structure that Band development occurs. The Band's involvement with water management historically involved the diversion of Chapman Creek to meet the community needs, and today they continue to maintain the face of that interest with their participation on the SCRD board and involvement in the IWMP on Chapman and Gray Creeks.

3.5.3 The Power to Make Changes

The SIB's capacity to legislate water uses are conferred from the Federal Government through the *Sechelt Act* and from the Province through the *Enabling Act*. The *SIB Constitution* regulates the actions of Council as they carry out the capacity conferred by these two Acts. Table 3.2 lists the relevant sections of these three pieces of legislation which may have bearing on water. With the *Sechelt Act* the Band has acquired the control over administration of Band resources (section 4) and the power to make laws for the protection, preservation, and management of these resources (section 14). The general Laws of Canada and British Columbia apply except if these laws are inconsistent with Band Laws. (sections 37 and 38). It would seem from looking at the *Sechelt Act* in isolation that the Band has acquired the capacity to act unilaterally in

⁷⁴ Taylor & Paget, 1988. 40.

Table 3.2 Sections which may have bearing on Water Resources for two statutes, and regulating Constitution, which enable the Sechelt Indian Band Self-Government.

Sechelt Act	Enabling Act	SIB Constitution
(4) Enables the SIB to obtain control over administration of the resources and services available to members		
(6) Make the Band a legal entity		
(14) Confers the power to the Band council to make laws regarding; a)access/residence on Sechelt lands, b)zoning and land-use plans, c)expropriation, e)taxation, j)preservation, protection, management(p/p/m) of natural resources on Sechelt Lands, k)p/p/m of fur-bearing animals, fish and game on Sechelt Lands.	(5) Suspends taxation under the <i>Municipal Act and Taxation (Rural Area) Act</i>	
(17-18) Gives the SIGD jurisdiction over all Sechelt Lands and legislates it to be a legal entity.		
(21) Provincial approval of SIGD (B.C. Order in legislature required)	(1) Lieutenant Governor in Council recognized the SIGD Council as the governing body. (2) Creates an Advisory Council.	
(23) Transfers Fee simple title to Band.		
(24) Fee simple title subject to; a)BC Indian Reserves Mineral Resources Act, b)OIC 1036 Amendment & 1055 c) any interests and or Mortgage lease occupation permit, COP's or other grants.		
(26) Band has power to dispose of Sechelt Lands as determined by constitutional procedures.		
(27) Land kept within the <i>Indian Act</i> Reserve Land Register.		
(28) The Council can make laws authorizing the registration of Sechelt Lands with B.C. laws.	(4) The Lieutenant Governor in Council can declare that the District council is entitled to municipal benefits	
(31) Sechelt Lands retain <i>Indian Act</i> section 91(24) reservation.		
(35) Laws of Band supersedes <i>Indian Act</i> .		
(37) General Laws of Canada apply, except in inconsistent with Band Law.		
(38) General Laws of B.C. apply, except if inconsistent with any treaty, Act of Parliament, the Band constitution or Band law.	(3) Laws and bylaws enacted by the SIGD Council, as per a municipality, shall be deemed to have been enacted from the Act to be of the Province	(3, 2) "The control over the administration of all Natural resources on in and under the Sechelt Lands is vested in the Band <u>subject to the existing rights thereto, if any, of the Province of British Columbia.</u> "
(39-41) This Act is subject to <i>Indian Oil and Gas Act</i> , <i>B.C. Indian Reserve Mineral Resources Act</i> , and the <i>Indian Reserves Minerals Resources Act</i> .		(3, 1) The Band has full power to dispose of rights and interest of Natural resources subject to sections of <i>Sechelt Act</i> (24,35,39,40,41)

determining the laws, and from this, the use of resources on Band Lands. The Province was opposed to enabling such a breadth of powers. It was for this reason that section 3,2 was included in the *SIB Constitution* when drafting the Sechelt Self-Government legislations. Section 3,2 subjects the administrative control for resources to the existing rights of the Province. The debate continues over whether this section limits the powers of the Band. The terms of this debate revolve around whether the Province has any rights on Band Lands. The Province has vested all rights to water with the Provincial Crown. The question still outstanding is whether the Province has rights to water over lands that have not been unburdened from the original Title, that is the Aboriginal Title. The SIB has opted to adopt the laws and standards of the Province. However, for the purposes of administering water resources, they are not limited by these actions.

3.6 Summary

Chapter two focused on articulating the debate surrounding Aboriginal Water Rights, and the basis for their management role. This chapter has then looked at how this role is affected by water management construction within the Province. The SIB chose to adopt a self-governance structure that would integrate (not assimilate!!) into the local governance so as to improve their capacity to manage the Band lands and resources. Criteria adopted from the Coast Salish communities suggest that the Sechelt Nation has had some experience in dealing with resource management.

Management of water resources has become complex as communities strive to deal with change. The faith placed on science to solve resource management issues has minimized the adoption of a "limits to growth" collective ethic. This chapter has defined two functional levels of management. At a broader scope there is Area management which is necessary to incorporate the complex socio-economic, biophysical, and legislative factors. Then there is the level of managing for the particular resource itself. This involves understanding the mechanics of water to determine how our involvement may affect the resource, as we look to meeting societal demands.

Regional coordination at the Provincial level is suggested as necessary: for management of human systems, to deal with various trans-boundary issues and, to promote the general societal benefits to be derived from water resources. The complexities introduced as result of the Provincial 'program' structure and from the constitutional split of water management responsibility, has created a bureaucratically self-aggrandizing management regime. The result is that Provincial managers have control over determining the issues, and pronouncing outcomes, usurping the ability for the local community to enable their objectives.

In comparison to the surrounding non-Native community, the SIBs capacity to participate in the Provincial 'priority licensing' regime was administratively prohibitive. The Water Act is a piece of Provincial legislation, that for the most part, is concerned with allocation of water for

consumptive uses. The priority of uses is only considered for two licenses established on the same date. The Bands ability to address their non-consumptive water demand concerns (e.g., fisheries habitat and flow considerations) is affected by the fact that the Provincial government is not limited in the amount of water they can license from any particular water body. The management principle operating here is that, with the construction of water storage facilities, the present volume is not necessarily the total capacity of the stream. Without a pre-licensing inventory, the ecological production capacity of the stream is subject to the priorities set by the various licensees. Avoiding water resources commodification, the purported purpose for making licenses appurtenant to a piece of land or mine, has not been actualized. Licensed administrative control over water has empowered the SCRD to dictate the rate of development, particularly with respect to industrial water needs. The Bands ability to participate in the development on the Peninsula is also affected by the myriad of governance water agencies that exist. Water quality standards are dictated to the purveyors of distribution systems. These same organizations are limited in their ability to control activities that affect the deterioration of water quality. This is an administrative concern that the Band needs to address when deciding what their future involvement in water management might be.

The *Sechelt Act* has created a delegated governance authority that has enabled the capacity of the Band to make

"Federal" laws, and adopt Provincial laws to manage water resources over Band lands. This would empower the Band to create laws that could link the water issues such as allocative volume with effluent discharge. There are questions still outstanding though as to whether this capacity to make laws would supersede laws and legislation created by the Province regarding water regulation on Band lands.

If the Band is to plan their communities growth, and therefore forecast their requirements, it has become evident that there is need for greater involvement in the present system. Accessing licenses, setting aside water volumes and participating with Provincial management are some of the ways to mitigate the erosion of their capacity to actualize community growth aspirations.

Whatever the direction, maintenance of the good working relationship the SIB has established with the local government on the Coast Peninsula has been, and will be the strongest means of fostering collaboration to promote sustainability.

Chapter 4

THE CHAPMAN/GRAY INTEGRATED WATERSHED MANAGEMENT PLAN:
INCREASING SHÍSHÁLH'S CAPACITY FOR MANAGEMENT?

4.0 Introduction

During interviews, or as people were being solicited as respondents for this project, the main query was often, What is meant by the capacity to actualize self-government? Does this mean building parallel governance infrastructures? Does this mean getting involved with monitoring? Or what?

Alternatively, to what extent and means does the Province intend to facilitate First Nations in the planning and management of their water, stated as a proposed objective:

The provincial government recognizes aboriginal title and rights to self-government. Realization of these rights will include planning and management by First Nations for their water.¹

In fact there is no answer for these questions because negotiation via the treaty process has yet to define that extent and therefore the capacity of the Band's ability to be involved with water management. This chapter looks at what 'capacity' exists as reflected by what is happening in the Sechelt Traditional Territory (STT). Water management continues to occur within the STT, and one comprehensive process, the ongoing *Chapman/Gray Integrated Watershed Management Plan (C/G IWMP)*, has attempted to include the Sechelt Indian Band (SIB) in an effort to mitigate the factors affecting the water resource. This process has been

¹ British Columbia Ministry of Environment, Lands, and Parks. *Stewardship of the Water of British Columbia: A Review of British Columbia's Water Management Policy and Legislation*, vol. 4 *Water Management Planning*. (Province of British Columbia, 1993) 8.

reviewed to determine the realized capacity afforded the band by this particular management authority.

4.1 The IWMP: A Management Authority

The first thing considered is what makes the C/G IWMP a management authority. The IWMP framework was set as the means of organization to control activities affecting community water supplies (details are provided in Appendix H, a memorandum of understanding (MOU), of a 1980 provincial government document²). By 1980 there were competing uses within watersheds, thus an MOU was struck to initiate a process if need was demonstrated. Although Chapman and Gray Creeks provide the main supply of water for the Sunshine Coast, petitions from the Sunshine Coast Regional District (SCRD), the main water purveyors, to have a moratorium on activities that were contributing to the deterioration of water quality went unheeded³. Continued frustration with forest management practises that were occurring in the recreation areas as well as those affecting water quality spurred the SCRD⁴, environmental, and recreation groups to pressure the Provincial Government to invoke the MOU for

²Guidelines Task Force. "GUIDELINES FOR WATERSHED MANAGEMENT OF CROWN LANDS USED AS COMMUNITY WATER SUPPLIES, APPENDIX H: Policy and Procedures for Community Watershed Planning. November 26, 1984," in *Chapman and Gray Creeks Integrated Watershed Management Plan (Draft)*. ed. Marion Jamieson (Ministry of Environment, Lands, and Parks:BC Environment) February 1994. Appendix 2.

³Peggy Connor to Ministry Of Environment. Letter. Sunshine Coast Regional District Office files: Environmental Management - General. Chapman/gray Creek Watershed File # 5280016. (Sechelt).

⁴Chuck Weatherill, et.al., *Tetrahedron LRUP, WATER: Final Report of the Water Sub-Committee*. December 1993. 5.

managing community watersheds⁵. This process and subsequent plan is voluntary, that is, there is no legislative requirement for participation in the planning, or adherence to the plan outcome, yet the local political pressure got the ball rolling for the implementation of the process and it appeared that if you were not "on the train you would be under it". Traditionally provincial resource management has utilized a fairly technocratic approach where an expert assesses the situation and determines the management strategy⁶ However, the IWMP called for a more inclusive framework of decision-making. Without the initiation of this process members of the local community were unable to alter or coordinate resources uses, but because inclusive management is not part of the dominant paradigm⁷ the process was established with reluctance. The framework stipulates that this process has to be initiated through the lead agencies of either the Ministry of Forests (MOF), or Ministry of Environment (MOE). After the C/G IWMP initiation planning team members were delimited, negotiation got under way and the management direction determined. In chapter one a water management authority was defined as, "groups or individuals that presently have the power to give

⁵ C/G IWMP Development (Provincial rep). Interview code 06. Tape recorded transcript. Interview by author. Burnaby, BC. 04 October 1996. 2.

⁶ C/G IWMP Development (Provincial rep). Interview code 06. Tape recorded transcript. Interview by author. Burnaby, BC. 04 October 1996. 12.

⁷ C/G IWMP Development (Provincial rep). Interview code 06. Tape recorded transcript. Interview by author. Burnaby, BC. 04 October 1996. 12.

orders or take action over the control and organization of water resources". Where previously the SCRD was unsuccessful in altering factors contributing to deterioration of water quality, the initiation of the C/G IWMP enabled some local control over the mitigation of those factors. The power to affect those changes did not arise from any one group or ministry but rather changes were enabled as a result of this larger planning process. The C/G IWMP enabled local individuals to take action over the control of the watershed and thus water, and for this reason its implementation is examined as a management authority. The next part of the thesis reviews the factors of the construction imposed by this 1980 MOU which affect the capacity or capability for the Sechelt Nation to actualize self-governance as it pertains to water.

4.2 Representation: Limitation from Construction

The structure for this planning process was established in 1980 and therefore, by design, representation on the planning team reflected the priorities of the Province up to that time. Increasing the First Nation's capacity in management was not one of those priorities. As any plan is a product of the planners, those chosen to be at the table is as important as what is discussed. If the outcome can be discerned from the members doing the planning, the next question is whether to endorse the plan by the mere fact of participation. A third matter demonstrated with the C/G IWMP is that compartmentalized mandates are advocated and supported.

Of those signing onto the C/G IWMP document⁸ there were three whose primary concern included water quality, quantity, and timing of flows (i.e., representatives for Ministry of Environment, Lands and Parks:Water Branch, the Sunshine Coast Regional District, and Ministry of Health), three focusing on forestry (i.e, Ministry of Forests, and two industry representative), two whose interests include fish and wildlife (i.e., a Federal fisheries person for Department of Fisheries, and the Ministry of Environment, Lands, and Parks:Fish and Wildlife), one concerned with mining interests (Ministry of Employment and Investment:Energy and Mineral Division), and one person that was required to focus on all concerns simultaneously (i.e., the SIB representative). While it was the local environmentalists that had driven the process to begin with, they were not given a seat at the table and the meetings were restricted to those IWMP members who had been asked to participate⁹. The SCRD had expressed their desire to have logging operations stopped within the watershed, but with three of the ten C/G IWMP planning team members representing forestry this was unlikely to happen. This reality was questioned by the water subcommittee involved in the Land and Resource Use Plan (LRUP) for a Class "A" park in this area (this park designation area is commonly referred to as the "Tetrahedron") when they wrote:

⁸ See Appendix 2.

⁹ C/G IWMP Development (Provincial rep). Interview code 06. Tape recorded transcript. Interview by author. Burnaby, BC. 04 October 1996. 5.

[S]ince the IWMP planning team must use consensus to reach decisions the inclusion of two forest industry representatives on the planning team indicates that a decision to exclude future logging from the watershed is virtually impossible. Is it realistic to expect that timber industry representatives have a meaningful role to play in determining the best use for a community watershed? Does this enable an "objective" determination based on the stated IWMP objective? Is this in the best interests of water consumers?¹⁰

The importance that was placed on forestry is demonstrated by the fact that it is one of the two lead agencies identified for the initiation of this process. If the priority, and reason for the initiation of the process, was the protection of community water supplies the question which looms is, would it not make more sense for the two lead agencies to be the Ministry of Health and Ministry of Environment? The resistance to changing forest harvesting regions and practises made this a protracted process, even with the *Community Watershed* designation. The present structure emphasizes and reinforces the reality of political tenure afforded the forest industry in the Province. This political entrenchment therefore is one of the factors that affects Sechelt's self-governance capacity in relation to water.

A second issue regarding representation was whether to validate a process that, by construction, does not significantly improve the community's management options, and thus continuously puts the Band in a reactive position versus otherwise developing other effective management opportunities. Various activities occur simultaneously

¹⁰ Chuck Weatherill, et.al., *Tetrahedron LRUP, WATER: Final report of the Water Subcommittee*. December 1993. 22.

within First Nations' traditional territories that do not include representation from the local Bands or tribes either because they are not invited, not considered significant in terms of the activity being developed, or do not have the manpower. The Sechelt Indian Band is invited often to attend management committees and board meetings but the underlying concern is which process, political or otherwise would provide the most benefit for the Band. This had been the case with the C/G IWMP. Originally invited to attend, the manpower was not available. It was not until the release of the 1994 C/G IWMP draft¹¹ revealed the implicated restrictions being placed on the Bands' activities that the additional task of becoming a planning team member was added to the Band's duties.

The second submission of the C/G IWMP compilation document stated:

The IWMP agreed that submissions from representatives of different agencies in the first three chapters of the IWMP would not be subject to IWMP approval. We agreed that the agency representative with a mandate for management of a specific resource was the appropriate authority for providing information on inventory, description of the resource, identification of interests and concerns from that agency's management perspective.(emphasis added)¹²

While it is obvious that there is a need to go beyond disputes of resource data and use, what this emphasizes and

¹¹ Marion Jamieson, ed., *Chapman and Gray Creeks Integrated Watershed Management Plan (Draft)* (Ministry of Forests; Ministry of Environment, Lands and Parks (BC Environment); Ministry of Health; Ministry of Energy, Mines and Petroleum Resources; the Sunshine Coast Regional District; International Forest Products; Canadian Forest Products and Department of Fisheries and Oceans, February 1994).

¹² Marion Jamieson. *Memorandum to IWMP Planning Team re: C/G IWMP Final Draft* 04 December, 1995. Ministry of Environment, Lands, and Parks File 77900-50/Chapman.

reinforces is that, for each specific resource, there is an existing agency to whom the mandate of management already belongs, and further that their information is the information. The people of the Sechelt Nation have been fishing from Chapman Creek since time immemorial¹³, so were they the appropriate authority for fish? Apparently not. Sechelt people have been involved in the forest industry within the Sechelt traditional territory for over a hundred years¹⁴ so were they the appropriate authority for forestry? Apparently not. What about water. The Band members were responsible for the original flume construction¹⁵, and so have some manner of history with the diversion of water in the watersheds, would they not, therefore, have some standing as the appropriate authority for this resource? Again no. What this process reiterates is that there are no resources for which the Band would be considered a management agency and thus who would be called upon as the appropriate authority for information. How is it that the people with the longest history in the region would be afforded the least authority for any information regarding resources? This is a manifestation of the common catch-22 where you are not able to manage without appropriate authority and yet without acknowledgement of your authority it is not considered within your management mandate.

¹³ Sechelt Indian Band:Elder. Interview code 02:10. Tape recorded transcript. Interview by author. Sechelt, BC. 07 January 1996. 14.

¹⁴ Frank Fuller. *Amalgamation*. Unpublished work. Interview of Clarence Joe. (Interview date unknown). 1980.

¹⁵ Helen Dawes, 1990. 100.

This section reports the issues regarding representation within the process. The next section looks at the process itself, and to what means and extent it has affected the capacity of the Sechelt Nation to actualize self-governance.

4.3 The Process: Defining Scope and Living with Consensus

There are several water management planning processes occurring in the province. The Integrated Watershed Management Planning process is delimited by the watershed as the scope of management. One such process was conducted in the Chapman and Gray Creeks as they were designated as *Community Watersheds*. Consensual processes tend to have many shortcomings such as lack of funds, or time, or points of agreement. The C/G IWMP exhibited all of these¹⁶ which contributed to the degree of influence that the Sechelt could have on the process or outcome.

4.3.1 The IWMP: It's NOT the Only Game in Town

Under the *Lands Act* section 12 the Minister may, in the public interest, withdraw Crown land from disposition, which was the case for Chapman and Gray Creeks as they were designated as *Community Watersheds*¹⁷. This designation is criteria for the implementation of an IWMP, but it is only one of the several planning activities involving water

¹⁶ C/G IWMP Development (Provincial rep). Interview code 06. Tape recording transcript. Interview by author. Burnaby, BC. 04 October 1996. 12.

Marion Jamieson, *Memorandum to IWMP Planning Team*, 04 December 1995. Ministry of Environment, Lands, and Parks File No:77900-50/Chapman.

¹⁷ C/G IWMP Development (Provincial rep). Interview code 06. Tape recorded transcript. Interview by author. Burnaby, BC. 04 October 1996. 1.

management. The *Stewardship of BC* lists other planning processes by geographic scope as shown in table 4.1. Of all of these various means of being involved with water management planning, to date the Sechelt have only been involved at the watershed level with the C/G IWMP.

TABLE 4.1 Water management plans by geographic scope¹⁸

SCOPE	SUBREGION	WATERSHED	LOCAL
Type of existing plans	<ul style="list-style-type: none"> •Strategic plans •Sub-regional plans •Environmental Management plans 	<ul style="list-style-type: none"> •Operational plans •Integrated watershed management plans •Water allocation plans 	<ul style="list-style-type: none"> •Floodplain management plans •Water quality objectives •Estuary plans

The Sechelt Nation, given the size of the traditional territory certainly have interests which would necessitate their involvement at the sub-regional level but, as yet, they are not involved with planning at that level. That the Minister has the ability to withdraw lands from disposition for the public good and designate certain water bodies as priority for community supply is perhaps one option the Sechelt Nation can attempt to exercise in an effort to embark on water management within a broader scope.

4.3.2 Consensus: An issue of Time

A consensus process is defined by the way in which a plan or direction is chosen, that is, the "general agreement"¹⁹ of all the participants that they have

¹⁸ British Columbia Ministry of Environment, Lands, and Parks. *Stewardship of the Water of British Columbia: A Review of British Columbia's Water Management Policy and Legislation*, vol. 4 Water Management Planning. (Province of British Columbia, 1993) 6.

¹⁹ British Columbia Round Table, *REACHING AGREEMENT: Volume 1 Consensus Processes in British Columbia* (British Columbia: Report of the Dispute Resolution Core Group of the British Columbia Round Table on the Environment and the Economy) 1991. 4.

optimized the compromises. Consensus processes are adopted reluctantly because the perception is that they, by design, will be time-consuming. The Round Table report on consensus contends though that this does not necessarily have to be the case as long as there are clearly defined deadlines for the process and fallback consequences that would be invoked if those deadlines are not met.²⁰

IWMPs are laid out as an eight step procedure to guide the various ministries and participants in the coordination of their efforts. These steps are:

- 1) Confirm planning priorities - have MOE and MOF agree to initiate the process,
- 2) Organize planning process by setting terms of reference to include: the planning area, purpose and objectives, planning method, lead agency, participants and their roles, product and product detail, completion date, known limitations, decision-making method, required commitments, MOE and MOF endorsements, resource and land management problems, required information, and work schedule,
- 3) Assembly and collation of gathered information,
- 4) Develop and describe plan alternatives,
- 5) Evaluate plan alternatives,
- 6) Select plan,
- 7) Implement plan,
- 8) Monitor and carry out contingency plans if necessary.

Of the stepwise procedure laid out above the first five are stated to have a time frame of five months and a seven to twelve month total planning time-frame. Data gathering is still ongoing for the C/G IWMP and it has taken seven years (1990 to 1997) to come to step 6, by having a document that the various planning project members are willing to put their signatures to. There were no fallback guidelines established as a consequence of not achieving deadlines for the C/G IWMP. To speculate from this process the amount of

²⁰ British Columbia Round Table, 1991. 25.

time it will take to achieve integrated watershed management for the number of systems within the STT exemplifies how unworkable conducting negotiations on a watershed-by-watershed basis would be. The Band is presently involved in treaty negotiations including water management and allocation being on the table as matters to discuss. It is perhaps through this process that the Band can seek ministerial direction in setting *Community Watershed* guidelines for bodies of water that the Band would necessarily access due to their proximity to SIB lands. In this way water management could be done at the level of the sub-region in a comprehensive rather than a piece-meal manner (i.e., watershed by watershed).

4.3.3 Consensus: An Issue of Resources

The Round Table document on consensus processes lists as one of the key characteristics of a successful process:

Participants in a consensus process must have a level playing field in terms of their ability to participate in a meaningful way.²¹

The various means of establishing this level playing field include training to develop negotiating skills, equitable access to information, and alleviation of financial hardships that would be incurred as a result of taking time for this process. When asked of the co-chair of the C/G IWMP whether there had been any mechanisms established to deal with the disparity in human resources the response was "No". The whole process was described as "under-resourced". This

²¹ British Columbia Round Table, 1991. 17.

respondent described the problem to be cyclic, in that:

..participator planning processes in the provincial government are not supported because they're not part of the dominant paradigm, and then they fail because they don't get supported so then they, ah, then there's proof that they don't work. And then the dominant paradigm becomes enforced. So, the IWMP'S themselves tend to work on a shoestring.²²

Being able to plan means that one must have the luxury of going beyond just trying to survive the day. In addition, participation in planning means that this must be funded, either by having the resource itself (in this case water) fund the planning requirements or by utilizing other resources to support this as a community service. At present neither of these options is available to the Band, but they are attempting to overcome this shortcoming via accessing resources through the treaty process. For this reason this strategy was explicitly spelled out in the C/G IWMP May 1996 draft under the resource management objectives and issues as stated in the following:

The Sechelt are negotiating a land claim with the provincial and federal governments with respect to: compensation for past injustices; recognition and financing of self-government; and the creation of a new relationship among Canada, British Columbia and the Sechelt. One component of the claim is a share in perpetuity with the Provincial government on a 50/50 basis the royalties and other payments accruing from the taking of any and all natural resources from the Sechelt aboriginal territory, both from the Sechelt lands...and Crown lands within the Sechelt traditional territory.²³

²² C/G IWMP Development (Provincial rep). Interview code 06. Tape recorded transcript. Interview by author. Burnaby, BC. 04 October 1996. 12.

²³ Marion Jamieson, ed., *Chapman and Gray Creeks Integrated Watershed Management Plan (draft)* (British Columbia: BC Environment, Water Management and Fish and Wildlife; Canadian Forest Products; Coast-Garibaldi Health Unit; Department of Fisheries and Oceans; Ministry of Employment and Investment, Energy and Minerals Division (formerly Ministry of Energy, Mines and Petroleum Resources); International Forest Products; Ministry of Forests; Sechelt Indian Band; and Sunshine Coast Regional District, May 1996) 38.

Certainly there are management of natural resources processes within BC that are occurring without the luxury of financial and other resources, but developing the momentum to change the present management structures to effectively include First Nations will require a shift in resources, both human and otherwise.

4.3.4 Consensus: The Effects of a Closed Door Policy

As mentioned in section 4.2 the participants for an IWMP were identified by a 1980 guideline document and the meetings were closed, which due to the unfavourable reaction to the 1994 draft was later acknowledged as a drawback²⁴. Within a few days of releasing C/G IWMP 1994 draft the head of the B.C. Environment Ministry received a petition signed by approximately 2000 people protesting the draft plan as being inappropriately oriented to development rather than conservation²⁵. The perception was that the action dictated by the plan was merely maintenance of the status quo and did nothing to address past degradative management practices in the watershed. A second concern was that it demanded a continuance of Provincial control and given the problems perceived to have occurred as a result of the present regime the people of the Sunshine Coast opposed the plan. That 2000 signatures were garnered from a relatively small population in a few days is a measure of the concern that the people of

²⁴ C/G IWMP Development (Provincial rep). Interview code 06. Tape recorded transcript. Interview by author. Burnaby, BC. 04 October 1996. 5.

²⁵ C/G IWMP Development (Provincial Rep). Interview code 06. Burnaby, BC. 04 October 1996.

the Sunshine Coast have regarding the management of the coastal resources. Due to this petition funding was sought for watershed restoration to assist with the management objectives identified with the C/G IWMP. Assistance funds were received amounting to 2.2 million dollars. With these funds a coordinator was hired to oversee rehabilitation projects and accumulate data for a georeferencing system. From this, better information was available and another draft was produced in May of 1996 which moved (relatively) towards a more conservation focus.

Taking this as an example for other watersheds, the Band would have to look to managing for past or ongoing degradation as part of the job of managing for water, but changing the present state of operations may not occur without strong vocal support from the surrounding non-Native community to counter the present representational structure at the Table. The question to ask is how much different would the 1994 draft have looked if environmental or recreation groups had been invited to sit at the original meetings. Consensus can involve amalgamating participants with similar interests or deciding to form a coalition with other participants on certain points. Just as there were three people at the table for the C/G IWMP representing forestry concerns, the Band could benefit from, first of all, articulating what their main concerns would be for water management and water interests and then establish such coalitions.

This chapter has looked at the makings of the C/G IWMP

and what effects and issues have been brought about as a result. The next part looks at the plan itself, what it means for management and the points gleaned from this process that the Band will need to address if setting an objective of becoming involved with water management in the STT is relevant.

4.4 The Plan: It's Design lessons for the Sechelt Nation

The 1996 C/G IWMP draft reflects a movement towards a conservation focus but it also affirms local governance (i.e., in this case the SCRD and the SIB) concerns at least to the extent that they must be consulted. The present plan defines management zones where the emphasis for land use determines type of activity allowed (see Figure 4.1).

Written into the May 1996 C/G IWMP document is the recognition of the historical occupancy of the Sechelt Nation²⁶, the importance of the cultural and spiritual values²⁷, and a statement to recognize and provide for the protection of Aboriginal rights²⁸. It seems reasonable to assume that this will be upheld as long as the activities stemming from Aboriginal rights are consistent with the present zone management guidelines. What this process reveals about compromising and wresting control under the present structure is the topic for the following sections.

4.4.1 Learning to Counter the Erosion of Rights

As part of the overall information necessary for

²⁶ Marion Jamieson, ed., C/G IWMP Draft. May 1996. 9.

²⁷ Ibid, 1.

²⁸ Ibid, 64.

treaty negotiations the SIB carried out an overview assessment of traditional use. This information is to be used to contribute to an archaeological impact assessment, with the recommendations to be incorporated into the IWMP. This is one of the ways in which the SIB will have a key role in management functions involved in the IWMP implementation²⁹. Other management opportunities for the SIB include; consultation on road construction, access limitations, and tree removal for mining ventures. The Band also has the opportunity to be involved in site inspections before and after timber harvesting development and to work with DFO, BCE, and SCRD on a low flow water agreement. This involvement in the low flow agreement is the only place where the Band is directly involved with water management. Participation in this process to this point has not improved the Bands powers to determine what will happen to the waters in Chapman and Gray Creeks for the Bands' consumption. What if the Aboriginal

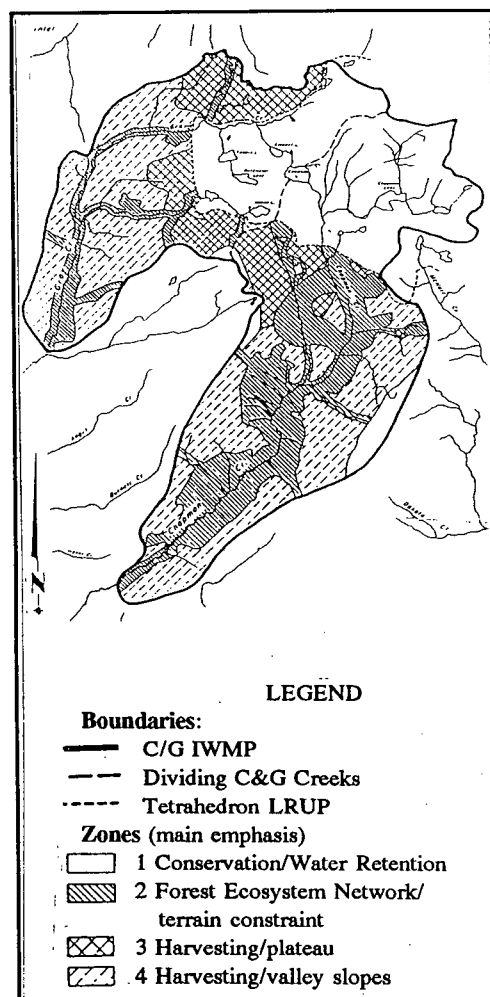


Figure 4.1 Management Zones for Chapman and Gray Watersheds from May 1996 C/G IWMP (draft).

²⁹ Ibid, 5.

Right includes development of an agricultural sector and thus a larger supply of water is required? This plan does not provide for the capacity to develop that right. The SIB's acquired role serves the function of a stewarding role in the mitigation of factors which would deteriorate water quality, and the extent is only at a consultative capacity. It was the opinion of an informant employed with the Ministry of Environment that this plan:

..goes as far as it is possible with the existing legislation to pull in the involvement of the local governments to the Sunshine Coast, the SCRD, and the Sechelt band to try to broaden their management role and broaden the base of consultation so that it's in the plan that those two levels of government have to be consulted in management decisions. It wasn't possible to go the next step of, I guess that would be delegating provincial authority. But it has attempted to formalize the consultation process.³⁰

As presented in chapter three, it is possible to "go the next step" and delegate powers to a lower authority. Certainly, a different strategy is required and this has been proposed:

We recommend that an alternative form of authority within the watersheds should be created. It should consist of the Ministries of Environment and Health and the Sunshine Coast Regional District as holder of the water licenses on Chapman and Gray Creeks and as the agency that is required by law to provide water that meets minimum health standards.³¹

Having involvement and, even better, control over alterations to the landscape is necessary to mitigate impacts to the water resource. In the previous quotation it was recommended that a new authority be established, with the water purveyor given a main seat at the table. If the

³⁰ C/G IWMP Implementation (Provincial rep). Interview code 06. Tape recorded transcript. Interview by author. Burnaby, BC. 04 October 1996. 4.

³¹ Chuck Weatherill, et.al., *Tetrahedron LRUP, WATER: Final Report of the Water Subcommittee*. December 1993. 39.

SIB are to become involved in water management it is clear that they would need to be given recognition as having a larger interest in the water than presently recognized. Then, to protect the opportunities stemming from the control of the water resource, there needs to be a shift in the present power structure dictating upstream land uses. The development of a water quality/quantity Board made up of representation of water users that have power to direct activities would be one strategy. To recognize the special interest of the Band, a municipal reserve volume could be established in their name, and that authority be delegated so as to enable the Band to protect this interest in water. Becoming more involved with water management, as would be the case with having a municipal reserve volume established, brings up new questions of concern such as that of the responsibilities brought about from system development resulting in ecological alterations. This is the topic for the next lesson from the C/G IWMP.

4.4.2 A Licence: Discussion of Rights versus Responsibilities

The Sunshine Coast Regional District presently holds seven distribution licences and one storage licence on Chapman Creek. As the community purveyors of water they have a legal responsibility to provide drinking water which passes certain quality standards. But what was made clear during this research was that they do not have any legal responsibility for assuring there is a minimum flow for fish, and that, as the major licence holder on the stream,

can determine best use of water.

With compartmentalizing of responsibilities within the government there has historically been a problem of looking towards their particular resource mandate. It has only been within the last fifteen to twenty years that consideration for fish habitat was written into licenses as a possible stipulation³² to the diversion of water. Water licences today may have a limiting clause which could reduce the amount of flow allowed to the licensee subject to conservation. Licences in the province operate on a first to apply first in right basis. The earliest licence to non-Natives on Chapman Creek was issued in 1929 to the Union Steamships which was purchased by the regional district. The original licence did not have any provisions for fish habitat and this was not changed with the transfer of the licence. It was the opinion of an SCRD respondent that maintenance of flow for fish is the responsibility of the Province:

We applied for a water licence, we received a water licence. It's incumbent on the Province to make sure there is residual flows sufficient for the environment and that.³³

The volume of water presently licensed for use on Chapman Creek exceeds the flow at certain times of the year and under the present system the licensees could legally extract every last drop of water. If there is no limiting clause for

³² Gary Robinson, Ministry of Environment, Lands, and Parks: Water Licensing. personal communication, telephone. 29 July 1997.

³³ SCRD Representative. Interview code 03:02. Tape recording transcript page 3. Interview by author. Township of Sechelt. 07 January 1996.

conservation the licensees are under no obligation to limit their draw on the stream, and further the province is constrained by its own licensing arrangements and therefore cannot alter or constrain the licence even if it means the stream goes bone dry³⁴. Regardless, the SCRD is trying to understand and accommodate for low and minimum flows, but the data had yet to be developed as to what the upstream minimum would have to be to support the downstream fishery. In their draft report looking at the storage and infrastructure requirements for the next ten years the engineering consultants state that storage must be increased to accommodate the minimum fishery compensation flow but that:

It needs to be recognized, however, that the water licence does not require a specific fishery flow and that in the past no flows were recorded in the lower segments of Chapman Creek in late summer.³⁵

This leads to two main considerations. The first is if there wasn't sufficient water to support fish species in the summer previously³⁶ then whose obligation is it to ensure there is sufficient flow for fish that are not there now, but who might be there if the ecosystem is altered to provide a year-round flow? Two court cases, *R.v.Forde* and

³⁴ Chris Morgan. Ministry of Environment, Lands, and Parks. personal communication, telephone. 20 June 1997.

³⁵ Dayton & Knight Ltd. *Mountain Lake Storage for 1995 Update of 10 Year Waterworks Plan* for Sunshine Coast Regional District. District of Sechelt, November 1996. 1-1.

³⁶ In their report as the water subcommittee for the Tetrahedron LRUP it says: "The year round flows in Chapman Creek were particularly important to its identification as the only supply." Chuck Weatherill, et. al., *Tetrahedron LRUP, WATER: Final Report of the Water Sub-Committee*. December 1993, 4.

*Her Majesty the Queen v. the District of Chilliwack*³⁷ have upheld the protection of fish habitat despite the fact that the habitat was result of a human alteration. So it seems that this is a reasonable concern to be addressed. The second is who would have to incur the costs of this increased maintenance responsibility? A new Bill in the Legislature, the *Fish Protection Act*³⁸, seeks to increase the Ministerial control over the waters allocation by enabling reductions in allowable licensed volume in times of drought. This would mean the licence or licences could be reduced by 5 percent of the total licensed volume. At this point the SCR D is not using the total volume of their licence, so a reduction of 5 percent would have no realizable affect on the amount available for minimum flow. The total flow still needs to be augmented to raise it up to the minimum flow obtainable even with the protection of the *Fish Protection Act*. It is ironic that the best practise that the Band could undertake, if developing a system to provide year-round flow, would be that the base be dammed to ensure no fish enter the system and therefore the Band would only be responsible to the users of the system and not to the fish that might enjoy the altered ecosystem. But if we are to take Chapman Creek as a lesson, that is the case. The system today is top heavy with the defining of

³⁷ Lynne B. Huestis, *Legal Effect of the Land Development Guidelines for the Protection of Fish Habitat*. (Vancouver: Swinton & Company, 1993) 2.

³⁸ British Columbia's Legislative Assembly, *Bill 25 -- 1997, Fish Protection Act* 1997 Legislative Session: 2nd Session, 36th Parliament FIRST READING. http://www.legis.gov.bc.ca/1st_read/gov25-1.htm. 28 May 1997. Section 11(3).

jurisdictional boundaries, but addressing responsibilities (i.e., in this case at whose door should this lie?) remains an open door for future conflict. There are several streams within the STT, and from this experience we can see that an important step in the planning of water uses is the monitoring of present flow to protect the present ecology and to show whether the flow that is there is "natural" or enhanced and at least maintained by developments on the system. The SIB has elected to establish partnerships such as with their joint Forest Renewal Plan, to look to improving water quality, quantity and timing of flows. This partnering may alleviate some of the resistance that such monitoring might encounter. Yet it should be made clear that the priority for quality of water resources is the supercedent issue over economics. Regardless of who does it, unless monitoring is done on these systems now, we will not be able to determine if the present practices in those watersheds is affecting any changes. So far this chapter has looked at how building and design has influenced SIB's management capacity, the next part discusses some issues of actualizing watershed management for water concerns.

4.5 The Job of Implementation

There are several stages to action in a situation with so many interests. Getting to the stage of having all parties signing on to a plan has for the C/G IWMP taken several years. Implementing this plan is another stage. The Sechelt Indian Band was a partner in developing a proposal for a watershed coordinator to set in motion the objectives

outlined by the IWMP planning board. What has become apparent is that although the plan can define what should occur, there are many paths to making that a reality. There is increasing friction over the means of achieving the objective of maintenance of a quality water supply wherein the multi-use activities within watersheds is opposed without the acknowledged secondary benefits derived from this multi-use. Implementation is also affected by the fact that Canada operates under a representative democracy, wherein the larger vote of the particular population base affects the community development direction. The Sunshine Coast has experienced a huge increase in population as the area is viewed as an alternative to the Fraser Valley for commuters. This shifts the collective community consciousness towards more of an urban land ethic and makes the task of mitigating impacts to the water supply that much greater.

4.5.1 Maintenance of Amenities with Reduced Funds

There is an assumption that reducing activities within the Chapman and Gray watersheds would increase capacity to protect and predict water quality. Even if it were politically possible to exclude all activities from the region from this day forward, past degradative management practises continue to affect the water supply. Poor timber harvesting practises is one of the main activities that has undoubtedly compromised the water quality in these watersheds and therefore has experienced strong pressure for the exclusion of this as an activity. Yet one of the

benefits that the community at large enjoys, which the forest industry incorporates as the cost of doing business, is road maintenance³⁹. These roads are used to access the Tetrahedron plateau, a region that sees substantial recreational use yearly. Where then would the revenues come from for this road maintenance that provides important recreational access? People in the local society need to feel the decisions made will benefit them locally, but while all of the people enjoy the benefits of clean water, not all people partake in the recreational opportunities and so there is even further debate as to the importance of maintaining these road networks. Access to resources was stated earlier as one of the factors affecting the SIB's capacity to be involved with water management, this is another manifestation of the how resources are required to operationalize management, both for infrastructure development and to support other uses. Supporting mountain recreation activities has the spin-off effect of promoting the human/land interconnection. Making that connection was identified as an important factor in managing watersheds.

4.5.2 Changing and Guiding Land Ethics

In the face of a population which is in constant flux, developing a vision and working towards achieving that vision can be difficult. A changing population base means that goals shift depending on the collective ambition of the

³⁹ C/G IWMP Implementation (Local Rep). Interview code 07. Tape Recorded Transcript. Interview by author. Sechelt, BC. 13 February 1997. 5.

community. The range of movements can be the full scale of the differences represented in the community. As people establish some history with their surroundings many see the shifts that occur with the passing of the decades and endeavour to guide those changes which serve to maintain those factors contributing to their enjoyment of the region. But the problem that we have continuously witnessed through history is the frustration of those ensconced in a region as their attempts to control the direction of change are diminished by the onslaught of newcomers, as witnessed in the Fraser Valley where:

In most cases, gains in the will to protect the environment and technological advancements to mitigate impacts has been offset by human population growth and associated urban development.⁴⁰

Having some history with a region gives a sense of the limitations and capacities for the region wherein one establishes a localized land ethic. It takes time to appreciate your role and effect as a part of that region. Also your perspective of the changes can only be drawn from your experience with those changes.

The shift in the collective land ethic that the Sechelt Nation has witnessed on the Sunshine Coast is extreme. The elders alive today have watched the Township of Sechelt go from a summer vacation resort accessed by boat, to a central servicing place for the scattered families involved in the

⁴⁰ Otto Langer, Fern Hietkamp & Melody Farrell. *Human Population Growth and the Sustainability of Urban Salmonid Streams in the Lower Fraser Valley*. Presented at Sustainable Fisheries Conference, American Fisheries Society. April 26-30. Victoria, BC, 1996. 9.

forest and fishing industries, to a bustling local community and today the region is undergoing the shift of becoming a suburb for Vancouver commuters. Planning for water, watersheds, and water uses therefore becomes an amorphous exercise. The body politic making the plans change, which then shifts the plan. This was described by a respondent involved with the IWMP Implementation:

...we live in a democracy of, based on what 50.001 percent of the people want and that's um, so it may not be the best thing, but democracy ultimately, here anyhow, makes the decisions, so it's through the political process, that's how we've been taught, that's how decisions are made. If, for instance, there's a strong urban push coming up the coast, more and more people with those kinds of thoughts, that would have the net result of changing our perception of land use.⁴¹

One of the main exercises for the C/G IWMP therefore has been to somehow educate the range of collective perceptions as to the need to understand what is physically happening within the watershed. From a scientific perspective promoting this involves recognizing a thing for what it is, what makes a tree a tree? The next step is to understand that thing in its context, meaning what are the processes that contribute to that tree being a tree here, and finally, once we understand what it is, what is necessary for what it is, then we need to look at what we can do to promote its needs⁴². But even with this there is the job of moving collectively in a particular direction. Making responsible decisions does not necessarily mean that you will be enabled

⁴¹ C/G IWMP Implementation (local rep). Interview code 07. Tape recorded transcript. Interview by author. Sechelt Band Lands. 13 February 1997. 7.

⁴² Ibid, 8.

the responsibility to enact those decision as the same informant states with:

let's say that I happen to be dead right on every issue that I'm speaking on the effects of this, this, and this. Let's say that I was, I know that I'm not, but let's assume that I'm absolutely right. I'm almost certain that I could not get my ideas across to people who are in charge to make the decisions. Because there's too many other people out there with their own concerns and things and that's just the way it's going to be. And I have to recognize that as part of the scrum, even to get what I have to be considered neutral information used, takes fighting, it takes embarrassment politically, or whatever way to get people to recognize these things. That's how this country works, for better or worse.⁴³

The experience of implementing the C/G IWMP demonstrates that the SIB, requires stronger means of infusing the Sechelt Nation community vision to plan and achieve their needs in the face of the overwhelming force of "democracy". There needs to be legislative mechanisms established to ensure that the vision of the Sechelt, the first people of the region, is not smothered by newcomers. In doing this the people of the Sunshine Coast will have some hope of ensuring that developing plans will include those with vision stemming from historical experience as well as those who bring vision representing the changing landscape of society.

4.6 Summary

The C/G IWMP represents the first comprehensive exercise within the Sechelt Traditional Territory to develop a strategy that would oversee the activities affecting the drinking water supply. This process is one level involving

⁴³ C/G IWMP Implementation (local rep). Interview code 07. Tape recorded transcript. Interview by author. Sechelt Band Lands. 13 February 1997. 12.

water management that is occurring within the Province. The focus on a particular watershed is perhaps a prohibitive level of involvement for the Band given the number of watersheds within their Traditional Territory.

By design the IWMPs promote status quo with respect to extractive practices occurring around water bodies. That the process must be initiated by the MoF or MoE, and requires the final signature of both ministerial representatives means that it is difficult, if not impossible to exclude such activities. For the SIB to be involved with water management, will require the capacity to access revenues which may come from forestry, and the ability to effect management decisions at a level higher than is presently afforded.

In their attempt to arrive at a plan based on consensus, the IWMP planning team has invested a great deal of resources. This investment, and the protractedness of the process would limit the Bands ability to adopt this type of management strategy for other water bodies of concern.

Beyond the *development* of the IWMP is the challenge of implementation. This process has illustrated the fact that actualizing the SIBs water needs will require facing the ever-changing 'democratic' spectrum. Making decisions on water management will require that the SIB be legislated authority to have some control over the water and watershed resources so that they can go beyond the present catch-22 of being marginalized, that is they do not have authority and thus cannot provide input because they are not considered

the management agency. The Bands control over water and water management has not been increased by participating in this process. Their opportunities to be involved with stewardship activities that address mitigation of water quality deterioration has.

Being involved with management of resources involves building the relationship with the surrounding community. An element in resource management is trust. Developing the data without pushing ones own opinion as to what should occur is one step required to being a coordinator of watershed activities. There is danger in being labelled as promoting any particular activity because the prescription for solutions will then be filtered through the doubt of motive. The first hurdle to management is demonstrating that a certain level of technical competence is present and the second hurdle is projecting objectivity.

Chapter 5

SUMMARY AND FUTURE NEEDS

The shíshálh have lived in their Traditional Territory and relied on the resources since time immemorial. This thesis has looked at the construction of water management authorities from a historical perspective so as to present alternative options for involvement of the Sechelt Nation with future development of water resources. The Provincial legislations developed to manage water has conferred rights to non-Natives despite the fact that the inherent rights of the Aboriginal people have not yet been defined. The water rights, conferred for the most part to non-Natives within the Traditional Territory, are administered via a bureaucratically complex systems within which the Aboriginal people posses little authority. The *Sechelt Act* was developed to enable greater control over the administration of their resources and the direction of their future growth. This administration is facilitated by adopting a municipal style governance structure that links with the local administrative agencies for services on Band lands. Despite this, the ability of the Sechelt Nation to direct community growth is impinged by the Provincial licensing regime and the prioritization of extractive activities as a consequence of the planning guidelines established for watersheds.

The experience of the SIB with the C/G IWMP has enabled the Band stewardship roles within the watershed but has not established any authority over the water resource itself. The protractedness of this integrated planning process

demonstrates the requirement for legislative mechanisms to protect the Sechelt Nation's interests in water. The general opinion regarding the working relationship of the SIB with local government is that it is good, but that there is no real definition as to the goals of the SIB. There are many factors to consider for future water needs, and as these are still being articulated amongst the Sechelt Nation it has been difficult to state at this time what their specific requirements might be.

The mechanisms exist to afford the Sechelt Nation greater control over water resources. Whether these are realized will depend on the terms set out through the negotiation process at the treaty table. In order to set out their terms regarding water resources the present ambiguities regarding responsibilities of non-consumptive water uses need to be addressed. There are inherent uncertainties in forecasting water demands given the changing complexities of the socio-economic, biophysical, technological and legislative system. Discussion of some of the complexities will help in guiding the SIB to address how water management by them or by others will ultimately affect the future growth of their community.

There are many aspects of water management that have not been addressed in this examination. One obvious need for future research is to conduct an analysis of the historical and cultural development that has occurred within the Sechelt First Nations community itself. In particular, a focus on how traditional values have helped form the present

situation and how these values may have been compromised as a result of institutional and/or legal realities. This would help to reference where the shíshálh have come from so that they have a stronger idea of where they would like to go.

Then moving from the past to the present there needs to be a polling of the Band members to determine the future infrastructure needs. Where does the Band envision themselves ten or twenty years from now? That the surrounding community has a good working relationship and wish to accommodate to the Band's community growth vision has been articulated repeatedly. What has also been said as often is; "What do they want?" The Band needs to determine this so that they can involve themselves in the construction of their future rather than merely surviving the consequences of the actions of others.

There also needs to be an examination of Water policy in the Province. What direction the Provincial government intends to take and how this is to be accomplished is an important concern for First Nations communities. The *Stewardship of the Water* document acknowledges throughout this policy package that First Nations water needs are not considered, but it does not go further to say how this may be addressed. It is perhaps not appropriate that it is done by the Provincial Government, but rather that the means of involvement should be articulated by the First Nations communities themselves.

Finally, there is a strong need for an inventory of local water resources. How much is there? What are the

present activities which may affect water quality and other water uses? What are the local habitat considerations that need to be considered before the development of any infrastructure? These are a few of the issues that were highlighted during the conducting of the research for this thesis.

The thesis focuses on water resources but is only an example of the resource issues that need to be addressed. Although First Nations are recognized as rightful stakeholders in resource issues, their role is often compromised by the historically derived legislative bureaucracy.

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APPENDIX 1 CODING LIST FOR INTERVIEW RESPONDENTS

Coding assignment for Interviews conducted. To meet the terms of approval for the UBC Ethics review committee the persons interviewed remain anonymous. The following list states the perspective sought in requesting the interview and the date the interview was conducted. For interviews coded 02, 03, and 08 there was more than one person present. Each of the individuals was therefore assigned a secondary coding number.

CODING NUMBER	PERSPECTIVE SOLICITED	INTERVIEW DATE Y/M/D
01	Commercial water user	95/10/06
02:1-16	Sechelt Indian Band:Elders	95/11/16
03:1-2	SCRD Representative	96/01/07
04	Infrastructure development history (local)	96/01/19
05	Infrastructure development (Dayton & Knight Ltd:engineering)	96/08/09
06	C/G IWMP Development (Provincial rep)	96/10/04
07	C/G IWMP Implementation (local rep)	97/02/13
08:1-2	Ministerial Water Planning & Rights (MoELP)	97/03/12

Cited in notes as follows:

[Perspective solicited]. Interview code [_:_]. Tape recorded transcript. Interview by author. [Place of interview]. [DD Month Year]. [Page number from transcript].

APPENDIX 2

LIST OF THE CHAPMAN AND GRAY INTEGRATED WATERSHED MANAGEMENT
PLAN PLANNING TEAM

FEDERAL REPRESENTATION

Department of Fisheries and Oceans (DFO)

Nanaimo Branch

Representative Richard Eliassen
(1990-1996)

PROVINCIAL REPRESENTATION

Ministry of Environment (MOE)

Water Management Branch

Representative Marion Jamieson (Co-chair IWMP)
(1990-1996)Ministry of Environment (MOE)

Fish & Wildlife Branch

Representative Steve Gordon
(1990-1996)Ministry of Energy, Mines and Petroleum Resources (MEMPR)

Mineral Policy Branch

Representative Rolf Schmitt
(1990-1996)Ministry of Forests (MOF)

Sunshine Coast Forest District

Representative Barry Miller (Co-chair IWMP)
(1990-1996)Ministry of Health

Coast Garibaldi Health Unit

Representative Bob Weston
(1990-1996)

ABORIGINAL REPRESENTATION

Sechelt Indian Government District (SIGD)

Fisheries Office

Representative Sid Quinn
(1993-1996)

MUNICIPAL REPRESENTATION

Sunshine Coast Regional District (SCRD)

Planning

Representative Sheane Reid
(1990-1996)

BUSINESS REPRESENTATION

Canadian Forest Products Ltd. (Canfor)

Mainland Logging Division

Representative Bill Lasuda
(1990-1996)International Forests Products (Interfor)

Jackson Division

Representative David Lasser
(1997-1996)