RECLAIMING INDIAN WATERS: DAMS, IRRIGATION, AND INDIAN WATER RIGHTS IN WESTERN CANADA, 1858-1930

by

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ABSTRACT

Indian water rights regarding irrigation agriculture and the construction of storage and hydroelectric dams took shape from the 1870s to the 1930s and largely determined economic activities on and near reserves and reservations in Western Canada and the American West respectively. Although historians recently have provided extensive studies of American cases, Indian water rights issues in Western Canada have gained scant attention. The present study focuses on this neglected part of the history placing particular emphasis on the interactive roles Native peoples, government officials, agricultural businesses, hydroelectric developers and homesteaders played in "reclaiming" aboriginal landscapes for irrigation and water storage or hydroelectric dam projects. I explore the jurisdictional debates over water rights that these projects generated.

Recognizing the importance of inter-provincial and international contexts, the thesis examines the extent to which American reclamation laws and practices influenced Canadian policymakers, bureaucrats, and technocrats. It also focuses particular attention on the development of water laws and policies in British Columbia and Alberta to identify similarities and differences that subsequently affected Native peoples. I accomplish this by providing four case studies. I note that the differences between these two provinces with respect to the development of Indian water rights were particularly significant before 1930. A key reason was that the federal government held title to Crown lands in Alberta until the latter date, whereas British Columbia entered confederation holding that title.

My dissertation demonstrates that the idea of Indian water rights emerged in the late-nineteenth-century from political and legal philosophies and practices of colonialism

that attempted to transform the "primitive" Native populations into the mold of yeoman farmers. It was also shaped by modifications of the common law that sought to address the needs of industrialists, miners, and settlers who developed the semi-arid and arid North American west. The water rights regime that emerged was based on a perception of this resource that was very different from the holistic one held by indigenous populations. I note that as the Native peoples increasingly relied on the agricultural economy in the early twentieth century, and as the competition with neighboring settlers for water intensified, the question of the extent to which the Native peoples were entitled to water became the subject of serious political and legal wrangling. Native peoples demonstrated that they had a strong desire to maintain control over water at a local level by actively carrying out irrigation projects, protecting their own reclamation works from the obstruction of settlers, fighting against the construction of storage dams by neighboring ranchers, and by successfully negotiating the terms of agreements for surrendering reserve lands to facilitate on-reserve hydro-electric projects. My thesis closes with a reflection about how these historical events help us understand contemporary Indian water claims.

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INTRODUCTION

Culture of Colonialism and Reclaiming Indian Waters

> You are going to a distant country, not I trust, to fight against men, but to conquer nature; not to besiege cities, but to create them; not to overthrow kingdoms, but to assist in establishing new communities under the sceptre of your own Queen. .... The enterprise before you is indeed glorious. Ages hence, industry and commerce will crowd the roads that you will have made; travellers from all nations will halt on the bridges you will have first flung over solitary rivers, and gaze on gardens and cornfields that you will have first carved from the wilderness. Christian races will dwell in the cities of which you will map the sites and lay the foundations. You go not as the enemies but as the benefactors of the land you visit, and children unborn will, I believe, bless the hour when Queen Victoria sent forth her Sappers and Miners to found a second England on the shores of the Pacific.
>
> Edward Bulwar Lytton[1]

With these extravagant and metaphoric words of his farewell speech, Sir Edward Bulwar Lytton, the Colonial Secretary for the Conservative Derby-Disraeli administration (1858-1859), dispatched a regiment of Miners and Sappers to the Colony of British Columbia that had been established in 1858. The instructions implicitly reflected his belief that the new British colonialism would have to take a major departure from the ancient Roman Empire, which "conquered" European cities and the more recent Spanish one, which had been founded by conquistadors who violently swept through Latin America in search of "golden" cities. He drew this comparison partly based on his experience as a historical novelist who had studied the demise of the Roman Empire and the origins of

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[1] "Speech by Sir Edward Bulwar Lytton to a Company of Royal Engineers, Leaving London in 1858 for British Columbia." This Farewell Speech was reprinted by Vancouver City Archives in 1956. In UBC special collection, spam 13839; Thomas H.S. Escott, *Edward Bulwer, First Baron Lytton of Knebworth: A Social, Personal, and Political Monograph* (London: George Routledge and Sons, Ltd.; New York: E.P. Dutton and Co., 1910), 313.

England.[2] Lytton's vision also manifested his political outlook as a member of the Conservative Party. He contended that the British government should play a much more active role in managing colonial affairs. The greater role of the government included the new economic direction for the Pacific colony by turning away from its fur trading and gold mining past and building a future based on family farms. This was an idea that resonated with those of his intellectual predecessors, such as Edward Gibbon Wakefield, John Locke, and Thomas Jefferson, who had championed this approach to colonization in Australia, New Zealand, and the United States, respectively.[3]

Lytton's vision, conceived so confidently at his Downing Street office, actually held on to the outdated assumption that the new colony was a "wilderness" and no man's land just opened to be "civilized." Earlier British governments had recognized the rights of indigenous peoples on the East Coast of British North America, by issuing the Royal Proclamation in 1763, and in New Zealand, by signing the Treaty of Waitangi in 1840.[4] Lytton, however, failed to consider how his plan would affect British Columbia's

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[2] His publications include *The Last Days of Pompeii* (London: R. Bentley, 1834), *Harold: The Last of the Saxon Kings* (London: R. Bentley, 1848), and *The Caxtons: A Family Picture* (Edinburgh: Blackwood, 1847).

[3] Edward Gibbon Wakefield proposed a systematic colonization, where an ordered society was to be duplicated in the new colony. His theory did not reject the free trade policy but opined that the reestablishment of "old world" society or what he termed the "art of colonization," would provide wide ranging employment for the British subjects. See Edward Gibbon Wakefield, *England and America: A Comparison of the Social and Political State of Both Nations* (New York: Harper & Brothers, 1834), reprint (New York: Augustus M. Kelley, 1967), 283; Wakefield, *A view of the Art of Colonization, with Present Reference to the British Empire* (London: John W. Parker, West Strand, 1849), reprint (Oxford: Clarendon Press, 1914); Klaus E. Knorr, *British Colonial Theories, 1570-1850* (Toronto: University of Toronto Press, 1944), 300-306. See more discussion on Locke's and Jefferson's visions in chapter 2.

[4] Political scientist Paul Tennant notes that Governor James Douglas of British Columbia relied on the Treaty of Waitangi when he drafted treaties for the indigenous peoples in Vancouver Island in the 1850s. See Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: University of British Columbia, 1990), 19. About the historical significance of the Royal Proclamation, see John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government," in Michael Asch ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997), 155-172.

indigenous peoples' use of the land. By Lytton's time, the indigenous peoples and British subjects had been interacting with each other for over half a century, mainly through the fur trade. Lytton's thinking and actions apparently were not influenced by the knowledge the British had acquired from this contact history. For example, his instructions to Colonel Richard Clement Moody of the Royal Engineers (later the Chief Commissioner of Lands and Works), who had recently arrived in New Westminster, amply demonstrates this. On October 19, 1858, Lytton wrote to Moody that: "the ordinary resources of the Colony--in Fisheries, in timber, in the various soils and the extent of them, favourable to Agriculture produce--will command your attention and contribute materials to your reports."[5] Here Lytton spelled out the resources he believed were important for the Empire and directed Moody's attention to them. He said nothing about the indigenous peoples, but certainly knew about them. In fact, his office constantly had to deal with the Anti-Slavery Society and the Aboriginal Protection Society, which demanded that Aboriginal livelihoods be protected. The Protection Society paid special attention at the time to miners' violence against the indigenous peoples in the Fraser Valley. These newcomers were threatening the traditional fishing economies of the Fraser River system.[6] Lytton believed, however, that the conflicts between the indigenous peoples, miners, and settlers were "so local a character" that he issued no instructions to local officials about how to deal with them.[7]

In addition to British Columbia, Lytton took responsibility for overseeing another government enterprise in Western British North America. This was the exploring

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[5]Edward B. Lytton to Richard C. Moody, Downing Street, 19 October 1858, Colonial Correspondence, B-1346, 1149b, British Columbia Archives.

[6] Daniel Patrick Marshall, "Claiming the Land: Indians, Goldseekers, and the Rush to British Columbia," (Ph.D. diss., University of British Columbia, 2000).

[7] Dispatch from Lytton to Governor James Douglas, 31 July 1858, in British Columbia, *Papers relating to*

expedition that Captain John Palliser led from 1857 to1860. Palliser's mandate was similar to that of Moody's. He was ordered to map all the regions along the present-day U.S.-Canada border from present-day Manitoba to British Columbia and search for a possible transport route to and through the Rocky Mountains. He also was supposed to assess the possibilities for agricultural settlement, mostly in the prairies, by providing detailed reports on agricultural, mineral, and other resources that he found therein.[8] Similar to the American expansionists who promoted the transcontinental railway, Lytton thought that a great engineering endeavor that linked British North America together with railways would solidify the British position on the continent and lead the Empire to a higher level of imperial strength. In his view, encouraging settlement in the Colony of British Columbia and the prairies in Rupert's Land was essential to achieve this enormous practical and moral task. In one of his speeches, he contended that: "to fulfill the mission of the Anglo-Saxon race in spreading intelligence, freedom, and Christian faith whenever Providence gives us dominion of the soil, wherever industry and skill can build up cities, it is the duty to which we now stand committed."[9]

The institutionalized tradition of seeking to transform the Aboriginal environment into a familiar European one intensified after the Hudson's Bay Company transferred its title to Rupert's Land to Canada in 1870 and British Columbia joined Confederation in 1871. Now, revisiting Lytton's dream of the generation before, Canada took up the challenge by entering a series of treaty negotiations with Native peoples in the prairies, and

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Indian Land Question (Victoria: Richard Wofenden, Government Printer, 1875), 12.

[8]Irene M. Spry, *The Palliser Expedition: The Dramatic Story of Western Canadian Exploration, 1857-1860* (Calgary: Fifth House Publishers, 1963), 19, 177. Science played a significant role in expanding empire. For the documentation of this process, see Suzanne Zeller, *Inventing Canada: Early Victorian Science and the Idea of a Transcontinental Nation* (Toronto: University of Toronto Press, 1987), 7-9.

eventually concluding Treaties 1 through 8 (1871-1899).[10] These treaties covered the present-day prairie provinces and part of Ontario and British Columbia. The Dominion government also earnestly undertook the trans-continental railway construction and Dominion land surveys, encouraging homesteaders to settle in the prairies and promoting agriculture as the national economy.[11]

During Lytton's lifetime as an active colonialist, water became the fundamental component of mining, agricultural and industrial development in Western British North America. Consequently, the formulation of land and water rights became an integral part of the colonial process. Colonizers in British Columbia recognized the importance of land and water rights for gold mining and agricultural activities as early as 1859.[12] In the prairie West, recognition came later when irrigation needs led to the passage of the first water rights legislation in the 1890s.[13] Significantly, American, British, and Canadian colonizers attempted to use statutes and newly created bureaucratic institutions to regulate the use of this important and indispensable resource in an effort to maintain English legal traditions. In this transformation process, they marginalized Native peoples the same way Lytton had. Continuing conflicts between Aboriginal peoples and the settlers and their descendants have become the ongoing legacy. In order to obtain a better understanding of the complex issues of Aboriginal land and water rights issues in the American and

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[9]Quoted in Escott, *Edward Bulwer*, 313.

[10] Arthur J. Ray, Jim Miller, and Frank Tough, *Bounty and Benevolence: A History of Saskatchewan Treaties* (Montreal and Kingston: McGill-Queen's Press, 2000); and Treaty 7 Elders and Tribal Council, *The True Spirit and Original Intent of Treaty 7* (Montreal and Kingston: McGill-Queen's Press, 1996).

[11] Vernon C. Fowke, *The National Policy and the Wheat Economy* (Toronto: University of Toronto, 1957).

[12] In 1859, Governor James Douglas issued a proclamation, which is referred as the Goldfield Act. This regulation is mostly based on American experiences except for the use of the licensing system. I discuss this in chapter 3.

[13] In 1894, the Dominion government passed the North-West Irrigation Act in order to regulate water use

Canadian realms, this thesis discusses the culture of colonialism to provide the broader context to the ongoing issues.

Although a sweeping examination of colonialism is too large a topic for this dissertation, it is possible to consider those aspects of colonial studies that are directly relevant to water rights history generally, and more specifically, to aspects of Indian water rights history in Western Canada during the formative period from the 1870s to the 1930s. This is a topic that Canadian historians have neglected to study. Federal officials recognized the great importance of Indian water rights in the early twentieth century. They knew well enough that the success of their policies of assimilating Indians into yeoman farmers would depend on having sufficient supplies of water on reserves. Only recently have scholars started to recognize the vast body of federal records related to the economic, political and social problems of securing water for Indians, although no historian has tackled these records and unveiled the importance of the Indian water rights issues in Western Canada. I will explore these problems by providing four case studies in the semi-arid portions of interior British Columbia and southern Alberta (the Treaty 7 region). The four studies will reveal some of the principal features of water rights conflicts on Indian reserves from the 1870s to the 1930s. These included heated federal-provincial jurisdiction debates, water competitions with neighboring settlers, the problems of establishing irrigation agriculture among hunting peoples on the prairies, and hydroelectric developments on reserves. The exploration of these key features will help us understand the extent to which policymakers and Indians similarly or differently recognized Indian water rights. Such an examination also will clarify to a considerable extent the current

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mainly for irrigation purposes.

enigma about Indian water rights questions in Western Canada. In both southern Alberta and interior British Columbia, where most Native reserves are situated along rivers or lakes, Native land claims are inextricably linked to water rights. Today, the Native people, legal experts, and policymakers debate the extent to which Native peoples are entitled to water, but the question has been politically muddled because of the increasing business and "public" interests in, and industrial demands for, the limited water resources.

The Culture of Colonialism before and after 1858

Scholars have recently demonstrated the importance of placing particular Aboriginal histories within the broader context of colonialism and imperialism. In *Colonialism's Culture: Anthropology, Travel, and Government* (1994), anthropologist Nicholas Thomas emphasizes the cultural context of colonialism.[14] Edward Said analyzes the cultural aspect of colonial representations in the history of European colonialism.[15] At the local level, Robin Fisher, Douglas Harris, Cole Harris, Dianne Newell, and Paul Tennant have provided the colonial context for studying Aboriginal rights to fish and land in British Columbia.[16] These pioneering works help form the theoretical backbone of this dissertation, especially in examining the process of creating authorities over water administration and use on Indian reserves.

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[14] Nicholas Thomas, *Colonialism's Culture: Anthropology, Travel and Government* (Princeton: Princeton University Press, 1994).

[15] Edward W. Said, *Culture and Imperialism* (New York: Vintage Books, 1994).

[16] Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890* (Vancouver: University of British Columbia Press, 1977); Douglas Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001) and Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: University of British Columbia Press, 2002); Dianne Newell, *Tangled Webs of History: Indians and the Law in Canada's Pacific Coast Fisheries* (Toronto: University of Toronto Press, 1993); Tennant, *Aboriginal Peopeles and Politics*.

During the past thirty years, studies of colonialism have moved away from the two-dimensional interpretation of Native versus European relations; they have emphasized interdependence rather than dependency and interconnection rather than separation. For example, in *Indians in the Fur Trade* (1974) historian Arthur J. Ray noted that pre-Confederation fur trade society in Western Canada was based on an interdependent relationship between indigenous peoples and newcomers.[17] More generally, Edward Said in *Culture and Imperialism* argues that the often conceptually separated identities and cultures of the colonizers and the indigenous inhabitants in the nineteenth and twentieth centuries were in fact "intertwined." Because their histories were intertwined and the colonized territories "overlapped," Said suggests there is no need to attribute stereotypical status or labels to race, gender, and class. Assuming every cultural form is "radically and quintessentially hybrid," he declares that "[c]ulture is never just a matter of ownership, of borrowing and lending with absolute debtors and creditors, but rather of appropriations, common experiences, and interdependencies of all kinds among different cultures."[18]

Despite its emphasis on the Creole nature of culture, Said's thesis does not simply follow the deconstructionist argument, which dismisses the mythic notion of authentic Indian culture as mere fiction. Apart from theoretical discussions, the cultural notions of distinctive Indian races, cultures, and societies largely affected relations between policymakers and Indians. This is where the idea of distinctive Indian water rights came into being as a legal concept. One of the reasons why scholars find Indian water rights

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[17]Arthur J. Ray, *Indians in the Fur Trade: Their Role as Trappers, Hunters, and Middlemen in the Lands Southwest of Hudson Bay, 1660-1870*, with a new introduction (Toronto: University of Toronto Press, 1998), xix-xxi.

[18]Edward Said, *Culture and Imperialism*, 217. See also Alexandra Harmon, *Indians in the Making: Ethnic Relations and Indian Identities around Puget Sound* (Berkeley: University of California Press, 1998).

history so complicated largely owes to the reciprocal relations among the mythical notion of Indian-ness, interconnected socio-economic situations on reserves, and somewhat distinctive regional differences in dealing with water rights issues in Western Canada. In order to disentangle this complex history, I use case studies to provide a better understanding of Indian water rights issues. The following chapters will trace the historical process in which Indian water rights issues were inextricably bound with provincial laws, neighboring economic activities, and federal assimilation policies.

Of particular relevance to my study, Nicholas Thomas warns historians that the "homogenization" of colonialism through the conventional scholarly venues of racism, fatal impact, or hegemony often misses the complex processes that were at work.[19] He argues that, for the purposes of examining the context of colonialism's culture, historians are better off if they make in-depth case studies or focus on specific issues rather than indulge in sweeping theoretical generalizations. Heeding Thomas' cautionary tale, this thesis takes a regional and topical focus. I emphasize the practices of law and politics as they were expressed through legislation and court decisions, which developed inseparably from literature, popular writings, and other cultural forms.[20]

What these scholars of colonialism have also recognized is that British, American and Canadian policymakers often sought to create a new colonial order with little reference to life in the nascent settlements. The imperial visions mostly aimed to facilitate the goals of the larger Empire or home state, rather than to address the dreams and aspirations of indigenous and European individuals living in the colonies. Thus, in distant offices, the

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[19]Nicholas Thomas, *Colonialism's Culture*, 2, 9-16.
[20]Ibid., 66-70, 96-97.

colonial promoters conceived colonial visions from the perspectives of their own value systems. Lytton is a classic example of this. Even though survey reports about indigenous peoples, lands, and resources in British Columbia and the prairies by the Royal Engineers, the Palliser expedition, or the Canadian exploration party led by Henry Youle Hind in 1858, identified difficult obstacles for the establishment of a yeoman society, Lytton did not change his colonial vision.[21] Lytton's earlier writings make it clear that the idea of spreading the Anglo-Saxon race for the better use of land by means of occupation and agriculture was upper most in his mind.[22] The information regarding the territorial claims of many western Native groups were not relevant to him.

According to environmental historian Donald Worster, the imperial manifestation and the utilitarian ideas of resource exploitation, such as those held by Lytton, gained popularity beginning with the late eighteen-century enlightenment movement in Europe. In *Nature's Economy*, Worster calls this the "imperial" view of nature, which he contends originated from the Christian pastoralism tradition. With the advent of science and technology, the mechanistic view of nature prevailed, which led western intellectuals to assume that the natural world was devised by a rational mind and therefore governed by identifiable rules. A key element of this post-enlightenment thinking was the Lockean

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[21]Henry Youle Hind was a professor of chemistry and geology at the University of Toronto. He prolifically published his detailed studies on geology, resources, agriculture, and transportation in Canada. He was also an enthusiastic promoter of agricultural settlement in the prairies. When the news of gold in the Fraser Valley reached eastern Canada in 1858, Hind advocated the idea of connecting the continent above the 49th parallel by railway in order to facilitate immigration and the transportation of wealth. His visions appeared to be very similar to the ones conceived by Lytton. See Henry Youle Hind, *Narrative of the Canadian Red River Exploring Expedition of 1857 and of the Assiniboine and Saskatchewan Exploring Expedition of 1858* (Edmonton: M.G. Hurtig Ltd., 1971), originally published in 1863; and W.L. Morton, *Henry Youle Hind, 1823-1908* (Toronto: University of Toronto Press, 1980).

[22]Escott, *Edward Bulwer*, 273-274, 295. Lytton's *The Caxton* (1847) particularly demonstrates his colonial visions, which influenced Benjamin Disraeli, Chancellor of the Exchequer, between 1858 and 1859 (Earl of Derby's Conservative government).

view that God designed nature for men to utilize in pursuit of the enrichment of human economy.[23] In the heyday of the British Empire, these ideas prevailed and underpinned British colonizers' beliefs that it was appropriate to differentiate between their "civilized" society and the "wild" or "warlike" Aboriginal societies of North America. Images of these wild societies, which often were cast negatively, frequently appeared in the press and colonial writings.[24]

By the mid-nineteenth century, numerous expeditions had surveyed land and water resources of Western British North America to lay the ground work for the transformation of nature, or the "wilderness," to something familiar and productive according to the European value system. From the expeditions of James Cook, George Vancouver, Lewis and Clark, John Palliser and Henry Youle Hind, to the philosophers and administrators of colonialism such as John Locke, Thomas Jefferson and Lytton, these colonial agents perceived land as the source of power and wealth as well as a commodity or property to be bought and sold. Whether those visionaries subscribed to yeoman farmer idealism, or Hamiltonian industrialism, they commonly believed that "unoccupied" land should be liberated from the "savages," reclaimed, and legally incorporated into "civilized" society.[25]

Chapter two considers Locke's and Jefferson's yeoman ideal and property rights notions as they relate to colonial expansion in North America. Here I will discuss how

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[23]Donald Worster, *Nature's Economy: A History of Ecological Ideas*, 2d. ed. (Cambridge: Cambridge University Press, 1994), 29-40; originally published in 1977.

[24] For example, Lytton read the article on the conflicts between American miners and Aboriginal peoples in British Columbia in the *New York Times* at the time. The article said that: "The country is perfectly wild, and a dense forest, full of warlike Indians; and, with the well known injustice of the miner towards anything of the genus Indian or Chinaman, and their foolhardiness, they will get up a series of little amusements in the way of pistolling and scalping, quite edifying." In *Papers related to Indian Land Question*, 13.

[25]Leo Marx, *The Machine in the Garden: Technology and the Pastoral Ideal in America* (New York: Oxford University Press, 1964), 146-168; Henry Nash Smith, *Virgin Land: The American West as Symbol and Myth*

American and British colonialism became intricately interconnected with Locke's property rights theory. In many parts of Western British North America, the developing regional political and legal cultures facilitated the reformulation of familiar eastern colonial economic structures during the latter half of the nineteenth century. A key element of this process involved modifying the common law by statutory means to give the state more power over natural resources, especially water. Statutory laws that aimed to regulate the use of natural resources also had the effect of commodifying fish, timber and water in colonial lands, thereby establishing an imperial regime of nature and indigenous lands. The idea of water rights, including "Indian water rights," emerged from such a property-centered legal perspective. At the beginning of the twentieth century, the colonial principle of property rights produced the idea of Indian water rights in the American West and Western Canada. The discussion will focus on the key role that U.S. Supreme Court's Winters decision of 1908 played in the process, and I will consider its implication for Western Canada.

Chapters three through six address two major themes. One is the process by which the interactions between British North American legal and political culture and indigenous communities resulted in creating a unique Indian reserve environment. The documentation of the interaction will demonstrate the active roles that Indian residents and leaders played in managing their own agricultural development. The other theme deals with the impact that irrigation and hydroelectric projects had on Indian reserves in interior British Columbia and southern Alberta beginning in the late nineteenth century. I will show how federal and provincial officials hoped to use these projects for the purpose of assimilating

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(New York: Vintage Books, 1950), 15-34; Richard White, *The Organic Machine: The Remaking of the*

Indians on reserves. Most notably, government officials did not satisfactorily deal with reconciling Indian and non-Indian water uses. Also, federal officials could not obtain full cooperation from Indian communities. Finally, the thorny jurisdiction debate between British Columbia and the federal government over Indian water rights jurisdiction caused major problems.

Chapter three discusses the bitter federal-provincial strife for administrative control of water on Indian reserves in British Columbia. This particular inter-governmental dispute was one of the most significant events in the entire history of Aboriginal water rights in Canada.

Chapter four focuses on the water rights conflicts that unfolded between settlers and the Indians on Kamloops and Neskonlith Reserves in interior British Columbia. The abundant historical records pertaining to these reserves provide important insights into water conflicts in what is known as the dry belt that encompasses the semi-arid plateau region of interior British Columbia. The major purpose of the discussion is to show the complexities of Indian-non-Indian relations surrounding water rights disputes rather than framing them simplistically in terms of the Indian against settler paradigm. I show that some prominent settlers cooperated with the Department of Indian Affairs in order to fight off neighboring settlers and to benefit from the relatively secure federally-funded Indian irrigation projects. Others fought against Indian reclamation projects and obtained monetary compensation from the federal government as a result. By providing these detailed accounts, this chapter attempts to highlight the varied nature of water rights conflicts.

Columbia River (New York: Hill and Wong, 1995), 34-48.

Chapter five focuses on one of the earliest irrigation projects among Treaty 7 Indians on the Blackfoot Reserve near Calgary. Many Blackfoot people willingly accepted and incorporated irrigation works and agriculture into their economic lives. Although federal officials wished to discourage some traditional activities, such as the Sun dance, by means of introducing irrigation farming, Aboriginal people managed to practice agriculture and continue those practices. The examination of water rights history in the Treaty 7 region will also demonstrate that the political and social climate that existed in the North-West Territories (and Alberta after 1905) from the late nineteenth century to the early twentieth century was very different from that of British Columbia. The formulation of irrigation law for the North-West Territories was based on precedents established in the American West and Australia rather than those of British Columbia. Although both British Columbia and the North-West Territories developed their water rights in reference to foreign experiences, the two Canadian political jurisdictions developed rather independently than interactively. The Dominion government held title to Crown Lands in the prairie region until 1930, whereas British Columbia was a province having full provincial jurisdiction from 1871 onwards.

Chapter six considers another Treaty 7 Nation, the Stoney, on Alberta's upper Bow River. Along with the Sarcee and the Blackfoot people, the Stoney had to cope with the industrial development of the Calgary area and the ensuing water demands that it generated. During the first half of the twentieth century, the Stoney Indians were forced to negotiate with federal officials three times for the surrender of portions of their reserves in order to accommodate hydroelectric projects. My aim here is to show that federal officials and development companies recognized Indian water rights when they arranged these

surrenders. I also want to explain how Indian leaders dealt with these seemingly inevitable changes to their land. The records of years of negotiations and agreements make it possible to trace the development of a distinctive Aboriginal water rights culture in Western Canada.

In contrast to irrigation projects, hydroelectric schemes created a dominant industrial power over the water resources at the dam site by significantly altering the landscape and severing the historic associations that Native land and water users had had with substantial portions of their traditional lands. In the minds of hydroelectric engineers and political promoters, the water in the river was a commodity. Historian Richard White, who studied post-World War II hydroelectric development on the Columbia River in the Pacific Northwest, calls the outcome of this transformation in thought "the organic machine." Presenting the concept of the "real" river and water, along with nature in general, as a cultural construct, he argues that the Columbia River became a machine because American society "literally and conceptually dissembled the river."[26] Science and technology also allowed the Americans to incorporate nature into the computerized management of the river system and water resources, thus making the Columbia a "virtual" river. The river is now a "partial human creation" or an "artifact of human technology."[27] However, White's study unjustifiably neglects to examine the roles Native peoples played in the process of creating the virtual river. Nor does he consider the impact economic incentives created to facilitate hydroelectric development had both on Natives and non-Natives. Traditional uses of water for fishing, navigation, and consumption along

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[26]White, *The Organic Machine*, 110. See also Elizabeth Ann R. Bird, "The Social Construction of Nature: Theoretical Approaches to the History of Environmental Problems," *Environmental History* 11 (Winter 1987), 255-264.

with the Native claims to the river system influenced the process of creating the virtual river.

Finally, it is important here to acknowledge the problems that arise when examining the above issues raised in the thesis. First, there is a difficulty of including such widely different cultural and political groups as the Siksika (or the Blackfoot), the Blood, the Tsuu T'ina (or the Sarcee), the Stony, the Secwepemc (or the Shuswap), and a few neighboring peoples. These indigenous peoples lived in southern Alberta and interior British Columbia for centuries and created distinctive cultures and spiritual connections to their territories. Providing a thorough understanding of each cultural group, especially their spiritual connections to, and their perceptions of, water is beyond the limit of this thesis. Chapters three to six discuss how Native leaders claimed their rights to rivers and lakes to some extent, but the detailed examination of their oral histories concerning these issues will have to be the subject of a future project. Although those groups did have widely different cultures and customs, they also shared some common ideas about water. Second, one must acknowledge that the bias in historical studies is unavoidable, for historical writings and their social context develop interdependently. While this thesis from time to time attempts to challenge some of the historical misconceptions of the history of Western Canada in relation to that of the American West, it is not immune from current social and political circumstances. Similar to the historical stance taken by historians like Peter Iverson, Arthur J. Ray, and James Riding In, it attempts to view Native peoples as central players. In the midst of mounting Aboriginal rights litigation in Canada in the 1990s, I faced many questions regarding the extent of Aboriginal rights to water in

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[27]Ibid., 106, 111.

both United States and Canada. Without contemporary issues in mind, these questions would not have been part of my consideration in writing this thesis. However, the intention of this thesis is not to provide a legal interpretation of Indian water rights in response to contemporary water conflicts; rather, it is to help understand the historical contexts of these conflicts, especially during the formative period of water rights in Western Canada and neighboring states of the American West.[28]

The tasks of historians in the early twentieth century similarly reflected their socio-political interests and ideologies. They often attempted to demarcate political boundaries in history by writing "national" histories. In *The Fur Trade in Canada* (1930), for example, Harold Innis symbolically emphasized that "[t]he present Dominion emerged not in spite of geography but because of it."[29] He argued that the distinctive Canadian environmental features, most notably the Pre-Cambrian Shield, had not been obstacles, but, rather, acted as galvanizing forces for the development of the nation.[30] If one goes back further to the mid-nineteenth century, then Innis's strong emphasis on the role the distinctive "Canadian" physical landscape played in making the country stands in a sharp contrast to Lytton's imperial and quasi-historical vision. While Lytton doubtlessly

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[28] I have discussed the Indian water rights issues in the southwest of the United States in "Americanizing Indian Water: Agrarianism and Irrigation Projects at Navajo, Salt River and Fort McDowell," (Master's thesis, Arizona State University, 1996); and Matsui, "The Winters Doctrine and Federal Indian Policies," in Douglas Harris and et al. eds., *Law and Power in the Margins: Voices from beyond the Centres*, conference papers (Vancouver: University of British Columbia, 1997), panel 1.

[29] Haorld A. Innis, *The Fur Trade in Canada: An Introduction to Canadian Economic History* (Toronto: University of Toronto Press, 1956; originally published in New Haven: Yale University Press, 1930), 393.

[30] After World War I, stimulated by the international acceptance of the landscape paintings by the Group of Seven, the Canadian Shield appeared to be the symbol of Canadian identity. Innis's statement quoted here reflected this milieu. Carl Berger, *The Writing of Canadian History: Aspects of English-Canadian Historical Writing since 1900* (Toronto: University of Toronto Press, 1986), 55; Ramsay Cook, "Landscape Painting and National Sentiment in Canada," *Historical Reflections* 1: 2 (1974): 263-283; Cole Harris, "The Myth of the Land in Canadian Nationalism," in Peter Russel ed., *Nationalism in Canada* (Toronto: McGraw-Hill, 1966): 27-43.

envisioned the re-creation of British farm society in British Columbia with the historical sense and pride of the Anglo-Saxon race, Innis attempted to incorporate the distinctive landscape into national history by focusing on the fur trade and other "staple" histories.[31] Such characterization and biases of history demonstrate the close connection of history writings and society in the past and the present.[32]

In short, my thesis does not seek to offer a definitive account of Indian water rights history in Western Canada. Rather, it offers important insights into aspects of this largely unknown history in the hope of opening and encouraging the further exploration of the history of Indian water rights in North America and possibly in other parts of the world. More specifically, this thesis seeks to contribute to the historical fields such as Native-non-Native relations, economic policy developments on natural resources, and cross-border studies between countries and provinces. By re-evaluating neglected government sources on Indian water rights and reclamation practices, it also offers a new insight on the ongoing debate over Indian land claims.

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[31] See, for example, Arthur Ray, *Indians in the Fur Trade*; Ray and Donald Freeman, *'Give Us Good Measure': An Economic Analysis of Relations Between the Indians and the Hudson's Bay Company Before 1763* (Toronto: University of Toronto Press, 1978); and Sylvia Van Kirk, *"Many Tender Ties": Women in Fur-Trade Society, 1670-1870* (Winnipeg, Manitoba: Watson & Dwyer Publishing Ltd., 1980).

[32] Ken Coates, "Writing First Nations into Canadian History: A Review of Recent Scholarly Works," *Canadian Historical Review* 81: 1 (March 2000), 99-114; and Keith Thor Carlson, Melinda Marie Jette, and Kenichi Matsui, "An Annotated Bibliography of Major Writings in Aboriginal History, 1990-99," *Canadian Historical Review* 82: 1 (March 2001), 122-171.

Chapter 2

Establishing "Western" Water Culture and Making Indian Farmers in the West

The fundamental forms of water law and policies that govern water resources both on and off-Indian reserves and reservations in contemporary Western Canada and the American West had taken shape by the early twentieth century. Historical studies have traced this evolution since the 1970s.[1] These studies emphasize the ways settlers and policymakers uniquely responded to the scarcity of water by modifying traditional English common law doctrine into statutory rights, thus, transforming the water rights from being conceived of as a common resource to being regarded as private or state property. In so doing, they identified "old" and "new" water rights doctrines in the American West to better understand the changes in law, politics and society. While these studies have successfully identified the problems of water rights in the trans-Mississippi West, little effort has been made to connect the underlying premise of water law with the Western philosophical traditions of agrarianism and property rights. Understanding the intricate connection of water rights with property rights is essential to gain a proper understanding of the

[1] In the studies of the American West, Donald Worster, Norris Hundley, William H. Veeder, and Donald J. Pisani led the historical studies of water rights. See, for example, Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York and Oxford: Oxford University Press, 1985); Hundley, Jr., *Water and the West* (Berkeley: University of California Press, 1975); Veeder, "Water Rights: Life or Death for the American Indian," *Indian Historian* 5 (Summer 1972): 4-21; Pisani, *From the Family Farm to Agribusiness: The Irrigation Crusade in California and the West, 1850-1931* (Berkeley: University of

evolution of Indian water rights in Western North America.

The main purpose of this chapter, therefore, is to examine this connection from a historical perspective with an emphasis on three major themes. I begin by discussing how John Locke's property theory underpinned the agrarianism that became an integral part of the colonial thinking of American and Canadian policymakers in assimilating Native peoples. The focus here is on the ideological evolution of agrarianism, property rights and federal land policies in the two countries. The second section highlights the complex legal and political processes of establishing water culture in British Columbia, California, Colorado, Manitoba, Montana, the North-West Territories, and Wyoming. Here I do not seek to provide a comprehensive survey of developments in these vast western regions. Rather, my purpose is to highlight the common historical developments of water rights in relation to Native peoples. The discussion in these two sections provides the essential background for the last section, which examines the creation of Indian water rights in relation to American case law and history. Legal scholar Richard H. Bartlett cogently argues in *Aboriginal Water Rights in Canada* (1986) that the extent to which Aboriginal peoples in Canada are entitled to water rights has to be viewed partly in terms of American precedents because of the similar historical development of Aboriginal rights in both countries.[2]

The discussion of Indian water rights in the third section will focus on the so-called Winters doctrine, which is a cornerstone of water culture in the North American West. This doctrine originally came into being in 1908 when the Supreme Court of the

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California Press, 1984).

[2] Richard H. Bartlett, *Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian*

United States made a ruling in *Winters v. United States* concerning the waters rights of the Gros Ventres and the Assiniboins on the Fort Belknap Reservation in northern Montana. In affirming lower courts' decisions, Chief Justice Joseph McKenna declared, in an often quoted judgement, that: "Indians had command of the lands and the waters—command of all their beneficial use, whether kept for hunting, 'and grazing roving herds of stock,' or turned to agriculture and the arts of civilization." McKenna further ruled that Montana's water law of prior appropriation did not apply to Indian water rights because the federal government had reserved land for Indians by treaties and through Presidential executive orders that meant to reserve water as well.[3] Thus, some scholars call the decree "Indian reserved water rights." To the present day, this doctrine has influenced Indians and policymakers alike in the West. Why is this so? This is the question I will address in part three.

Agrarianism and Property Rights in British North America, 1607-1902

Scholars have shown that the portrayal of "Indians" as barbarous or noble savages was a central element in the development of agrarianism and property rights in eastern North America during the seventeenth and eighteenth centuries.[4] In the minds of colonial bureaucrats, Indian lands appeared to be a Lockean *tabulae rasae* or blank space, in which "civilized" people could transplant their idealism and assimilate the Aboriginal

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Water Rights (Calgary: Canadian Institute of Resources Law, 1986).

[3] *Winters v. United States*, 207 U.S. 576-577 (1908); *United States v. Rio Grande Dam and Irrigation Company*, 174 U.S. 690, 702, 703 (1899); *United States v. Winans*, 198 U.S. 371 (1904).

[4] For example, Olive Patricia Dickason, *The Myth of the Savage: And the Beginning of French Colonialism in the Americas* (Edmonton: University of Alberta, 1984); Richard Drinnon, *Facing West: The Metaphysics of Indian Hating and Empire Building* (Minneapolis: University of Minnesota Press, 1980); and Richard

peoples into mainstream society. During the process of settler expansion in colonial America, starting with the unsuccessful Jamestown establishment of 1607, the myths about "savages" gradually took shape.[5] The philosophers of colonialism intertwined the actual experiences of European settlers and Indians with highly romanticized notions of a mythical "Golden Age," or "Garden of Eden" society, which often added archaic or exotic color to explorers' travel logs, settlers' diaries, novels, poems, and political discourses. The nostalgia for the Golden Age had first appeared in the writings of many of ancient classical philosophers of Greece and Rome, such as Hesiod (fl. ca. 800 B.C.), Plato (ca. 428-348 B.C.), Aristotle (384-322 B.C.), and Virgil (70-19 B.C.). As an antithesis to modernity, noble savage imagery remained popular with eighteenth century writers, most notably Jean Jacques Rousseau (1712-1778). Of particular relevance to colonial property theorists, myths about the barbarous or noble savage included the idea that these primitive people lived a blissful existence without laws, private property, agriculture, industry, and any of the other corrupting modes of "civilized," or European, society.[6]

John Locke (1632-1704) was one of the most influential philosophers to adopt the myth of the savage for the purpose of legitimizing colonization. In examining the role Locke's ideas played in the colonial process in America, political scientist Barbara Arneil convincingly argues that, as a Carolina plantation beneficiary, Locke's purpose was to

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Slotkin, *Regeneration Through Violence: The Mythology of the American Frontier, 1600-1860* (Hanover, New Hampshire: Wesleyan University Press, 1973).

[5] Robert Berkhofer, Jr., *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Vintage Books, 1978), 25-30, 45; Dickason, *The Myth of the Savage*, 45, 55, 63-84; and Francis Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (New York: W. W. Norton & Company, 1975), 132-145.

[6] James A. Montmarquet, *The Idea of Agrarianism: From Hunter-Gatherer to Agrarian Radical in Western Culture* (Moscow: University of Idaho Press, 1989), 6-12; and Richard Pipes, *Property and Freedom: The Story of How Through the Centuries Private Ownership Has Promoted Liberty and the Rule of Law* (New

justify the dispossession of aboriginal people from their ancestral lands in order to facilitate European settlement and plantation agriculture.[7] Locke saw the potential of portraying aboriginal America as the second Garden of Eden for this goal. Arneil suggests that Locke believed America could be "a new beginning for England should it manage to defend its claims in the American continent against those of the *Indians* and other European powers."[8] Drawing on the ideas of Saint Thomas Aquinas (1225 or 1226-1274), Martin Luther (1483-1546), and John Calvin (1509-1564), Locke conceived property rights as being 'natural rights' that were established by investing labor in the beneficial use of land, particularly for agricultural purposes.[9] This approach is known as the labor theory of property.

By agriculture, Locke envisioned a family or yeoman farm that was characteristic of the British Isles at the end of the seventeenth century. He thought it should serve as the template for mainstream colonial society in the New World.[10] In his *Two Treatises of Government* (1689), Locke wrote that: "As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property." According to his reasoning, yeoman farmers departed from "primitive" and non-agrarian Native societies in a fundamental way. By investing their labor in the land, these farmers

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York: Alfred A. Knopf, 1999), 5.

[7] Arneil corrects the assumption held by many Lockean scholars who had believed that Locke's theory did not mean to apply to colonial America. Her evidence strongly suggests otherwise. See Barbara Arneil, *John Locke and America: the Defence of English Colonialism* (Oxford: Claredon Press, 1996), 1-19.

[8] The emphasis is in the original text. Ibid., 1.

[9] Pipes, *Property and Freedom*, 17; Bertrand Russell, *History of Western Philosophy: And its Connection with Political and Social Circumstances from the Earliest Times to the Present Day* (London: Routledge, 1996), 610-613.

[10] Thomas William Heyck, *The Peoples of the British Isles: A New History From 1688 to 1870*, vol. 2 (Belmont, California: Wadsworth Publishing Company, 1992), 3-26. According to Heyck, the medieval system of subsistence-based agriculture in England had already been experiencing the decline by the time

established their legitimate rights to ownership. Locke believed that Native peoples in America lived in the state of nature, or what he called a "state of common," in which a group of people shared nature and its products without individually possessing land. Locke glorified the colonization effort to "reclaim" the land by the investment of labor, because biblical scripture states that God had commanded people to "subdue the earth" and "improve it for the benefit of life...."[11] By this logic he rejected the legitimacy of Native land ownership even though some Indians practiced horticulture and irrigation long before European contact. In fact, they even supplied food to Puritan settlers in the seventeenth century.[12]

Of great importance, Locke's labor theory of property was embraced by his fellow Whigs and by prominent eighteenth-century English legal theorists, most notably William Blackstone (1723-1789).[13] His ideas also helped to establish the eighteenth-century American Whig political tradition.[14] Arneil suggests that Locke's property discourse greatly appealed to prominent political leaders and law makers in America, such as judge Hugh Henry Brackenridge of the Pennsylvania Supreme Court and Thomas

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Locke's *Two Treatises* first appeared. English farmers favored commercially oriented farming.

[11] John Locke, *Two Treatises of Civil Government* (London and New York: J.M. Dent & Sons Ltd. and E.P. Dutton & Co Inc., 1955), in Book II, 130-141.

[12] About horticultural practices in the eastern part of North America, see Jennings, *The Invasion of America*, 19, 61-69; James Axtell, *The Invasion Within: The Contest of Cultures in Colonial North America* (New York and Oxford: Oxford University Press, 1985), 35, 154-157. The archaic Hohokam people in present-day central Arizona used the intricate irrigation system to sustain agriculture and society. See George J. Gumerman ed., *Exploring the Hohokam: Prehistoric Desert Peoples of the American Southwest* (Dragoon, Arizona, and Albuquerque: An Amerind Publication and University of New Mexico Press, 1991). See also William E. Doolittle, *Cultivated Landscapes of Native North America* (Oxford and New York: Oxford University Press, 2000).

[13] Blackstone wrote four-volume treatises on English law entitled *Commentaries on the Laws of England* (1765-1769), which became one of the most respected authoritative account of English law in revolutionary America.

[14] James W. Ely, Jr., *The Guardian of Every Other Right: A Constitutional History of Property Rights* (New York and Oxford: Oxford University Press, 1998), 16-17.

Jefferson (1743-1826), and to a broad spectrum of colonial society.[15]

Agrarianism and Property Rights in the United States, 1776-1902

The imagery of Locke's agrarianism became an important component of colonial literature and, as a consequence, an integral aspect of the emergent American nationalism. For example, after travelling widely in the American colonies as a cartographer-surveyor and establishing his family farm in New York around 1769, J. Hector St. John (or Michel-Guillaume Hector St. John) Crevecoeur (1735-1813) celebrated American farmers in his classic work, *Letters from an American Farmer* (1782). Similar to Locke and Jefferson, Crevecoeur proudly wrote that: "This formerly rude soil [in America] has been converted by my father into a pleasant farm, and, in turn, it has established all our rights. On it is founded our rank, our freedom, our power, as citizens; our importance, as inhabitants of such a district."[16] For the author of this highly influential book, yeoman farmers were the model citizens and the essence of American identity.[17] As new settlements reached the trans-Appalachian West in the early nineteenth century, and the trans-Mississippi West in the second half of the nineteenth century, the western "frontier" yeoman further solidified the symbolic meaning with a strong sense of patriotism. American historian Henry Nash Smith claims that the yeoman is one of the most tangible things Americans identify with

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[15] Arneil, *John Locke and America: The Defence of English Colonialism (Oxford: Claredon Press, 1996)*, 100, 177-194.

[16] J. Hector St. John Crevecoeur, *Letters From an American Farmer* (Oxford: Oxford University Press, 1997), 27.

[17] Brian W. Dippie, *The Vanishing American: The White Attitudes and U.S. Indian Policy* (Lawrence: University Press of Kansas, 1982), 107.

when they speak of the democratic foundation of their country.[18]

Among the proponents of the yeoman citizen ideal in the late eighteenth century and early nineteenth century, Jefferson undoubtedly was the one who played the most prominent role in popularizing the family farm ideal. In fact, Jefferson's agrarianism and property concept became an essential part of American republicanism and western expansion. In glorifying the yeoman ideal, Jefferson elaborately blended nationalistic virtue with Christian rhetoric, the combination of which strikingly resembled British visions of Edward Gibbon Wakefield and Edward Bulwar Lytton. In *Notes on the State of Virginia* (1787), Jefferson wrote that "Those who labor in the earth are the chosen people of God, if ever he had chose people, in whose breasts he made his peculiar deposit for substantial and genuine virtue."[19] Commenting on the question regarding the future economic direction of the United States, Jefferson personally and explicitly expressed his vision in his letter to John Jay on August 23, 1785:

> We have now lands enough to employ an infinite number of people in their cultivation. Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independent, the most virtuous, & they are tied to their country & wedded to its liberty & interests by the most lasting bonds. ...our citizens will find employment in this line till their numbers, & of course their productions, become too great for the demand both internal & foreign.[20]

Although some scholars believe that the Jeffersonian ideal was doomed to fail in the midst of rising early nineteenth-century industrialism, his ideal persistently captured

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[18] Henry Nash Smith, *Virgin Land: The American West as Symbol and Myth* (New York: Vintage, 1950), 135.

[19] Quoted in Stanley N. Katz, "Thomas Jefferson and the Right to Property in Revolutionary America," *Journal of Law and Economics* 19 (October 1976), 473-474.

[20] Joyce Appleby and Terence Ball eds., *Thomas Jefferson: Political Writings* (Cambridge: Cambridge

political visions of American reformers, and inspired British colonialism and Canadian expansionism throughout the nineteenth century.[21] Of the utmost importance for the present study, the Jeffersonian family farm model was used as a tool to justify the course of westward territorial expansion into areas where the yeoman farmer model based on Locke's theories continued to justify the displacement of Aboriginal people. Jefferson and his followers not only helped make frontier agrarianism become a part of the American psyche, but they also laid the foundations for early federal land policies at large.

The importance of the legacy Jefferson left for the development of land policies in both the American West and Western Canada cannot be overstated. In the heyday of republicanism from the late eighteenth century to the beginning of the nineteenth century, land and agricultural policies took shape that largely determined the ways the federal government pressed forward with territorial expansion into the American West. In the 1770s, Jefferson was able to play a key role as a surveyor in Virginia and as the chairman of two congressional committees that planned for the settlement of the trans-Appalachian

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University Press, 1999), 548-550.

[21] Arneil concludes that the Jeffersonian ideal lost popularity when Chief Justice John Marshall of the United States Supreme Court (1801-1835) began rendering opinions that were contrary to Locke's property theory as it pertained to the Indians. Jeffersonian scholar Stanley Katz similarly contends that Jefferson was a "loser," because his republicanism did not prevail in American history. Literary historian Joyce Appleby provides a different and cogent interpretation by cautioning not to make simplistic characterization of Jeffersonian ideal. She contends that the Federalist-Republican battle over the future of the country was not a conflict between yeoman ideal and modern mercantilism, but rather, it was a "struggle between two different elaborations of capitalistic development in America." See Arneil, *John Locke and America*, 194-196, 208; Stanley N. Katz, "Thomas Jefferson and the Right to Property in Revolutionary America," 467; Joyce Appleby, *Liberalism and Republicanism in the Historical Imagination* (Cambridge and London: Harvard University Press, 1992), 258. Although Chief Justice Marshall was a distant cousin to Jefferson, they had largely different political opinions. Marshall's political and economic opinions were complex and often appeared to be identical with Locke's theories of politics and constitutional government. See, Herbert A. Johnson, *The Chief Justiceship of John Marshall, 1801-1835* (Columbia: University of South Carolina Press, 1997), 13-17.

country and the disposition of public domain. In these roles, he spearheaded the movement to standardize land policies and adopt the rectangular land survey system. This scheme was realized in the Land Ordinances of 1785 and 1787, according to which surveyors divided the public domain into townships of thirty-six square miles, which in turn were divided into thirty-six 640-acre sections. In 1804, Albert Gallatin, the Secretary of the Treasury of the Jefferson Administration, recommended that Congress standardize the size of land sales at 160 acres, or a quarter section, which he assumed was large enough for family farms in the humid and fertile Old Northwest (Mid-West). His recommendation first materialized as the Indiana Territory Act of 1804.[22] Later Congress adopted it on a national scale in the Land Act of 1820 and the Pre-emption Act of 1841.[23]

In the second half of the nineteenth century, the quarter section remained the core feature of land allotment programs in the West. There were several reasons for its persistence. It served the political need to meet the demand for homestead lands by increasing numbers of immigrants. Also, it provided a means for fending off rising problems with unemployment in the northeastern industrial states by having the West serve as the "safety valve." Jeffersonian reformers wanted to counteract the escalating land speculation activities that had gravely concerned them since the mid-1830s.[24] Accordingly, in the 1850s they attempted to introduce legislation that aimed to carry the yeoman farming ideal into new territories by granting free title to homesteaders who improved their frontier lands. This initiative met die-hard objection from slave-holding

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[22] Murray R. Benedict, *Farm Policies of the United States, 1790-1950: A Study of Their Origins and Development* (New York: The Twentieth Century Fund, 1953), 11-16.
[23] Ibid., 17-18.
[24] William F. Deverell, "To Loosen the Safety Valve: Eastern Workers and Western Lands," *Western*

southern representatives. The liberal policies of Lincoln's Whig Administration paid the price for the withdrawal of the southern states during the Civil War in order to pass the Homestead Act in 1862. The Act ambitiously covered the wide ranging environmental regions of the West and promised free grants of 160 acres to settlers provided they had developed their holdings in five years.[25]

This idealistic Act had serious shortcomings. As settlers poured into the Trans-Mississippi West, especially after the Civil War, they discovered that160 acre farms were too small to bear the heavy costs of transportation, livestock, implements, and commission fees they faced. As a result, most homesteaders failed to maintain their farms.[26] In the end, the intention of converting over one billion acres of public domain into small family farms proved to be far too unrealistic. The Act failed to stop massive cash land sales by auction, railroad grants, and private speculation. The emergence of the banking system allowed powerful interest groups to monopolize valuable farming and lumbering regions. Yet, in spite of all of these obstacles, Congress extended the scheme into the Far West. With the intention of providing farmers, ranchers and miners with better means to cope with the arid environment, it passed the Desert Land Act of 1877.

Historical Quarterly 19: 3 (August 1988), 269-270.

[25] The sentiment of the southerners against the northern free states worsened especially after the passage of the Kansas-Nebraska Act of 1854, which localized the authority to decide slavery issues and virtually violated the balance between free and slave states agreed in the Missouri Compromise of 1820. See John Mack Faragher ed., *The American Heritage Encyclopedia of American History* (New York: Henry Holt and Company, 1998), 485, 601.

[26] According to economic historian R. Taylor Dennen, the homestead policy was doomed to fail from the beginning. Among those farmers who received free homestead during the second half of the nineteenth century, about 73 percent of them did not have enough financial support to start farming settlements, including the amount to cover the building of infrastructure, procurement of agricultural implements, good knowledge of local climatic changes, and the establishment of market among others. R. Taylor Dennen, "Some Efficiency Effects of Nineteenth-Century Federal Land Policy: A Dynamic Analysis," *Agricultural History* 51: 4 (October 1977), 734-736.

This act expanded the 160-acre provision of the Homestead Act to a maximum of 640 acres. Settlers merely had to prove that they had initiated an irrigation operation to qualify for the larger acreage. The scheme invited fraud. At least 95 percent of the final proofs made by the patents under the Act were bogus. Often settlers simply poured a bucket of water on the claimed land and paid a witness twenty dollars to say that the land was under irrigation.[27] The federal government remained reluctant to provide sufficient support for irrigation agriculture in the arid West throughout the nineteenth century despite the mounting urgent cries from settlers for more drastic solutions. The severe drought years from the late 1880s to the early 1890s, ultimately persuaded a considerable number of policymakers to promote irrigation practices and resulted in the dispatch of John Wesley Powell's party to identify all suitable water sources for irrigation. However, it was not until the beginning of the twentieth century that the federal government assumed stronger administrative power over water and agricultural policies by passing the Reclamation Act in 1902.[28]

Agrarianism and Property Rights in Western Canada, 1867-1894

American land policies had a powerful influence on Canada as it expanded westward. The idea of acquiring Rupert's Land for colonization purposes had long been a dream of economic promoters in Britain and even more so in Upper Canada or Canada West. As early as 1849, a select committee of the British House of Commons held an inquiry into the administration of the Hudson's Bay Company and questioned the

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[27] Fred A. Shannon, *The Farmer's Frontier: Agriculture, 1860-1897* (New Yok: Harper & Row, Publishers, 1968), 52-61.

company's Governor, Sir George Simpson, and others who had experience in Rupert's Land, about the possibilities for agricultural colonization there. The witnesses provided the committee with evidence about successful agricultural experiments at The Pas, Norway House, Fort Simpson, and Red River, while acknowledging that there were problems with frost, frozen soils, and other negative climatic conditions. Their testimonies failed to promote colonization, however. Nonetheless, in 1857, the British government dispatched an expedition led by Captain John Palliser to the region lying between the Red River settlement and the Rocky Mountains. One of the objectives of the enterprise was to look for possible areas that could sustain agricultural settlement. The Canadian government also was interested in this same territory. Accordingly, in the same year it sent George Gladman (Director), S.J. Dawson (Surveyor), W.H.E. Napier (Engineer), and Henry Youle Hind (Geologist) to lead an expedition from Fort William on Lake Superior to the Red River settlement and beyond. The Hind Expedition, as it has come to be known, was instructed to investigate the agricultural and mineral potential of this vast territory.[29]

The reports of both expeditions provided general ideas of the extent of the arable West, or the "fertile" belt. For Palliser and Hind, the "fertile" belt encompassed the Red and the Assiniboine valleys as well as the parkland region of the North Saskatchewan River valley. According to Palliser, the fertile belt would provide not only "a good supply

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[28] Worster, *Rivers of Empire*, 135-6.

[29] Arthur S. Morton, *History of Prairie Settlement* (Toronto: Macmillan Co. of Canada Ltd., 1938), 31-35; Henry Youle Hind, *Narrative of the Canadian Red River Exploring Expedition of 1857 and the Assiniboine and Saskatchewan Exploring Expedition of 1858*, vol. 1 (Edmonton: M.G. Hurtig Ltd., 1971), 3-8, 246, 250; Irene M. Spry, *The Palliser Expedition: The Dramatic Story of Western Canadian Exploration, 1857-1860* (Calgary: Fifth House Publishers, 1963), 294-295.

of rich pasture and natural hay" but also the large tracts of land for the prospective settler to begin cultivating land immediately. Palliser also traversed the prairie region of present-day eastern Alberta and southwestern Saskatchewan in the middle of a drought cycle. Partly due to the drought years, he regarded these tree-less arid/ semi-arid regions or the "true prairie" areas as being too arid for agricultural settlement. This tract came to be known negatively as Palliser's Triangle.[30]

These expedition reports encouraged promoters in Canada West to intensify their advocacy of westward expansion, focusing on the great potential of the Red River and Northern Saskatchewan River valley regions. George Brown (1818-1880), a Scottish immigrant, politician, and the owner of the Toronto *Globe,* was one of the key figures. Brown and his allies capitalized on the growing "land hunger" sentiment among Canada West farmers.[31] In the late 1860s, when Brown retired from public life, William McDougall (1822-1905) took the lead in advocating the acquisition of Rupert's Land for Canadian colonial expansion. Mcdougall's vision faced challenge when his political opponents, the Conservatives led by John A. Macdonald, won a majority in the United Province of Canada in 1864 in alliance with the Liberals and eventually led the new Dominion government in 1867. However, Macdonald showed interests in the American idea of the westward expansion, and McDougall remained an influential force by becoming Macdonald's Minister of Public Works in 1867. In doing so, the Macdonald government sustained the dream of promoting colonial expansion by revitalizing Canada's staple-based economy, an idea Macdonald's Clear Grit opponents had

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[30] James B. Hedges, *Building the Canadian West: The Land and Colonizaation Policies of the Canadian Pacific Railway* (New York: Russell & Russell, 1939), 3-4.

championed. Under the Macdonald government, the establishment of the transcontinental railway and the rapid settlement of the Prairie West became primary economic goals. Historian Chester Martin explains that the granting of free Dominion homesteads grants in the North-West Territory along with the transcontinental railway grant were to become the principal development policy of the new government.[32]

In 1871, the Dominion government adopted the American rectangular system by an order-in-council.[33] J.S. Dennis, Jr., the son of the famous Dominion surveyor of the same name wrote about this transitional time in 1892. He noted that when the Judicial Committee of the Privy Council in London, Britain, passed the order, politicians assumed that "a large portion of the newly acquired territory was good agricultural land, [and] well adapted for successful farming operation." The Dominion government also expected that "a large influx of immigrants would follow the transfer of the country to the Dominion" and, accordingly, made the Department of Agriculture responsible for immigration matters immediately after Confederation.[34] To make way for these anticipated immigrants and the construction of a transcontinental railway, the Dominion government immediately negotiated a series of treaties with indigenous nations in the 1870s to address their rights in accordance with the obligations toward these nations, which the Dominion government had assumed as part of its Rupert's Land Transfer agreement with the British government

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[31] J.M.S. Careless, *Canada: A History of Challenge* (Toronto: Macmillan of Canada, 1970), 220, 224-225.
[32] Chester Martin, *"Dominion Lands" Policy* (Toronto: Macmillan Co., 1938), 391-392.
[33] Don W. Thomson, *Men and Meridians: The History of Surveying and Mapping in Canada, 1867-1917*, vol. 2 (Ottawa: Queen's Printer, 1967), 22.
[34] J.S. Dennis, "A Short History of the Surveys Made Under the Dominion Lands System 1869 to 1889," in Canada. *Sessional Papers*, No. 13, 1892, 1; and J.C. Chapais, "Report of the Minister of Agriculture," in Canada, *Sessional Papers*, No. 76, 1869, 1-7.

and the Hudson's Bay Company.[35]

Colonel John Stoughton Dennis, the first Surveyor General of the Dominion Lands Branch of the Department of the Secretary of the State (1871-78), took the responsibility of carrying out the survey of the vast Western Canadian prairie lands. To promote rapid settlement and to meet the obligation to the province of British Columbia, the Macdonald government pushed the building of a transcontinental railway to open the new territories and provinces to world markets. In 1872, Parliament passed the Dominion Lands Act, which affirmed the 1871 order-in-council and borrowed additional ideas from the American Homestead Act of 1862, most notably land grant provisions for mining and logging and the detailed instructions for the Dominion land survey, having particular reference to the proposed railway land grant and construction. Of particular importance, section 42 stipulated that no provision of the Act would apply to Indian lands.[36]

Significantly, the federal government adopted this scheme even though both Dennis and the first Lieutenant-Governor of the North-West Territories, William McDougall, had warned that American land grants were too small and they were devoid of road allowances.[37] According to the explanation given by the Lieutenant-Governor of Manitoba, Adam G. Archibald, although later Canadian surveys did incorporate road allowances by adjusting the American land grant system, one of the prime reasons that the government largely followed the American model anyway was that the 160 acre quarter

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[35] The treaty negotiation processes were often more complex than a merely one-sided government endeavor. See Arthur J. Ray, J.R. Miller, and Frank Tough, *Bounty and Benevolence: A History of Saskatchewan Treaties* (Kingston & Montreal: McGill-Queen's Press, 2000).

[36] *Statutes of Canada*,1872, 35 Vict. 69, c. 23, "An Act respecting the Public Lands of the Dominion." Section 16 also provided that the surrendered lands on the Red and Assiniboine rivers under the terms of the Selkirk Treaty would not be affected by the Act.

section had become the standard for North America homesteaders. Also, it had the advantage of providing more homesteads than the Dennis-McDougal 200 acre model would. Since the government anticipated that many immigrants would come to Canada through American territories, Archibald's arguments were convincing in Ottawa at the time.[38]

In June 1872, the newly created Department of the Interior took over the responsibility for Dominion lands policies, the Geological Survey, and Indian Affairs. As surveying moved forward, the government made further amendments to the Dominion Lands Act in 1874, 1879, and 1881. In the act of 1881, the government reserved all odd-numbered sections (except sections eleven and twenty-nine) for railways and established the 48-mile wide railway belt, consisting of 24 miles each side of the line that stretched 900 miles across the prairie.[39] As the major beneficiary of this huge land grant, the Canadian Pacific Railway was promised 25 million acres of land "fairly fit for settlement" and eventually received over 26 million acres in the prairie, while other railways received less than six million acres in total. When the government of British Columbia formally conveyed a strip of land to the Dominion in 1883 for the completion of the transcontinental line, this prairie railway land grant practice became a model for setting the boundaries of the British Columbia railway belt. The belt consisted of the total area of 10,976 acres with the width of 40 miles (20 miles each side of the CPR line).

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[37] McDougall and Dennis recommended that 200 acres should be the model for a Canadian family on the homestead. Dennis, "A Short History of the Surveys," 1-15.

[38] Robert B. McKercher and Bertram Wolfe, *Understanding Western Canada's Dominion Land Survey System* (Saskatoon: Division of Extension and Community Relations, University of Saskatchewan, 1986), 13-19; Martin, *"Dominion Lands" Policy*, 391-395; and Thompson, *Men and Meridian*, 28-35; J.S. Dennis, "A Short History of the Surveys Made Under the Dominion Lands System 1869 to 1889," in Canada.

The government completed the railway grant in 1903.[40]

In British Columbia, land policies took a somewhat different course from that of the North-West Territories and Manitoba, although there was a similar emphasis on the promotion of the small family farm ideal. Despite the fact that the colony had been established in response to a gold rush, Governor Douglas and Colonial Secretary Edward Bulwar Lytton had the long-range goal of transforming it into a "sturdy yeoman" society. By the time British Columbia joined the union in 1871, it had developed its own land procedures under the direction of the British Colonial Office and colonial governor James Douglas.[41] To facilitate this objective, the Douglas administration loosely adopted the American pre-emption strategy. Accordingly, Douglas gave squatters pre-emption rights to 160 acres of unsurveyed lands if they made required improvements. In 1870, the Anthony Musgrave administration of the colony extended the right in the Land Ordinance Act by allowing for 320 acre pre-emptions in the area east of the Cascades.[42] In 1879, Premier George A. Walkem (1874-1876, 1878-1882) decided to abolish the free grant system in favor of public auction and deferred payment.[43]

As Canada had grown through the exploitation of staple resources for export such as fish, fur, and timber, it seemed natural to expect that grain would be the next

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Sessional Papers, no. 13, 1892.

[39] *Statutes of Canada*, 1881, 44 Vict., c. 1, "An Act respecting the Canadian Pacific Railway."

[40] Dennis, "A Short History of the Surveys Made Under the Dominion Lands System 1869 to 1889," 1-15; and Martin, *"Dominion Lands" Policy*, 392, 397; McKercher and Wolfe, *Understanding Western Canada's Dominion Land Survey System*, 10-11, 22-24; and Hedges, *Building the Canadian West*, 9, 17, 21, 24-25, 29-30, 34-35.

[41] Robert E. Cail, *Land, Man, and the Law: The Disposal of Crown Lands in British Columbia, 1871-1913* (Vancouver: University of British Columbia Press, 1974), 11; and Edward B. Lytton to Richard C. Moody, Downing Street, 19 October 1858, Colonial Correspondence, B-1346, 1149b, British Columbia Archives (BCARS).

[42] Cail, *Land, Man, and the Law*, 14-17.

staple export to drive the Canadian economy. In 1878, the reinstated Macdonald administration advocated a "National Policy," which promoted tariff protection measures coupled with the development of the "frontier" wheat economy.[44] Nevertheless, it would take another twenty years before this vision was realized. Economic historians have argued that the National Policy and free homestead grants did not work as the major catalyst for the rapid settlement in British Columbia or the Prairie West. Considering the rapid increase in population in Western Canada in the first two decades of the twentieth century, they argue that the establishment of railways, technological innovation in agricultural science, and the proliferation of irrigation systems played much larger roles. The increasing accessibility of railway transportation, the development of early ripening wheat varieties, and the practices of summer fallowing and dry farming all aided farmers.[45]

Irrigation technology reached Western Canada in the late nineteenth century and was promoted as one of the most effective ways to cope with unstable precipitation and to increase agricultural productivity. In the face of the recurring drought cycle, agricultural promoters operating in both the American West and Western Canada saw the potential economic advantages of irrigation, especially for large-scale farming businesses. Coupled with the wide acceptance of a new water rights doctrine, which will be discussed in the

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[43] Ibid., 34.
[44] V.C. Fowke, *The National Policy and the Wheat Economy* (Toronto: University of Toronto Press, 1957), 56-68.
[45] Kenneth H. Norrie, "The National Policy and the Rate of Prairie Settlement," in R. Douglas Francis and Howard Palmer eds., *The Prairie West: Historical Readings* (Edmonton: Pica Pica Press, 1992), 248-260. Wilfred Eggleston, "The Old Homestead: Romance and Reality," in Francis and Palmer eds., *The Prairie West*, 342-348; and Fawke, *The National Policy and the Wheat Economy*, 72-73.

next section, irrigation agriculture became economically attractive practice in the West.[46] Irrigation promised higher and more dependable crop yields and made it possible to grow such popular cash crops as alfalfa, sugar beets, and wheat.

From the late nineteenth century to the early twentieth century, irrigation schemes generally were modest in scale. Most of them involved diverting water through ditches from relatively small streams by using simple gravitation methods or storage dams. Although large rivers had the potential of providing larger quantities and more stable supplies of water, the problem was that seasonal changes in river courses and flows often forced ditch owners to make costly repairs and adjustments to headgates and ditches. In addition, many rivers are deeply entrenched in the valleys. This made it necessary to use electric pumping systems that only became available in the beginning of the twentieth century. Pumping machines made it possible to irrigate bench lands or river terraces. These were often the best farming lands in the plateau and mountain regions of western North America. Nevertheless, the high cost, and the need for engineering skills, put such systems beyond the reach of most homesteaders.[47]

Establishing Western Water Culture

As more farmers, ranchers, industries, and speculators began recognizing the economic potential of water in the late nineteenth century, most of the small irrigable

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[46]Pisani, *To Reclaim a Devided West: Water, Law, and Public Policy, 1848-1902* (Albuquerque: University of New Mexico Press, 1992), xiii-xiv; Worster, *Rivers of Empire*, 7-15, 64.

[47] The noria or so-called current wheel was used to carry the river water to the bench lands by the use of current power. In the late nineteenth century, these wheels were in use in California, Nebraska, southern Alberta, and other Western and Southwestern states of the United States. Louis C. Hunter, *A History of Industrial Power in the United States,1780-1930, vol. 1 Water Power in the Century of the Steam Engine*

streams were quickly claimed. Because of inefficiency and inexperience in water administration schemes, the claims often overlapped and created tension between water users. The problems of providing workable political or legal solutions to the water conflicts partly owed to regional variations in the registration procedures of water claims. The very complicated and costly legal dispute resolution system resulted in arbitrary and incompetent administration practices. In many cases individual settlers unhappily accepted the damage due to their financial inability to cover the costly legal representation that they needed to protect their rights. The farmers took safety precautions by being beneficiaries of powerful water companies who protected them. This allowed the leading promoters of western irrigation development to dominate the water rights of the entire stream or river system. At the same time, the promoters aggressively lobbied state and territorial governments for legislation that would provide them more expedient and comprehensive means to acquire water as a property right rather than as a common resource.[48] These movements for commercializing water generally gave a socio-political impetus to the formation of a water culture in the American West and Western Canada. In the development of this culture, water users experienced the rising popularity of the prior appropriation doctrine and the legal transformation of water into property.

In comparing the history of water rights development in the American West with that of the eastern states, American scholars have argued that the prior appropriation doctrine became popular in arid regions (West), but not in humid regions (East).

(Charlottesville: University Press of Virginia, 1979), 56-57, 400-401,.
[48] Pisani, *To Reclaim a Divided West*, 104.

However, I argue that the association of water rights doctrines with aridity problems have created the environmentalism-oriented notion that, contrary to the Western regions, the prior appropriation doctrine did not become a popular notion in the "East." This dualistic assumption holds that, under the riparian doctrine, an eastern landowner could draw as much water as required from the water sources associated with his or her property. A close examination of New England history between the late eighteenth century and the early nineteenth century, however, demonstrates this was not entirely the case. The expanding demand for water by the growing number of water-powered mills and other waterpower-oriented industries pushed governments to pass legislation that allowed mill owners to control the stream flow and govern their extensive water rights to rivers. This often obstructed an individual proprietor's ability to exercise his or her riparian right.[49]

Recognizing a water rights history is more complex in the East, historians recently have revised the interpretation of the prior appropriation doctrine. For example, Donald Pisani notes that just before the California gold rush of 1849 and 1850, New England courts had begun to adopt ideas that were similar to the prior appropriation doctrine associated with the West. Pisani points out that the Chief Justice of Massachusetts, Lemuel Shaw, ruled in 1844 that the first proprietor to erect a dam for the beneficial use of water had a priority right to maintain his/her level of usage against subsequent proprietors who established themselves upstream and downstream. In making his ruling, Shaw was following the precedents set by other New England courts in the

[49] Harriet Rueggeberg and Andrew R. Thompson, *Water Law and Policy Issues in Canada* (Vancouver: Westwater Research Centre, University of British Columbia, 1984), 5.

1830s and 1840s.[50] Similar to that of New England, in *Minor v. Gilmor* (1859), the Privy Council upheld proprietors' rights to impound water in the Granby River, Lower Canada, for any purpose, including irrigation, as long as it did not interfere with the water use of other established proprietors. The proprietors whose lands were flooded or damaged were entitled to compensation, but mill rights persisted.[51] These examples demonstrate that the prior appropriation doctrine was known in New England and eastern Canada by the middle of the nineteenth century. This was well before it had become a widely accepted practice in the West.

How then did the doctrine of prior appropriation become popularly associated with the arid West? Firstly, it can be attributed to frontier historians, most notably, Frederick Jackson Turner and Walter Prescott Webb, who gave an impetus to the regeneration of American identity out of the unique environment and history of the "arid" American West. Most recently, historians, especially the so-called "New Western historians," have sought to de-emphasize environmental factors as explanatory elements in their histories of the West to counteract the theses of Turner and Webb; that is, New Western historians placed more emphasis on settlers with cultural baggage in transforming the "arid" environment. Despite their cogent scholarship, the new historians have not been entirely successful.[52] Partly this is because of the way they approach the history of Western water rights. Most historians continue to associate the development of

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[50] Pisani, *Water, Land and Law in the West*, 9.

[51] C.S. Burchill, "The Origins of Canadian Irrigation Law," *Canadian Historical Review* 29: 4 (December 1948), 353-354. This argument by Privy Council is identical to Locke's theory. See Locke, *Two Treatises of Government*, Book II, 292, paragraph 36.

[52] For example, see Pisani, *Water, Land, and Law in the West*, 7-23, *To Reclaim a Divided West*,xiv-xvi; and Shurts, *Indian Reserved Water Rights: The Winters Doctrine in its Social and Legal Context, 1880s-1930s*

the prior appropriation doctrine with the arid and semi-arid regions and riparian water law with humid regions in the East. In other words, history of western water rights remains bound to the old environmentally deterministic discourse.

Secondly, nineteenth-century irrigation promoters helped generate the impression that prior appropriation was typically developed in the West. These individuals aggressively promoted the doctrine in the placer mining areas of California, Colorado, and British Columbia. When mining fever subsided in these regions by the 1870s and 1880s, many miners took up agriculture and/or became involved in a variety of agricultural businesses and water development enterprises. They believed that prior appropriation rights would best accommodate their needs. In the twentieth century, the United States Bureau of Reclamation undertook large-scale American reclamation projects that aimed to overcome aridity.[53] Its projects, too, depended on the application of the prior appropriation principle.

These complex processes of writing national history and building national projects have clouded our understanding of water rights history. Revisiting Locke and Blackstone, we can see a different picture of the history. The examination of these philosophers' thoughts shows that the prior appropriation doctrine was the product of the evolution of western property theory through practical application. For example, about two centuries before the popularization of the prior appropriation doctrine in western North America, Locke had already suggested a very similar idea. In his *Two Treatises of Government*, Locke briefly discussed the issue of water as he developed his labor theory

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(Norman: Oklahoma University Press, 2000), 36-55.

[53] Robert G. Athearn, *The Mythic West in the Twentieth-Century America* (Lawrence: University Press of

of property. He considered the implication of someone who draws water into a pitcher from a public fountain for his or her own consumption. According to Locke, this action proves that one's "*labour* hath taken [water] out of the hands of Nature, where it was common, and belong'd equally to all her Children, and *hath* thereby *appropriated* it to himself."[54] He further observed that the property right ended when the person stopped using the resource.[55] It is notable here that the prior appropriation doctrine subscribes to the notion of use-it-or-lose-it. Blackstone developed this idea further. In Book II of his *Commentaries of the Laws of England,* he wrote that the exclusive property of wells "appears to have been established in the first digger or occupant, even in such places where the ground and herbage remained yet in common."[56] This suggests a notion of water rights to a particular diversion site on the priority basis, which also closely corresponds with the prior appropriation doctrine. In short, the property rights theory clearly was the theoretical foundation of the prior appropriation doctrine in the American West and Western Canada. The doctrine can be applicable to both arid and humid places as long as economic and political circumstances support it.

The actual implementation of water rights largely reflected regional or local economic patterns more than environmental constraints. For example, Pisani contends that the California and Colorado governments exercised their authority primarily to provide an efficient filing and recording system of water rights. The assertion of state

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Kansas, 1986), 15-17, 34-35.

[54] The italicized words are in the original text. Locke, *Two Treatises of Government*, ed. by Peter Laslett (Cambridge: Cambridge University Press, 1960), 289, paragraph 29.

[55] Locke, *Two Treatises of Government*, Book II, 295, paragraph 38.

[56] William Blackstone, *The Commentaries of the Law of England*, Book II (Philadelphia: Rees Welsh and Company, 1897), 473-474, paragraphs 5-6.

rights was not a major consideration. Rather, the goal was to give mining developers more leeway to utilize water.[57] In contrast, Wyoming and other western states depended more on ranching, where policymakers tended to opt for comprehensive and centralized water legislation.[58] In addition, although Pisani does not emphasize it, Wyoming had the outstanding leadership of hydraulic engineer Elwood Mead, who had extensive knowledge of water rights and reclamation matters. He led a movement in the 1890s for centralizing reclamation projects, not only in his home territory/ state, but throughout the West.[59] Mead and his colleagues exerted a strong influence on the creation of irrigation law in Manitoba and the North-West Territories, where ranching also was one of the major pioneer industries. The lack of strong federal commitment in water rights development in the late nineteenth century allowed state governments to establish legal force even on the federal lands. More important, at the time federal officials actually believed that applications to state authorities were necessary to obtain water rights on Indian reservations. Even after the establishment of the Winters decision (1908), which will be discussed in the next section, federal agents made water rights applications under state laws.[60]

The federal governments in Canada and the United States did establish some control of water resources on the public domain, however, through the North-West Irrigation Act of 1894 and the Reclamation Act of 1902. As it had in the nineteenth century, the federal governments initially meant to facilitate yeoman farms in the West.

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[57] Pisani, *Water Land, and Law in the West*, 21-22.
[58] Ibid., 5, 21-22.
[59] Charles Wilkinson, *Crossing the Next Meridian: Land, Water, and the Future of the West* (Washington, D.C.: Island Press, 1992), 238.

In the American West the major federal reclamation activities focused on building storage and hydroelectric dams of world renown scales (Roosevelt Dam, Arrowrock Dam, Elephant Butte Dam, and Hoover Dam), but the Reclamation Act allocated only enough water for each farm family to irrigate 160 acres. These costly and time-consuming federal projects contributed less than private reclamation works to the agricultural economies of most western states. In 1920, federal reclamation projects accounted for only 6.5 percent of western irrigated lands; in contrast, privately funded schemes accounted for 80 percent of them. Similarly, Canadian legislation did not give an impetus to the development of irrigation projects before the early twentieth century, partly because both policymakers and farmers remained reluctant to spend money for expensive irrigation projects once a wet climatic cycle returned in the 1890s.[61]

Establishing Indian Reserved Water Rights

The action of the federal officials who brought the Winters case to a United States federal circuit court in 1905 on behalf of the Indians has to be considered against the above background of state and federal squabbling over water rights and administration. While seeking an injunction against ranchers and farmers on the upper Milk River, whose upstream diversion had seriously damaged reservation irrigation agriculture, these federal authorities challenged the rights of the State government to adjudicate water rights in federal lands. When the Superintendent at the Fort Belknap

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[60] Pisani, *Water, Land, and Law in the West*, 5; and Shurts, *Indian Reserved Water Rights*, 152.
[61] Donald Worster, *Rivers of Empire*, 176; and Donald C. Jackson, *Building the Ultimate Dam: John S. Eastwood and the Control of Water in the West* (Lawrence: University Press of Kansas, 1995), 8, 19, 123-132.

Reservation, William Logan, and U.S. district attorney Carl Rasch prepared for the Winters case, they initially believed that Indian water rights were based on state law. Once they found that their assumption was wrong, they quickly changed their strategy at the court and claimed federal jurisdiction over reservation water rights.[62]

Logan and Rasch learned in the course of their case preparation that both federal and state courts had dealt with the federal-state jurisdiction question for some time. One of the most significant of these precedents had been established at the turn of the twentieth century. It concerned the State of New Mexico's jurisdiction over the Rio Grande River. On May 22, 1899, the United States Supreme Court declared that "a State cannot by its legislation destroy the right of the United States." The ruling meant that the federal government had the superior power to secure the navigable stream of the lower Rio Grande for the purpose of trade and travel.[63] The jurisdiction debate over water rights appeared in other states of the American West. In 1904, the Supreme Court of Montana rejected the state's argument that the federal government had granted water rights to the state in the process of transferring lands to it. In the following year, the Montana legislature, which was discontented with the decision, passed legislation that made its water law applicable to federal lands in the state.[64] In British Columbia, the federal-provincial jurisdiction debate went to the Judicial Committee of the Privy Council

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[62] Shurts, *Indian Reserved Water Rights*, 35-36; Kenichi Matsui, "Americanizing Indian Water: Agrarianism and Irrigation Projects at Navajo, Salt River and Fort McDowell," (M.A. thesis, Arizona State University, 1996), 50-61.

[63] *U.S. v. Rio Grande Dam and Irrigation Co.*, 174 U.S. 690-710 (1899). Although Joseph McKenna was Chief Justice of the Supreme Court, he was not directly involved in the decision-making of the case.

[64] Shurts, *Indian Reserved Water Rights*, 53-54, 264.

regarding Dominion rights to navigable water within the British Columbia Railway Belt.[65] In this case, the province unsuccessfully argued that it had the power to adjudicate water rights within dominion lands.[66]

These jurisdictional disputes shaped the Winters decision, in which Chief Justice affirmed federal supremacy on Indian reservations.[67] The rationale of this precedent setting decision was largely based on three interconnected concepts--treaty rights, historical occupancy, and assimilation. Regarding treaty rights, Chief Justice Joseph McKenna relied on his previous judgement in the *U.S. v. Winans* case (May 15, 1905). In rendering his opinion, McKenna reversed the decision of the 9th Circuit Court regarding the fishing rights of the Yakima Indians in Washington State and ruled that the State erred in attempting to extinguish Indian fishing rights on ceded traditional lands because the Treaty of April 18, 1859, gave the Indians "a part of larger rights" on the relinquished lands. Mckenna pointedly observed: "the treaty was not a grant of rights to the Indians, but a grant of rights from them."[68] Judge William H. Hunt, who tried the

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[65] Until the Supreme Court of Canada assumed the power of the highest court for all legal matters in 1949, the Judicial Committee of the Privy Council was the final court of appeal both for federal and provincial jurisdiction. *Canadian Encyclopedia*, 1st ed., s.v. "Supreme Court of Canada."

[66] *The Burrard Power Co. v. The King*, A.C. 87 (1911). See more discussion in chapter 3.

[67] The Winters decision left some key legal questions unanswered, including the quantity of water to a reservation. In *Arizona v. California*, 373 U.S. 546 (1963), the Supreme Court of the U.S. adopted a standard notion that the quantities of water Indians could be entitled to their reservation lands would be "practicably irrigable acreage (PIA)." Before the decision, courts and policymakers decided the quantification of Indian water rights on the basis of a tribe's reasonable or actual need. In *Conrad Inv. Co. v. United States* 161 Fed. 832, a circuit court judge stated that the court could not determine the amount of water with absolute accuracy because it cannot estimate the quantity of water use on reservations for future requirements. *United States v. Walker River Irrigation District*, 104 Fed. 2d. 321 (9th Cir., 1956) and *Skeem v. United States* 273 Fed. 95 (C.C.A. 9, 1921). See also John B. Weldon, Jr., "Non-Indian Water Users' Goals: More is Better, All is Best," in Thomas R. McGuire, William B. Lord, and Mary G. Wallace eds., *Indian Water in the New West* (Tucson: University of Arizona Press, 1993), 79-81.

[68] *United States v. Winans*, 198 U.S. 376 (1905). In *United States ex rel. Ray v. Hibner*, 27 F. 2d. 909 (D.C. Idaho, 1928), the Idaho District Court adopted the same argument by declaring that "we must not forget that it was not a grant to the Indians, but was one from them to the Indians, and all rights not specifically granted

Winters case, largely accepted McKenna's opinion. He believed that when the 1888 Agreement established the Fort Belknap Reservation, the United States government and the Indians reserved water for use on reservation lands even though the terms of the agreement did not specifically mention water rights. Rather, Hunt held that the treaty "implied" the government's intention to reserve water.[69] Not surprisingly, when the state's appeal of Hunts decision reached the Supreme Court in the winter of 1907, Chief Justice McKenna readily upheld Hunt's opinion because it was largely based on the precedent of the Winans case.[70]

Regarding the issue of occupancy, both Hunt and McKenna thought it was clear that the federal government had established its jurisdiction over water rights on Indian reservations. The judges particularly meant to deny the appellants' argument that Indian water rights came under the authority of the state water law when the state entered the Union in 1889. In other words, the courts affirmed that the state did not have power to repeal the rights of Indians under state's statutory power because they were prior occupants of the lands in question. As Shurts contends, in this way the doctrine of reserved Indian water rights, or the Winters doctrine, was based on prior occupancy. Historical occupancy in this instance did not refer to pre-contact occupation, but rather, to the fact that the treaties officially acknowledged Indian presence before the establishment of the states. This federal recognition through treaties meant that Indians did not have to

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were reserved to them." See also Shurts, *Indian Reserved Water Rights*, 57.

[69] *Winters v. United States*, 207 U.S. 577 (1908). Hunt and McKenna did not explicitly locate who reserved water for the Indians although his ruling on the Winans asserted treaty rights from the Indians. Historian Hundley concludes that the Supreme Court intended to locate authority to reserve water in both Congress and the Indians. See Norris Hundley, Jr., "The 'Winters' Decision and Indian Water Rights: A Mystery Reexamined," *Western Historical Quarterly* 13: 1 (January 1982), 34.

file plans of diversion or provide proofs of beneficial use as required by the state regulations.[71]

Regarding the assimilationist goal of the federal government, Hunt and McKenna thought that water would be indispensable if Indians were to ever adopt the American agrarian ideal as a step toward winning full-fledged citizenship. On the Fort Belknap and Blackfeet reservations in Montana, irrigation was essential for agriculture, which became the mainstay of the reservation economy after the disappearance of the buffalo herds in the 1880s. The 1888 Agreement had promised that the government would provide agricultural and mechanical equipment, as well as money for the construction of irrigation ditches. The Indians received these benefits in exchange for ceding one-half of their original reservation land. McKenna interpreted the agreement as the sign that Indians had committed themselves to abandoning their "old habits" of nomadic hunting with aid from Congress. In this way, the government had assumed a moral obligation to assist the "civilization" effort of Indians.[72] As McKenna wrote:

> The reservation was a part of a very much larger tract which the Indians had the right to occupy and use and which was adequate for the habits and wants of a nomadic and uncivilized people. It was the policy of the Government, it was the desire of the Indians, to change those habits and to become a pastoral and civilized people. .... The lands were arid and, without irrigation, were practically valueless.[73]

The federal government had clung to the idea of promoting agriculture among

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[70] His judgement nearly identical to that of the lower courts, which has led legal scholars to surmise that McKenna had simply summarized them. Hundley, "The 'Winters' Decision and Indian Water Rights," 33.
[71] Shurts, *Indian Reserved Water Rights*, 6.
[72] *Winters v. United States*, 207 U.S. 576.
[73] Ibid.

Indians in the American West for decades. President Ulysses Grant's "Peace Policy" (1869-1877) had laid the foundation for more intensified federal effort toward this end. In particular, federal policy sought to link Indians in a partnership with reform-minded "humanitarians" and religious leaders who were concerned about ameliorating the adverse effects of the "manifest destiny" ideal that justified continuing colonial expansion.[74] The language in the Winters decision largely echoed the ideals of the "reform" movement, which was rooted in urban intellectual visions of the United States. On February 8, 1887, the federal government had expanded the scope of its effort to break down the communal orientation of Indian economies by promoting male-centered individual family farms through the Dawes Severalty Act (or General Allotment Act). This Act divided the communal landholding of Indian reservations into homesteads of up to 160 acres per family.[75] Significantly, Section 7 of the Act recognized the right of each family farm to have sufficient water for agricultural purposes.[76] Senator Henry L. Dawes of Massachusetts, who vigorously promoted the passage of his bill, said the act would teach the Indians "how to go forth among the white men of this country and learn the ways of the white man, and stand up and take their part in the great work of the governing

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[74] Francis Paul Prucha, *American Indian Policy in Crisis, 1865-1900* (Norman: University of Oklahoma Press, 1976), v.

[75] The Act placed its priority on family farms. A single person over 18 years old would receive only one eighth of a section. The Act affected all Indian tribes except the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Osages, Miamis and Peorias, and Sacs and Foxes in the Indian Territory. It also excluded the Seneca Nation in New York and the tract of land set aside by executive order in Nebraska for the Sioux Nation. Felix S. Cohen, *Handbook of Federal Indian Law* (Washington, D.C.: Government Printing Office, 1942), 218-222.

[76] Section 7 reads: "That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescibe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shalll be authorized or permitted to the damage of any other riparian proprietor." Act of February 8, 1887, 24 Stat. 388, 25 U.S.C. 381.

of the Union."[77] This was a heady paternalistic vision that would prove difficult to implement both in the American West and Western Canada. From the outset a key difficulty was that Congress did not appropriate sufficient financial support for the program or provide the technical support and instruction Indian farmers needed.[78] In the Canadian prairies, the failure of the Dominion government to provide sufficient financial and technical support for Native agriculture also appeared to be the major drawback.[79]

Even though one of the government's major goals was to turn Indians into farmers, historians have noted that the "dispossession" of Indians from land and resources continued on reservations. Developments at Fort Belknap Reservation serves to highlight the process. In 1886 Indian Agent W. L. Lincoln recommended to the Commissioner of Indian Affairs, John H. Oberly, that "the time has come to put these Indians on to certain tracts of land, 160 acres to each, or more, if necessary, ...allowing them to mix more with the Whites."[80] Lincoln, and the agents who followed him, met indifferent reactions from the Gros Ventres and Assiniboine, to their efforts to construct an irrigation system for

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[77] Prucha ed., *Americanizing the American Indians: Writings by the "Friends of the Indian," 1880-1900* (Lincoln: University of Nebraska Press, 1973), 101.

[78] Section 5 of the Dawes Act initially prevented non-Indians from leasing allotted land for a period of twenty-five years. However, this initial intention soon changed on February 28, 1891, to allow the Secretary of the Interior to authorize the leasing of allotment lands. A few years later, another legislation gave superintendents power to lease reservation lands. Cohen, *Handbook of Federal Indian Law*, 227, 325-332; Janet A. McDonnell, *The Dispossession of the American Indian, 1887-1934* (Bloomington and Indianapolis: Indiana University Press, 1991), 26-29.

[79] Sarah Carter, *Lost Harvest: Prairie Indian Reserve Farmers and Government Policy* (Montreal & Kingston: McGill-Queen's University Press, 1990); Hana Samek, *The Blackfoot Confederacy, 1880-1920: A Comparative Study of Canadian and U.S. Indian Policy* (Albuquerque: University of New Mexico Press, 1987).

[80] Michael A. Massie, "The Defeat of Assimilation and the Rise of Colonialism on the Fort Belknap Reservation, 1873-1925," *American Indian Culture and Research Journal* 7: 4 (1984): 35-36. The U.S. Bureau of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior, 1905* (Washington, D.C.: Government Printing Office, 1906), 245-246.

crop farming on the reservation.[81] Toward this end, in 1898, Superintendent Luke Hays took the initiative of filing a claim for 10,000 miners' inches of water with the state authority to irrigate reservation land. By 1905, the irrigation system on the reservation supplied water for growing hay and small patches of vegetables and grains on 5,000 acres of land. Significantly, non-Indian farmers worked half of the acreage. In the same year, Superintendent William Logan promoted further economic improvements by attracting the sugar beet industry to sign a long-term lease agreement for 5,000 to 10,000 acres of the reservation land.[82] In 1909, Logan authorized the leasing of an additional 20,000 acres at $2.85 per acre. By this time Christian reformers expressed their opposition to these leasing arrangements because they valued Indian labor and regarded leasing and land speculation activities as "evil."[83] Even though the practice was contrary to its family farm vision, Congress supported the program by extending the period of lease to non-Indians and by providing inducements for more agricultural businesses to locate on reserves. By 1920, non-Indians controlled as much as 58 percent of the irrigated lands on

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[81] While the Gros Ventres and Assiniboines on the reservation did not show their enthusiasm in conducting crop farming, they did see economic opportunities in the cattle industry despite the fact that the Matador Cattle Company began dominating the grazing land on the reservation. By 1915, the Company had increased the number of its cattle to more than 15,000, about five times greater than that grazed by reservation Indians. In contrast, Indian herds had decreased from 4,750 head of cattle in 1898 to 1,860 head in 1915. Although some Assiniboines near the Northern Pacific Railroad found a market to sell hay at a low price, many Gros Ventres, who lived about the Little Rocky Mountains (35 miles south of the agency headquaters), lacked an access to a market. See U.S. Department of the Interior, *Annual Report of the Board of Indian Commissioners*, 1921 (Washington, D.C.: Government Printing Office, 1922), 57-62; *Annual Report of the Board of Indian Commissioners*, 1923, 48-49; and *Annual Report of the Board of Indian Commissioners*, 1925, 21-22.

[82] Shurts, *Indian Reserved Water Rights*, 27-31.

[83] Massie, "The Cultural Roots of Indian Water Rights," 21; "The Defeat of Assimilation and the Rise of Colonialism on the Fort Belknap Reservation," 45. The Amalgamated Sugar Company dominated the reservation lease along with W.B. French at Harlem, Montana, H.H. Nelson, David Eccles, Henry Rolapp, and Mathew Browing.

the reservation.[84]

Conclusion: Legacies of Locke and Jefferson

John Locke's theory of property rights and Thomas Jefferson's agrarian ideal left legacies for political and legal authorities to follow throughout the nineteenth century and well into the early twentieth century despite rapid industrialization and urbanization. Today their theories and thoughts remain keys for understanding the crucial roles that property rights and agrarian ideals played in shaping water rights policies in Canada and the United States. Their ideas laid the foundation for legal and political authorities to perceive water as property in order to accommodate capitalistic development. The doctrine of prior appropriation made it possible for entrepreneurs and government officials to build large-scale dams and irrigation systems. As Pisani points out, since the 1970s environmental groups, professionals, and other ecologically concerned people have been criticizing the doctrine because of its exploitative nature and its failure to foster the conservation of water resources.[85]

Throughout the nineteenth century, the Jeffersonian ideal of yeoman farmers remained a powerful driving force of land and agricultural legislation. It was enshrined with the establishment of a national standard size for a family farm in both the American West and Western Canada. U.S. land ordinances of 1785 and 1787, the Homestead Act of 1862, the Dominion Lands Act of 1872, the Desert Lands Act of 1877, the Dawes

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[84] Massie, "The Defeat of Assimilation and the Rise of Colonialism," 44; and Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln: University of Nebraska Press, 1984), 185.

[85] Pisani, *Water, Land, and Law in the West*, 2.

Severalty Act of 1887, the Indian Act amendment of 1890, the North-West Irrigation Act of 1894, and the Reclamation Act of 1902 all manifested their objectives of transplanting family farm ideal in the new lands. Many of those upheld the rectangular system and a quarter section (160 acres) as the conventional size for each homestead; but as it turned out, the size was too small for most homesteaders or Indian farmers to establish the economically manageable operations in semi-arid and arid environments.

As the two countries proceeded with their territorial expansion throughout the nineteenth century, a great disparity between the agrarian ideal and practical economic realties of agriculture became glaringly apparent. On the one hand, reform-minded leaders promoted the marriage between nationalism and agrarian ideal to create stronger transcontinental nations. By putting forth this grand vision, they promised to provide a solution to unemployment, land hunger, and the social problems of rapidly urbanizing and industrializing societies. These promoters believed in the myth of the "frontier:" that is, the vast "empty" land in the West would function as the "safety valve." On the other hand, government officials failed to provide feasible economic plans to make their dream a reality. While bureaucrats and technocrats in different departments often held opinions conflicting with each other, policymakers tended to make more lands available for settlers without persuading Congress or Parliament to provide proper financial and technical aid. This meant that private interests played more important roles than federal governments in establishing settlements in the West in the nineteenth century.

On Indian reservations, homestead ideas played overlapping roles by creating "surplus" land for newcomers, on the one hand, while aiming to transform the Indians

into self-supporting agricultural citizens on the other. Treaties and agreements stipulated terms in which federal officials would provide support for the Indians in their effort to practice agriculture just as other non-Indian people did. The Supreme Court of the United States in the Winters case acknowledged that water would be an indispensable part of this assimilation process. The Court also recognized the special historic and legal position of the Indians on reservations under treaties or agreements. In Canada, although the ideas in the Winters doctrine did not gain popularity, the Dominion government incorporated American family farm ideal and water management policies. Federal Department of Indian Affairs officials and other government agents were very eager to clarify the federal jurisdiction over Indian water rights, but their interests were not well represented in Ottawa.

The jurisdiction dispute over water between the federal and provincial or state governments became one of the most contentious political and legal issues. As those governments started creating more comprehensive legislation regarding the rights and use of water resources in the late nineteenth century to promote development, the disputes became more intense. In Western Canada, the intensity of debate was greatest in British Columbia, where there were both federal and provincial lands. The discussion over to what extent the federal and provincial authorities had jurisdiction over water rights on Indian reserves in British Columbia will be the major topic in the next chapter.

Chapter 3

The Struggle for Authority over Indian Water Rights in British Columbia, 1871-1921

The political and legal debate over British Columbia Indian water rights mostly focused on the ways federal and provincial officials dealt with irrigation and farming on Indian reserves from the 1870s to 1920s.[1] Both federal and provincial bureaucrats struggled for power to control water resources within Dominion lands, such as in the Railway Belt, and on Indian reserves, including most notably the ones for the Lilooet, Secwepemc, Lytton, and Okanagan peoples. While those officials were preoccupied with jurisdictional issues, the Indians frequently competed with wealthy non-Indian farmers and ranchers for their claims on creeks and lakes in the province's "dry belt." The federal-provincial friction was partly attributable to province's persistent refusal to recognize the rights and existing agricultural practices of Indian peoples when the provincial politicians established water policies. Another problem area was the

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[1]There are a few scholarly works on Indian water rights. See Nigel D. Banks, "Indian Resource Rights in Western Canada, 1871-1930," in L.A. Knafla ed., *Law and Justice in a New Land* (Toronto: Carswell, 1986): 129-161; "The Board of Investigation and the Water Rights of Indian Reserves in British Columbia, 1909-1926" in Kerry Abel and Jean Friesen eds., *Aboriginal Resource Use in Canada: Historical and Legal Aspects* (Winnipeg: University of Manitoba Press, 1991): 219-245; Richard H. Bartlett, "Indian Water Rights on the Prairies," *Manitoba Law Journal* 11 (1980): 59-90; *Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian Water Rights* (Calgary: University of Calgary Press, 1988); Claudia Notzke, *Aboriginal People and Natural Resources in Canada* (North York, Ont.: Campus University Publications, 1994); Harriet Rueggeberg and Andrew R. Thompson, *Water Law and Policy Issues in Canada*

unorganized and inefficient practices of provincial water administration, which meant that multiple records often were filed for the same water sources, thereby complicating water claims issues further. The Dominion government, on the other hand, was hesitant to assert its authority regarding Indian water rights in times of conflict with the province even though some federal officials recognized the seriousness of Indian water rights problems as early as the 1870s. For example, when Dominion and provincial representatives visited the dry belt to set aside Indian reserves in the late 1870s, they heard pleas from Native leaders, who asked for the official recognition of their prior water rights in order to avoid further problems with settlers. In many cases, Indian commissioners granted the amount of water the Natives needed for domestic and irrigation purposes. Although the extent of their authority to grant rights to the Natives is still legally contested today, the commissioners believed that they had decision-making power over land and water rights according to section 91(24) of the British North America Act and article 13 of the British Columbia's terms of Union.[2] The provincial government challenged these federal infringements on its authority by relying on its water legislation. It argued that Native water rights were not grants, but merely unauthorized records.[3]

(Vancouver: Westwater Research Centre, UBC, 1984); Union of B.C. Indian Chiefs, *Indian Water Rights in British Columbia: A Handbook* (Vancouver: Union of B.C. Indian Chiefs, 1991).

[2]These provisions stipulate the fiduciary obligation of the federal government in Indian affairs. Section 91 (24) of the British North America Act (30 & 31 Vict., c. 31) asserts the exclusive federal jurisdiction over Indians and the lands reserved for the Indians. Clause 13 of the British Columbia Terms of Union transfers province's responsibility for Indian affairs to Canada. However, Rotman argues that section 88 of the Indian Act allows the provincial government to apply its general laws to status Indians. See Leonard Ian Rotman, *Parallel Paths: Fiduciary Doctrine and the Crown-Native Relationship in Canada* (Toronto: University of Toronto Press, 1996), 252.

[3] The Water Act of 1914 defines a water record to be "an entry made in some official book pursuant to some Act of the Province in force prior to the twelfth day of March, 1909, purporting to grant a right in or to the use of water, or any certified copy thereof." Water Act, 1914, 4 Geo. 5, c. 81, s. 3.

This chapter will examine this jurisdictional battle over Indian water rights for the purpose of explaining how the provincial *Indian Water Claims Act* of 1921[4] came into being as a compromise between the competing positions of the federal and provincial governments. I will explore how the struggle and the resulting negotiations affected the political directions the two governments took regarding Indian water rights. In order to provide a background for this discussion, the chapter first traces the history of British Columbia's water rights legislation from the colonial period. My thesis is that a succession of provincial water laws provided a foundation for the province to assert its authority against those of the Dominion government in this sphere of resource management. Following the provincial water policy discussion, the chapter outlines the Dominion argument and examines how it recognized Indian water rights. It then examines the outcome of the jurisdictional strife and its implication to the livelihood of the Indians. This chapter also seeks to show that water rights issues affected the Native peoples in British Columbia as much as they did Indian nations living in Arizona, Montana, New Mexico, Nevada, and many other Western States. Finally I will demonstrate that the Indian water rights issues, which have received scant attention from historians, were an inseparable and significant component of province's aboriginal land rights struggles in the late nineteenth century and the early twentieth century. Although Indian water rights issues were closely related to the area of jurisprudence, readers should note that my principal approach is to place them in the historical context rather than determining the extent to which Indians, the federal government, or the provincial government had jurisdictional power over water.

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[4] *Statutes of British Columbia*, 1921, 12 Geo. 5, c. 19, "An Act respecting certain Claims to Water for Use on Indian Reserves."

Fighting for the Authority

In 1919, federal agents in the Dominion Water and Power Branch and the Department of Indian Affairs (DIA) became increasingly perturbed by the fact that provincial authorities had neglected to recognize the priority of Indian water rights. They found that decades of provincial neglect meant Indians urgently needed some sort of relief measures to curtail their water shortage crises and to address their water use conflicts with non-Indians. The DIA hired J. N. Ellis of a Vancouver law firm to represent federal interests and to expedite the process of negotiating a solution of the issue. In October, Ellis went to Victoria and met with Thomas Dufferin Pattullo, Provincial Minister of Lands and the future Premier (1933-1941).[5] During their lengthy discussion, Ellis strongly urged Pattullo to make "a friendly and speedy settlement" of the Indian water rights question.[6] Despite Pattullo's seemingly positive response to Ellis's suggestion, it took over eight months for the province to reply; and worse, the answer was unexpectedly blunt and hostile. In late June 1920, Ellis reported to Deputy Superintendent-General Duncan C. Scott of the DIA that the solicitor for the provincial Department of Lands, J. E. Lane, took an "antagonistic stand" against the federal initiative at the hearings of the provincial water rights tribunal, the Board of Investigation, which had been held in Lytton earlier that month.[7] What irked Ellis most about the provincial position was Lane's statement that

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[5] See Robin Fisher, *Duff Pattullo of British Columbia* (Toronto: University of Toronto Press, 1991).

[6] J. N. Ellis to Duncan Scott, 14 October 1919, RG 10, vol. 3660, file 9755-4. Ellis wrote that Pattullo friendlily responded that he would go to Ottawa to discuss the matter with Scott. Pattullo went to Ottawa and came back to Victoria in the winter of 1919, but, for Ellis, no progress had been achieved by the visit. Ellis to Scott, 9 December 1919, RG 10, vol. 3660, file 9755-4.

[7] Ellis to Scott, 15 June 1920, RG 10, vol. 3660, file 9755-4.

almost all the Indian water claims in the province were legal "nullities." Lane declared that those claims, which had been advanced by the DIA and the Indian Reserve Commission [IRC], were merely recommendations that had never been authorized by provincial water acts.[8]

This confrontation was perhaps the first recorded and one of the most significant incidents in which the federal and provincial governments made a significant effort to clarify Indian water rights in British Columbia. It took place thirty-four years after the two governments had wrangled over the highly contentious Indian land question. Throughout these thirty-four years, they established the Joint Indian Reserve Commission in 1876 and the McKenna-McBride Commission in 1913 in attempts to achieve permanent resolution to inter-jurisdictional dispute over Native land question, but the commissions failed to achieve their ultimate goals. The problem did not only stem from the provincial refusal to recognize the importance of the Indian land question but also from the negotiation strategies of federal Indian Reserve Commissioners, Indian agents, and other federal agents, who previously had been passive and avoided open confrontations in their efforts to affirm federal jurisdiction over Indian rights issues. Unfortunately, federal officials also applied this passive policy to Indian water rights problems, only aggravating the situation for Indian farmers.

Transportation and agricultural technological advancements, as well as hydroelectric projects, especially those in the Fraser valley and the Okanagan valley,

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[8]"Ruling of the Board as to water outside Railway Belt: Argument of counsel for British Columbia as to Railway Belt, the session held in Lytton," in June 1920, RG 10, vol. 3660, file 9755-4. J. F. Armstrong, Comptroller of the Board of Investigation, chaired the session and took the same stand with Lane, in

increased the interest in agricultural development from the late nineteenth century to the early twentieth century. These projects attracted large numbers of American, Canadian, and Chinese settlers or speculators into interior British Columbia.[9] These settlers paid no regard to Indian farmers, who had been irrigating their reserve lands to grow timothy hay, barley, potatoes and other crops since the 1860s.[10] The discord that erupted between Indians and newcomers over the former's prior appropriation rights to water from nearby streams became a catalyst for the clash between the two governments concerning who had the authority to adjudicate the issue. This feud came to a head in the 1919-1920 confrontation between Ellis and Pattullo.[11]

In this jurisdictional strife, the provincial and federal governments invoked every legal argument they could muster to support their positions on Indian water rights. In order to understand the nature of this confrontation and the socio-political implications it had for

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determining Indian water claims. At the time over 120 records were brought before the Board for investigation.

[9]Cole Harris, *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change* (Vancouver: UBC Press, 1997), 219-226.

[10]Harris interprets agriculture as an alien lifestyle for aboriginal people in British Columbia and contends that the introduction of agricultural landscape by new settlers was a "drastic departures from indigenous pasts." Ibid., 219. Although pre-contact aboriginal people did not have the idea of European family farming as Harris correctly suggests, one also needs to acknowledge that some aboriginal people were willing to take agricultural pursuits for their living. As Wayne Suttles points out in his studies on the Coast Salish people, potatoes were introduced to the Indians as early as the 1820s by Hudson's Bay Company men in the Columbia River plateau area. The crop spread among Indians quickly and became an important trading good with European merchants. See Wayne Suttles, *Coast Salish Essays* (Vancouver: Talonbooks and Seattle: University of Washington Press, 1987), 137-151.

[11]Both Nigel Bankes and Richard Bartlett stress that the dispute between the two governments over the jurisdiction of Indian water rights appeared to be a distinctive feature of British Columbia Indian-non-Indian relations. Bankes, "The Board of Investigation and the Water Rights of Indian Reserves in British Columbia," 219-145 and Bartlett, *Aboriginal Water Rights in Canada*, 30-49. However, the two most prominent works on the history of Indian affairs in British Columbia, Paul Tennant's *Aboriginal Peoples and Politics* and Robin Fisher's *Contact and Conflict*, do not emphasize the conflict between the governments over Indian land and water question. Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: UBC Press, 1990) and Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890* (Vancouver: UBC Press, 1977, 1992 with new preface).

Indian water rights legislation, it is necessary here to examine the historical background of water legislation in British Columbia.

Establishing the Colonial Hegemony on the Prior Appropriation Doctrine, 1858-1914

When the colony of British Columbia was officially established in 1858, the colonial government adopted British common law for administering land and natural resources.[12] However, as the Fraser valley gold rush had been the catalyst for establishing the colony by attracting 25,000 to 30,000 miners, mostly from California, it also introduced to the colony the technologies of placer mining and, most importantly, a different concept of water rights, which had become a widely accepted notion in California.[13] Californians regarded water as property and determined ownership to it on the basis of priority use.[14] In 1859, two years after the California Supreme Court upheld this new doctrine of prior appropriation,[15] Governor James Douglas proclaimed the Gold Fields Act. Significantly, the provisions of this act and rules and regulations regarding water privileges largely incorporated the California doctrine. Douglas' proclamation, however, did not simply duplicate the California doctrine. Instead of using the American patent system for mining claims, it adopted the British mining license practices developed in Australia at the time.

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[12]For example, see "An Ordinance to assimilate the general application of English Law" (or the English Law Ordinance), March 6, 1867, 30 Vict. 214. This act repealed "The Proclamation having the force of Law to declare that English Law is in force in British Columbia" that had been in force since 19 November 1858.

[13]Harris, *The Resettlement of British Columbia*, 109.

[14] John R. Umbeck, *A Theory of Property Rights: With Application to the California Gold Rush* (Ames: Iowa State University Press, 1981), 79-98.

[15] *Bear River and Auburn Water and Mining Co. v. New York Mining Co.*, 8 Cal. 327, 334 (1857). Donald Pisani argues that the court did not firmly establish the doctrine. It still supported riparian rights in certain cases. See Pisani, *Water, Land, and Law in the West: The Limits of Public Policy, 1850-1920* (Lawrence: University of Kansas Press, 1996), 10-12.

One notable difference between patent and licensing mechanisms was that the Australian and British Columbian practices charged miners for licenses, while American mining was based on the free title for mining explorations in the public domain.[16] Although the licensing system disappeared in Australia partly because of the violent protests against it in 1854, it remained intact in British Columbia, largely determining the course of mining water claims. In practice, the Gold Fields Act appointed Gold Commissioners, who had the authority to issue free miners' certificates and to determine exclusive water use privileges for ditches and sluices based on records of priority. The commissioners could cancel the privilege on the basis of non-use. They often dealt with mining disputes and acted as local policemen, electoral officers, and Indian agents. The act also allowed the owners of the ditch to sell and distribute water to free miners. This provision was largely intended to enable water companies to supply water for hydraulic mining.[17] The act included detailed instructions for application procedures. It also provided rules for the establishment of miners' societies. These were as stringent as those contained in late-nineteenth century statutes. Ultimately they would become the basis of later colonial and provincial mining and water regulations. Subsequent colonial acts and ordinances on

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[16]Charles F. Wilkinson, *Crossing the Next Meridian: Land, Water, and the Future of the West* (Washington, D.C.: Island Press, 1992), 43-50; Jean Barman, *The West Beyond the West: A History of British Columbia*, revised ed. (Toronto: University of Toronto Press, 1996), 63; and Ronald Genini, "The Fraser-Cariboo Gold Rushes: Comparisons and Contrasts with the California Gold Rush," *Journal of the West* 11: 3 (July 1972), 475, 477, 478-9, 487. The licensing system in Australia developed with the gold rush of 1851. The Colonial government imposed notorious monthly licenses to miners. This system triggered the Eureka rebellion in 1854. Then the license was imposed yearly basis though it did not remedy the discontent of the miners. In 1855, after the rebellion, the government replaced the licensing system with a miner's right. See David Day, *Claiming a Continent: A New History of Australia* (Sydney: Angus & Robertson, 1997), 140-146.

[17] Daniel Patrick Marshall, "Claiming the Land: Indians, Goldseekers, and the Rush to British Columbia," (Ph.D. diss., University of British Columbia, 2000), 136-37; "No Parallel: American Miner-Soldiers at War with the Nlaka'pamux of the Canadian West," in John M. Findlay and Ken S. Coates eds., *Parallel Destinies: Canadian-American Relations West of the Rockies* (Seattle: Center for the Study of the Pacific Northwest in

land management, which were enacted in the 1860s, adopted the ideas in the act. These ordinances vested the responsibility for administering land and water for irrigated lands in the new authority called the Chief Commissioner of Lands and Works.[18] Eventually, this official became the one who determined Indian water rights in the province until the early twentieth century.

After British Columbia entered Confederation in 1871, provincial policymakers affirmed the colonial land legislation regime and extended it over provincial natural resources, especially agricultural lands. A key aspect of this process involved amending the colonial Land Ordinance of 1870. The most significant changes that legislators made involved offering further protection of water users' rights by requiring every ditch owner take "reasonable means" for utilizing water. If one utilized excessive quantities of water and damaged the rights of others, for example by building mill-dams, he or she was required to compensate for the damage. The new provision mandating reasonable water usage was aimed at protecting cultivated lands, which had gradually increased after the decline of the gold fever in the province. The problem was that the phrase "all reasonable

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association with University of Washington Press; Montreal and Kingston: McGill-Queen's Press, 2002): 31-79.

[18] Anyone who held the "Free Miner's Certificate" was entitled to exercise exclusive right to the soil and gold for 12 months. This proclamation became effective on 1 September 1859 except the Queen Charlotte Islands (1 January 1860). See Proclamation of 31 August 1859, and "Rules and Regulations of the Working of Gold Mines: Issued in Conformity with the Gold Fields Act," "Pre-emption Consolidation Act, 1861," "Ditches: Rules and Regulations under the Gold Fields Act, 1859," 29 September 1862; "An Ordinance to amend the Laws relating to Gold Mining," 1867, in B.C., *Proclamations, Acts, and Ordinances, 1858-1871* (New Westminster and Victoria, 1871). This ordinance extended the period of water use for any owner of the ditch to maximum five years (s. 121). For general discussion of water rights history in British Columbia, see H.W. Grunsky, "Water Legislation and Administration in British Columbia," in *Report of the Water Rights Branch, B.C. Session Papers, 1913*. 13th Parl., 1st sess., D 117-118; Bankes, "The Board of Investigation," 220; and William S. Armstrong, "The British Columbia Water Act: The End of Riparian Rights," *UBC Law Review* 1 (April 1962), 583-584; and Robert Cail, *Land, Man, and the Law: The Disposal of Crown Lands in British Columbia, 1871-1913* (Vancouver: University of British Columbia Press, 1974), 111-112.

means for utilizing the water" did not specify the quantity of water that was to be regulated.[19]

In 1875, the province consolidated previous land and water ordinances and regulations in the Land Act. This comprehensive piece of legislation demonstrated the province's determination to take a stronger role in administering all land and water in the province. One section of the act explicitly stipulated that no settler would be able to claim land within Indian reserves. Another stipulated that unless an aboriginal person obtained written permission from the Lieutenant Governor in Council, he or she was not eligible to receive the same right, pre-emption, or privilege as British subjects.[20] The act further extended the authority of the Lieutenant Governor and the Chief Commissioner of Lands and Works related to aboriginal land issues:

> The Lieutenant-Governor in Council shall, at any time, by notice, signed by the Chief Commissioner of Lands and Works, and published in the British Columbia Gazette, reserve any lands not lawfully held by record, pre-emption, purchase, lease, or crown grant, for the purpose of conveying the same to the Dominion Government, in trust, for the use and benefit of the Indians, or for railway purpose, as mentioned in Article 11 of the Terms of Union, or for such other purposes as may be deemed advisable.[21]

Although this provision recognized provincial responsibility for conveying lands to the Dominion for the purposes of establishing Indian reserves and the railway construction, it

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[19] Land Ordinance, 1870, 33 Vict., no. 144. This ordinance allowed any "male" person being a British subject over 18 years old to obtain pre-emption for up to 320 acres in the land situated to the northward and eastward of the Cascade or Coast Range of Mountains, and 160 acres in the rest of the province. This male-centered provision was modified in the Land Act of 1875, allowing the head of a family, a widow, or single man over 18 years of age of British subject to apply for the land. *Statutes of British Columbia*, 1875, 36 & 38 Vict., c. 98, s. 24, "An Act to amend and consolidate the Laws affecting Crown Lands in British Columbia [Land Act, 1875]."

[20] The Chinese were also excluded. Land Act 1875, 36 & 38 Vict. c. 98, s. 3, 11, 33,24, 29.

did not yield provincial jurisdiction over natural resources in those transferred lands according to the provincial authorities.[22]

Indeed, it was contrary to provincial policy to give up jurisdiction. In part this was because provincial politicians believed that, despite article 13 of the Terms of Union, it retained the power to decide Indian land and water rights. The first Lieutenant Governor for the province, Joseph Trutch, clearly espoused this "home-rule" sentiment. In his October 14, 1872 letter to Prime Minister John A. Macdonald, Trutch stated that the Canadian system of dealing with Indians, especially by treaties, would not work in British Columbia for several reasons:

> 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 fulfill all their reasonable requirements for cultivation or grazing. If you now commence to buy out Indian title to the lands of B.C. you would go back of all that has been done here for 30 years past and would be equitably bound to compensate the tribes who inhabited the districts now settled farmed by white people, equally with those in the more remote and uncultivated portions. Our Indians are sufficiently satisfied and had better be left alone as far as a new system towards them is concerned, only give us the means of educating them by teachers employed directly by Govt. as well as by aiding the efforts of the missionaries now working among them.[23]

Despite the roles of Lieutenant-Governor in reserving land for the benefit of the Indians as promised in the 1875 Land Act, and contrary to Trutch's statement that the Indians were "sufficiently satisfied," many Indians were hardly satisfied with provincial land and water policies. On July 14, 1874, Chiefs of Douglas Portage of the Lower Fraser valley and other

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[21] Ibid., s. 60.

[22] Robert E. Cail, *Land, Man, and the Law*, 25-30.

[23] Joseph Pope ed., *Correspondence of Sir John Macdonald* (Garden City, New York and Toronto: Doubleday, Page & Company, 1921), 183-185.

tribes on the seashore of the mainland to Bute Inlet sent a petition to Indian superintendent Israel Wood Powell in Victoria, complaining about the arbitrariness of provincial reserve policies. They stressed that they had been expressing their complaints to provincial officials for many years, requesting more lands for reserves, but the province had made them feel "like men trampled on." They believed that "the aim of the white men is to exterminate us as soon as they can, although we have been always quiet, obedient, kind, and friendly to the white."[24] Powell, who had been appointed by Prime Minister Macdonald to oversee Indian policies in the province, attempted unsuccessfully to persuade provincial officials to adopt the Dominion standard of 80 acres for each Indian family. Having come to realize that Native discontent with provincial policies was becoming explosive, in August 1874 Powell wrote to Ottawa that "if there has not been an Indian War, it is not because there has been no injustice to the Indians, but because the Indians have not been sufficiently united."[25]

Provincial indifference to the Dominion rights and the protection of Indians water rights continued nonetheless. This was manifest in subsequent land and water legislation, which laid the foundation for the following policies of the province in resisting Dominion authority regarding Indian water rights claims. In 1888 the province included provisions regarding Indian water claims in its amendment to the Land Act.[26] This act authorized the Chief Commissioner of Lands and Works to appropriate water for Indians on their reserves for agricultural purposes. The change was partly in response to repeated Dominion

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[24] Cail, *Land, Man, and the Law*, 300-301.

[25] Tennant, *Aboriginal Peoples and Politics*, 46-47.

[26] *Statutes of British Columbia*, 1884, 47 Vict., c. 16, s. 77, "Land Act, 1884."

requests to recognize aboriginal interests. The provision did not change the indifferent attitude toward Indian rights; but was meant to demonstrate provincial rights to adjudicate Indian water rights. The new provision also became a tool to prevent Dominion authorities from exercising their power to protect Indian water rights. [27] In 1892, the British Columbia legislature passed separate water legislation called the Water Privileges Act. This brief document mainly legitimated the province's jurisdiction over all water claims, including irrigation and waterpower purposes.[28]

Five years later, the Water Clauses Consolidation Act provided the ever more comprehensive coverage of water regulations and strengthened provincial control over water resources. By passing this detailed legislation, the province demonstrated its greater commitment to its economic growth by not only facilitating the exploitation of agricultural and mineral resources, but also promoting large-scale waterpower generation for the development of industry and cities. This was a major new initiative for the provincial government, which previously had focused its primary concerns on promoting the ideal family farm. Yet again, the Indians were not intended to be among the beneficiaries of the projected economic growth of the province. The Act gave provincial authorities the power to administer all of the unrecorded and unappropriated water and water power registrations.

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[27] *Statutes of British Columbia*, 1888, 51 Vict. c. 66, s. 52, "An Act to amend and consolidate the Laws affecting Crown Lands [Land Act, 1888]." This section reads:

> The Chief Commissioner of Lands and Works, with the approval of the Lieutenant-Governor in Council, may, upon such terms and conditions as to compensation to persons affected as the Chief Commissioner may think proper to impose, authorize the diversion, for the benefit of all or any of the Indians located on any Indian reserve, of so much and no more of any unrecorded and unappropriated water from the natural channel of any stream, lake, or river, adjacent to or passing through such reserve, for agricultural purposes, as may be reasonably necessary for such purposes.

[28] *Statutes of British Columbia*, 1892, 55 Vict., c. 47, "An Act to confirm to the Crown all unrecorded and unappropriated water and water power in the Province, and for other purposes [Water Privileges Act]."

Similar to the 1888 Land Act, section 35 of the Water Clauses Consolidation Act also authorized the Chief Commissioner of Lands and Works to grant water rights to Indians on reserves for domestic and agricultural purposes. One distinctive change in this provision was that it formally recognized the needs of the Indians to use water for domestic purposes; while previous legislation only stipulated agricultural use.[29]

In April 1906, partly because of the extended interests of the province in waterpower rights under the 1897 Act, a serious jurisdictional debate arose between the Dominion and the province within the Railway Belt. The Chief Water Commissioner for the District of New Westminster granted the Burrard Power Company an allocation record of 25,000 inches for water to be taken from the Lilooet Lakes and the Lilooet River for the purpose of generating electricity according to provisions of the Water Clauses Consolidation Act. This grant represented a serious challenge for the federal government for two reasons. First, the province appropriated water from the Railway Belt, which was under exclusive Dominion jurisdiction. Second, the amount of water granted to the Burrard Company would greatly diminish the quantity of water within the belt and thereby interfere with the Dominion control over navigable waters. Dominion authorities claimed that the damage to the river's navigability adversely affected the spawning grounds for sockeye salmon and threatened the trout habitat. The Province rejected the Dominion's claims by arguing that the Terms of Union, especially Article 11, only transferred the beneficial interests in the Railway Belt lands when it agreed to convey the lands for

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[29]*Statutes of British Columbia*, 1897, 61 Vict., c. 45 "Water Clauses Consolidation Act."

constructing the transcontinental railway. The province stressed that it retained jurisdiction in the belt to pass legislation for regulating both land and water rights.[30]

The Attorney General of Canada brought the dispute to the Exchequer Court of Canada, which decided in favor of the Dominion in May 1909. The Company and the province appealed to the Supreme Court of Canada and to the Privy Council in London, but the Court and the Council both dismissed the appeals in 1911 on the grounds that the Terms of the Union did not empower the province to apply its water legislation to the land within the Railway Belt.[31] Justice Duff, with the other justices concurring, said that: "the true view of the eleventh article is that the power to deal with and manage the tract of land to be transferred to the Dominion thereunder was vested in the Dominion, and that as a consequence the province could neither assume any part of the land so vested in the Dominion for itself, nor dismember the Dominion's proprietary rights in it by conferring any such rights upon others."[32]

Although the decision was not directly related to Indian reserves, it opened a great possibility for federal authorities to use the judgement as the definitive answer to the much-debated water rights jurisdiction question on Indian reserves in British Columbia. Looking back to the Rio Grande decision by the U.S. Supreme Court in 1899, and reflecting on the persistent course of American courts in the following years to affirm the superior power of the federal government on Indian reservations, the fact that Canada did not effectively implement the rulings of the Burrard Power Company case by the highest

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[30] *The Burrard Power Co. v. The King*, 43 S.C.R. 27-36 (1909). Section 91 (10) of the British North America Act of 1867 affirms the exclusive jurisdiction of the Dominion government over navigation and prohibited the construction of any dam that might interfere with navigation.

[31] *The Burrard Power Co. v. The King*, A.C. 87 (1911).

appeal court distinguishes Canadian politics from American. It also demonstrates the historic reluctance of the Dominion and provincial governments to implement court decisions through their policies, especially those regarding Native rights. Since the 1870s, the Dominion government persistently asserted to the provincial authorities that both the Railway Belt and Indian reserves were under its exclusive jurisdiction. However, the court decision and the Dominion actions that followed it were not strong enough to change the opinion of the province on its rights to adjudicate water rights on reserves. Even before the case began dragging through the courts from 1909 to 1911, the province pressed forward and established the Irrigation Commission in 1907 for the purpose of creating new and more comprehensive water legislation.

J.B. Challies of the Dominion Interior Department was partially involved in the provincial investigation of 1907 and advised Secretary H.E. Young to create a joint effort to solve water rights problems within the Railway Belt. Challies gave his opinion as an expert in water rights issues because of his service in the Dominion Railway and Swamp Lands Branch of the Interior Department and later as the Superintendent of the Dominion Water Power Branch. In a nine-page memo, Challies expressed his fear that the province's intransigence in the Burrard Power Company case would cause "serious complications" and make the federal-provincial jurisdiction question more difficult to solve. To avoid this, he recommended that his Department try to reach a mutual understanding with the province regarding Railway Belt water rights by creating an administrative body, which would have proper representation from both governments. Challies also suggested that the

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[32] *The Burrard Power Co. v. The King*, 43 S.C.R. 52.

Dominion government encourage the province to wait for the decision by the Privy Council, which should settle the jurisdiction question. Once that had happened, he proposed that the Dominion government should draft a bill to deal with the issue after receiving recommendations from the Deputy Minister of Justice. Commenting on the possible nature of this Dominion bill, Challies wrote that the best solution to the complicated water administration problem was to give more power to local authorities to adjudicate water rights.[33]

The province, however, appeared incapable of handling additional water problems at the time. It had already accumulated a backlog of unsolved water disputes, especially in the Railway Belt where both the Dominion and province had already granted water rights that often overlapped and were in conflict. Challies was well aware of these problems. When he examined water records in the provincial water commissioner's offices in 1910, it took him weeks to find a particular record partly because those offices had not indexed their records. Challies found that such a record keeping problem was mainly attributable to practice of provincial authorities, who issued water licenses without investigating the feasibility of water applications by conducting hydrographic surveys of stream capacities. They did not even require water record holders to use water continuously, contrary to provincial legislation that was based on the idea of "use-it-or-lose-it."[34] One result was that late record holders could not prevent earlier ones from severing the stream flow to impound water for a storage dam. In some of these cases, the earlier record holders were allowed to capture water in their storage dams even though they had not used water for

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[33] A memorandum from J.B. Challies to H.E. Young, 25 January 1910, in RG 13, Series A-2, vol. 86-87/ 084, file 461/ 1910. National Archives of Canada (NAC).

years, thereby damaging later record holders, who had used water continuously for many years. Conflicts of this nature appeared not only between settlers, but also between settlers and Indian farmers.[35]

Despite its problems of enforcing water regulations, the province strenuously resisted federal intervention. Even after studying the Burrard Power Company case, it still assumed it held power over Dominion lands under the authority of provincial water legislation. In a further attempt to legitimate its power over the Railway Belt, provincial authorities drew on American state legislation and case law (not specifically cited) to argue that the point of origin of water resources determined the jurisdiction rather than the title to the lands. These authorities believed that the province held jurisdiction because the prior appropriation doctrine separated water rights from those of land, and most water sources within the Belt originated on provincial lands. Based on this legal position, they argued that the Burrard Company decision upheld the principle of point of origin and implicitly legitimated the provincial administration of water claims.[36] According to an authority in the Interior Department, this view was partially right since the province could claim its jurisdiction over patented land in accordance with the provisions of the British North America Act.[37]

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[34] Ibid.

[35] Louis Carpenter, "Report of the Irrigation Commission of British Columbia," 22 January 1908, in RG 13, Series A-2, vol. 86-87/ 084, file 461/ 1910. N.A.C.

[36] "Re Water Act of 1914—Transcript of the Proceedings of the Board of Investigation (1921) inquiring into the claims of the Department of Indian Affairs, to rights to use water on Indian Reserves in the Kamloops and Okanagan Agencies," RG 10, vol. 11026, file WR-2.

[37] House of Commons. *Debates of the House of Commons, 1912-13* (Ottawa: C.H. Parmelee, 1912-13), 11924.

Based on this self-serving interpretation of the Burrard Company decision, the province began revising its water law to extend its power over the Railway Belt. This resulted in the passage of a new and more comprehensive water legislation called the Water Act in 1909. To understand why the province, without an agreement with Dominion authorities, passed this legislation that affected the Railway Belt, one needs to examine the province's motivation and the events that led to the formulation of the Water Act. This examination also helps us to better understand the subsequent collision course with the Dominion over Indian water rights.

The provincial Irrigation Commission, which was established in 1907, had laid the foundation for the legislation to a large extent. With the Chief Commissioner of Lands and Works, Frederick J. Fulton, serving as Chairman, the Commission focused its investigation on the dry belt of the province because it found most water problems areas in that region. As Fulton later helped establish provincial forestry codes by learning from American conservation forestry expert, Gifford Pinchot,[38] Fulton's commission sought to learn irrigation administration from American practices by inviting American Professor Louis G. Carpenter of Fort Collins, Colorado (Colorado Agricultural College). The two men and Secretary R.F. Child made extended visits to Ashcroft, Kamloops, and the Okanagan Valley.[39] In the Ashcroft and Kamloops areas, they observed that farmers and ranchers could not divert water from the Fraser and Thompson rivers because the beds of these rivers were too far below the bordering bench lands where their homesteads were located.

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[38] British Columbia, "Royal Commission on Timber and Forestry, 1909," GR-0271, Box 1, file 3, BCARC.

[39] Frederick J. Fulton, "The Report of the Irrigation Commission," RG 13, vol. 86-87/ 084, Box 75, file 461/ 1910. N.A.C. Fulton submitted this brief report to James Dunsmuir, Lieutenant-Governor of British Columbia on 11 February 1908. He mostly described his observation of the places he visited.

Consequently, farmers and ranchers used small tributary streams, which often became dry by mid-summer. An additional problem was that these streams were not reliable sources because of unstable precipitation. The increasing demands from corporate and municipal interests created further water problems for the ranchers and farmers.[40]

After its 1907 survey, the commissioners traveled to Greeley, Fort Collins, and Denver, Colorado, where they met state irrigation promoters to obtain their advice. Carpenter chose those places partly because he was an expert in irrigation issues in the State and had good connections with other irrigation experts there. He also believed that the visit would be beneficial for British Columbia officials because the early water development stage in Colorado was very similar to the current situation in British Columbia. In particular, Carpenter was convinced that as Colorado had done earlier British Columbia would have to clearly define the extent, location, and nature of the land to be irrigated to avoid further complication of water disputes. In comparison to current Colorado practices, what Carpenter thought most problematic was British Columbia's lax administration, which still allowed applicants simply to state how much water they thought they would need. Government officials entered water records without assessing landowners' actual requirements.[41] As a result, some landowners obtained more water than they needed, while others obtained insufficient allocations.[42]

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[40] Louis Carpenter, "Report of the Irrigation Commission of British Columbia," in Ibid. Carpenter's report was submitted on 22 January 1908. For the discussion of the settlement in early twentieth-century British Columbia, see Harris, *The Resettlement of British Columbia*, 219-249.

[41] The Water Clauses Consolidation Act actually required either the Chief Commissioner of Lands and Works or the Gold Commissioner to record the quantity of water along with the point and means of diversion, sufficient description of stream and land for use, and the purposes. See Water Clauses Consolidation Act, 61 Vict., c. 45, sections 7 to 36.

[42] Fulton, "The Report of the Irrigation Commission," RG 13, vol. 86-87/ 084, Box 75, file 461/ 1910, N.A.C.

Carpenter's solution to the administrative chaos in British Columbia involved recommending the establishment of a special tribunal. He thought that such a board could investigate water record conflicts and manage all the water records more efficiently. The provincial government held lengthy discussions about this idea and others that were contained in the two reports submitted by Carpenter and Fulton. The outcome was the Water Act of 1909.[43] The Act established the Board of Investigation, which was the kind of tribunal Carpenter had envisioned. The act also included provisions to create different types of licenses based on various water usages. The Lieutenant Governor was empowered to appoint the Chief Water Commissioner and two or more Board members, who were given exclusive authority to hear all claims and to adjudicate all disputes arising from records granted by previous provincial acts or ordinances. The board had the authority to issue new provisional and full licenses. It finalized water licenses of those applicants who met the requirement of completing ditches and registering irrigation plans. The Act also included another provision that that Carpenter thought was critical. It promoted the building of storage dams to reduce the risk of water shortages. This section of the act was primarily intended to deal with the fact that small streams in the dry belt usually became low when water was most needed for irrigation.[44]

During the period between 1909 and 1921, the Dominion and province faced many more problems in establishing cohesive and practicable legal codes for administering water

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Carpenter also pointed out the difference between the State and the Province. He contended that Colorado recognized water rights on beneficial use while British Columbia relied on records.

[43] *Statutes of British Columbia*, 1909, 9 Ed. 7, c. 48, s. 68, "An Act to declare the Rights of the Crown in respect to Water and Water Power, and to Amend and Consolidate the Laws of the Province relating to the Diversion, Acquisition and Use of Water [Water Act, 1909]."

[44] RG 13, Series A-2, vol. 86-87/ 084, file 461/ 1910. N.A.C.

rights. Because the Irrigation Commission neglected to consider the agricultural interests of the Native people, the 1909 Act lacked any provisions regarding Indian water claims. This serious void had to be adjusted in minds of federal authorities, especially after considering Challies's recommendations regarding the conflicting jurisdiction over the Railway Belt in 1910. In the following year, the Dominion and the province made a political trade-off. The province assumed jurisdiction over water and waterpower rights and, in return, it agreed to pay revenue to the Dominion for the administration of Dominion lands. With this deal, the Dominion passed the Railway Belt Water Act in 1912. However, the act soon proved to be defective. It had neglected to secure the validity of Dominion licenses, which were issued to settlers and Indians in the Railway Belt under the authority of the Interior Department.[45] According to the Dominion authority, the 1912 Act did not mean that the province took over the exclusive jurisdiction over water rights in the Belt. During the session of the House of Commons on May 12, 1913, in which an amendment to the act was discussed, acting Minster Crothers explained that the Minister of the Interior also would retain responsibly for the administration of the Belt in order to protect water rights created by the Dominion authority.[46]

Partly in response to the amended Railway Belt Water Act of 1913, the B.C. Water Act of 1914 provided even more detail, specifying the several steps which an applicant had to take to obtain a water license. It created new types of licenses, established a new priority of water use, reorganized power of the Board of Investigation, and affirmed its control over

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[45] *Statutes of British Columbia*, 1912, 2 Geo. 5, c. 49, "An Act to amend the 'Water Act' [Water Act, 1912]"; *Statutes of British Columbia*, 1914, 4 Geo. 5, c. 81, s. 300, "An Act respecting Water and Water-power, declaring the Rights of the Crown therein, and relating to the Diversion, Acquisition, and Use of Water [Water Act 1914]."

water allocations in the Railway Belt and on Indian reserves. Another important change was the creation of water districts, each of which was to be administered by one or more Comptrollers of Water Rights appointed by the Lieutenant-Governor in Council. The comptrollers served as members of the Board and adjudicated water rights in their districts. The Minister of Lands chose a chairman from the comptrollers and led Board hearings throughout the province. The Minister also appointed water recorders for each district as well as engineers and water bailiffs for particular streams.[47] Another very significant change to the act involved the allocation of water for irrigation purposes on the basis of irrigable acres of land rather than on the basis of "reasonable" use. Engineers determined the actual quantity of water for one acre based on the local conditions, environment, and experienced knowledge about producing different types of crops.[48]

Although the provisions regarding Indian water rights remained unchanged from the Water Clauses Consolidation Act of 1897 to the 1914 Water Act, there was a notable anomaly in the 1912 Water Act. Section 53 of this version of the Water Act stipulated that an "Indian Agent may acquire, in trust for Indians located on any Indian reserve, one or more licenses to take or use water for domestic, irrigation, or industrial purposes."[49] The "industrial" purpose clause quickly disappeared in the 1914 Water Act. There is no record that indicated any Indian people ever claimed water for industrial use between 1912 and 1914 (See Appendix I).

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[46] House of Commons. *Debates of the House of Commons*, 9592.
[47] Water Act 1914, 4 Geo. 5, c. 81, sections 52-68, and 128.
[48] Ibid., s.125-127.

The Dominion Position on Indian Water Rights, 1878-1913

The argument of the DIA for Indian water rights in British Columbia was twofold. First, similar to the argument the U.S. federal government made in the Winters case, it asserted the legality of the exclusive Dominion jurisdiction over Indian lands and water, and second, it advanced moral principles to gain cooperation of the province with federal cause. Ever since British Columbia joined confederation, Dominion officials repeatedly stressed that aboriginal people were under federal trusteeship in accordance with section 91 (24) of the British North America Act of 1867. The Indian Act of 1876 stipulated that the Governor in Council could grant the right to Indian bands to control and manage reserve lands for the benefit of the members.[50] In addition, these officials noted that British Columbia was obligated to convey Indian reserve lands to the Dominion according to article 13 of the 'Terms of Union.'[51]

Recognizing the situation where the provincial laws affected the daily lives of the Native people and their use of land and water, federal officials unsuccessfully sought provincial cooperation by stressing on the moral value of protecting Indian rights. For example, Ellis explained to Pattullo in 1919, that the Terms of Union and the British North America Act did not absolve the province from its moral obligation to look after the

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[49] Water Act 1912, 2 Geo. 5, c. 49, s. 53.

[50] Bartlett, "Indian Act of Canada: An Unyielding Barrier," *American Indian Journal* (April 1980), 18.

[51] Legal experts on Aboriginal affairs in Canada commonly argue the fiduciary obligation of the federal government on the basis of article 13 of the Terms of Union and section 91 (24) of the 1869 constitution. See, for example, Hamar Foster, "Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849-1927," in Hamar Foster and John McLaren eds., *British Columbia and the Yukon*, vol. 6 of *Essays in the History of Canadian Law* (Toronto: Osgoode Society, 1995), 28-86; Sidney L. Harring, *White Man's Law*; Morse ed., *Aboriginal Peoples and the Law*; and Rotman, *Parallel Paths*.

well-being of British Columbia Indians. He contended that the obligation was "imposed on both Governments to deal equitably and fairly with" Indians.[52]

Ellis's emphasis on morality partly reflected his regret and frustration about the inability of the DIA to influence provincial politics. In fact, his troubled feelings about provincial intransigence had been shared by Dominion officials, who had been dealing with the jurisdictional conflicts with British Columbia ever since the establishment of the province in 1871. The history of the DIA's jurisdictional strife over Indian water issues went as far back as 1878. This was the year that the Indian Reserve Commissioner, Gilbert Malcom Sproat, investigated Indian land and water rights in the plateau region of the province for the purposes of establishing reserves. He discovered that "the Indians in many parts of the interior of the Mainland are not well placed as regards the essential requirements of water for irrigating their reserves."[53] This led him to express his concern to the provincial secretary. Sprout complained that white settlers had claimed water at nearly all the Indian reserves he visited. The province did not respond to him. The next spring, Indian delegates frequently visited Sproat's camp near Hope to request the confirmation of their water rights. He told the delegates that he would again ask the province to recognize "the *equitable* rights of the Indians."[54] Sympathizing with the Indians, he wrote Superintendent General of Indian Affairs on 21 April 1879 that:

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[52]On October 14, 1919, Ellis wrote Scott that he had "very strongly" stressed an argument to Pattullo that, "while the Indians are under the control of the Dominion Government, the section in the terms of Union clearly meant an obligation was imposed on both Governments to deal equitably and fairly with these people [Indians], and that it was an absurdity to give them land with no water." Ellis to Scott, 14 October 1919, RG 10, vol. 3660, file 9755-4.

[53] Cited in the memorandum of federal Chief Inspector of Indian Agencies in British Columbia, W.E. Ditchburn, to Minister of Lands T.D. Pattullo, 10 October 1921, RG 10, vol. 3660, File 9755-5.

[54] Ibid.

> I hope you will not consider that I too often refer to this water question. I do so from this place because my camp was scarcely pitched here, when Indian delegates came to it from a distance of more than 100 miles to ask me, again, what is being done in the matter. They were respectful, but evidently are being sore that another spring, that is, another year should pass without any adjustment being made. I could only again say to them that it was a difficult question, that I deeply regretted that they might still have to wait, that they must believe in the goodwill of the Queen and so forth. I have said this to so many, and on so many different occasions, that I feel considerably ashamed of what I feel bound to say, particularly with my knowledge that as far as the Provincial Government is concerned, the adjustment has not advanced a step, but is where it was a year ago.[55]

The continuing lack of a provincial response left him no choice but to enter water claims for Indians at his own discretion, having determined that "I must do what I can in the matter."[56] Sproat did so by relying on the power conferred upon him by the federal-provincial agreement to set aside Indian reserve lands in the province.

Outraged by the discovery of water claim entries by the Indian commissioner without provincial approval, the province expressed its strong objection to the Dominion government. On December 5, 1884, William Smith, Chief Commissioner of Lands and Works, notified the Department of Indian Affairs that the claims entered for the Adams River Indians in the Kamloops Agency were not valid. He argued that Sproat had entered the claim without complying with the provincial Land Act. Smith believed that the Indian Commissioner had no authority to confer any rights to water upon the Indians. In addition, the failure to respect the provincial authority meant the Dominion action "could be

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[55] From Gilbert Malcom Sproat to Superintendent General of Indian Affairs, 21 April 1879, RG 10, vol. 11027, file 9755-1.

[56] From Gilbert Malcom Sproat to the Superintendent General of Indian Affairs, 6 November 1878, RG 10, vol. 11027, file 9755-1.

productive of nothing but injury to the persons it was professedly intended to favour."[57] Appalled by this letter, Indian Superintendent Powell swiftly replied that "I was unaware that an Indian had any right to whatever under the [provincial] Land Act." He challenged Smith by pointing out that if the commissioners had no authority, "it appears to me that all their work in the Interior will be useless, so far as the Indians are concerned."[58] Nevertheless, Powell took no further action to protect the Indian rights, which Sproat had recorded. In the face of continuing provincial obstruction in subsequent years, succeeding Indian Commissioners Peter J. O'Reilley (1880-1898) and A.W. Vowell (1898-1910) followed in Sproat's precedent and filed additional water records for Indians.[59]

After Vowell left office, federal officials stopped the practice of entering water claims without the provincial authority. This action coincided with the passage of the Dominion Railway Belt Acts of 1912 and 1913. As we observed earlier that, largely following Challies's recommendation, the 1912 Act affirmed provincial administrative jurisdiction over water rights within the Belt and the 1913 amendment declared that all Indian water rights records were deemed to be valid and subject to the jurisdiction of the Board of Investigation. In the minds of Dominion officials, the valid records included those granted by Indian commissioners.[60]

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[57] From William Smith to the Superintendent General of Indian Affairs, 5 December 1884, RG 10, vol. 11027, file 9755-1.

[58] From I.W. Powell to William Smith, 9 December 1884, RG 10, vol. 11027, file 9755-1.

[59] The memorandum of Chief Inspector of Indian Agencies in British Columbia, W.E. Ditchburn, to Minister of Lands T.D. Pattullo, 10 October 1921, RG 10, vol. 3660, File 9755-5.

[60] *Statutes of Canada*, 1913, 3-4 Geo. 5, c. 45, "An Act to amend the Railway Belt Water Act [Railway Belt Water Act, 1913]." Section 4 stipulates that: "All waters for irrigation allotted to Indians or Indian Reserves, whether allotted by the Indian Reserve Commissioners or recorded in Dominion or Provincial Government offices, and all applications to any provincial or local authority for the use of water within the Railway Belt in the interests of Indians or Indian Reserves, shall be deemed to be valid and effective and subject to the jurisdiction of the Board and given effect to under the provisions of the Water Acts as if made, issued,

These Dominion acts were enacted prematurely without clarifying who had the authority to determine the validity of water claims in the Railway Belt. This caused government authorities in responsible federal departments to have different opinions about the Indian rights. When Duncan Scott asked the federal Deputy Minister of Justice, W. Edwards, for his opinion about the federal power over Indian water rights, he only received a technical interpretation of the 1913 Act. Contrary to the Privy Council's decision on the Burrard Power Company case, or the opinion of the Acting Minister of the Interior regarding the 1913 Act, Edwards contended that if "the Governor in Council has made an order giving the exclusive control of these waters to the authorities of the province, those authorities have the exclusive right to administer these waters so long as the Governor in Council may think fit." He added that the only way the Dominion government could satisfactorily deal with the problem would be to follow the appeal procedure provided in the British Columbia Water Law. Edward's response implied that Dominion officials had to comply with the provincial act in all respects when it came to water.[61] At this time DIA agents in interior British Columbia intensified their efforts to register Indian water claims through federal authorities.

However, Edward's opinion appears to have had little influence upon the Dominion argument. In September 1912, the federal-provincial McKenna-McBride Agreement established a commission to settle all differences regarding Indians lands and Indian affairs in general in B.C. Although it did not solve the Indian water question specifically, the agreement recognized that the "lands comprised in the Reserves as finally

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authorized or pending by, to or before the competent provincial or local authority under the provisions of the Water Acts with respect to water in British Columbia not within the Railway Belt."

fixed by the Commissioners aforesaid shall be conveyed by the Province to the Dominion with full power to the Dominion to deal with the said lands in such manner as they may deem best suited for the purposes of the Indians."[62] The McKenna-McBride commission hearings of Indians and Indian agents made Dominion officials aware of the seriousness of many water disputes between Indians and non-Indians.[63] Indian testimonies made it clear that the situations on reserves, especially at Williams Lake, Kamloops, and Ashcroft, were much more serious than the commissioners had expected. In addition, the Commission hearings demonstrated how deeply-rooted the province's opposition to Indian water rights issues was. For example, in 1914, when Assistant Secretary for the Commission, C.H. Gibbons, investigated most of the provincial Indian water rights records, he discovered that "the Provincial officials interested had had no information as to a majority of these scheduled records for the Indians." Gibbons quickly collected information about Indian water records without provincial assistance, tabulated them, and sent his results to the Commission and the Chairman of the Board of Investigation. Gibbon's findings demonstrated that, after five years of operation, the provincial water Board had failed to collect any Indian water records. Considering that the primary objectives and duties of the Board were mostly to resolve water rights conflicts throughout the province, this five years

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[61] W. Edwards to Scott, 30 July 1920, RG 10, vol. 3660, file 9755-4.

[62] "Memorandum of an Agreement arrived at between J.A.J. McKenna, Special Commissioner appointed by the Dominion Government to Investigate the Condition of Indian Affairs in British Columbia, and the Honourable Sir Richard McBride, as Premier of the Province of British Columbia," 24 September 1912. The excerpts from Bradford W. Morse ed., *Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada* (Ottawa: Carleton University Press, 1991), 493-495.

[63] Reports of the hearings by the Royal Commission is in RG 10, vol. 11026, file WR 1.

lapse provided yet another example of the persistent provincial refusal to deal with Indian water rights.[64]

From 1913 to 1921, the Dominion government increased its effort to clarify its legal responsibilities with regard to Indian water rights in British Columbia. The new Indian Commissioner for the province, William E. Ditchburn, who had taken over Vowell's Victoria office in 1910, played a decisive role in achieving a political compromise between the two levels of government.[65] Through his active involvement in the McKenna-McBride Commission, he became an ardent promoter of Dominion authority in Indian water claims. His role intensified after taking greater responsibility as chief inspector of Indian affairs in 1917. Ditchburn aggressively advanced his interpretation of Indian water rights issues, especially for the cause of validating his predecessors' water records. He contended that, at the time of the 1914 Royal Commission hearings, the province did not seek to nullify the Indian water records taken by Indian Commissioners. In addition, he argued that the 1913 Railway Belt Water Act recognized the validity of those records. He thought that such interpretations were the essential part of the understanding reached between federal and provincial governments at that time. After learning of the bitter confrontation between Ellis and Lane in the spring of 1920, Ditchburn suggested that Duncan Scott create a new clause in section 5 of the Railway Belt Water Act that would define Indian water rights as originating from the date of the allotment of Indian

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[64]Assistant Secretary, C.H. Gibbons, to the Chairman and the members of the Royal Commission, 18 November 1914, RG 10, vol. 11026, file WR 1.

[65] After Vowell's resignation, the DIA divided the responsibility of the Indian Commissioner into three regional inspectorates. It appointed Ditchburn in Victoria as inspector for the southwestern region, including Vancouver Island, the west coast of the lower mainland, and the Lytton agency. Douglas Cole and Ira Chaikin, *An Iron Hand Upon the People: The Law against the Potlatch on the Northwest Coast* (Vancouver

reserves.[66] Assistant Deputy Superintendent General of the Indian Affairs, J.D. McLean, approved Ditchburn's proposal and recommended it to the Dominion Water Power Branch, which was then responsible for water development on Indian reserves. The Chairman of the Branch, Challies, declined to consider DIA's proposal, contending that section 6 of the Railway Belt Water Act allowed the British Columbia Water Act of 1914 to deal with all water records within and beyond the Belt. He thought that the proposed amendment to the Railway Belt Act therefore would be pointless.[67]

Even though some officials in the Dominion Water Power Branch and the Justice Department had began to accept exclusive provincial jurisdiction over water resources, and became reluctant to remedy accruing Indian water problems, Ditchburn steadfastly voiced his support for the priority of Indian water rights. In October 1921, he suggested to T. D. Pattullo that "if the Indians were to be expected to make full use of the lands allotted to them in the Dry Belt it was absolutely essential that sufficient water should also be allotted to them for this purpose, and I am of the opinion that the Commission were [sic] perfectly justified in considering that water went with the land."[68] Some federal authorities supported Ditchburn's opinion on the basis of their understanding of the rationale underlying the Winters doctrine, which acknowledged Indian reserved water rights and the exclusive federal jurisdiction over Indian reserve land and water.[69] Technically, Indian water rights were connected with riparian rights.[70]

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and Seattle: Douglas & McIntyre and University of Washington Press, 1990), 90-91, 197.

[66] From W.E. Ditchburn to Duncan Scott, 26 April 1923, RG 10, vol. 3661, file 9755-6.

[67] From J.D. McLean to W.E. Ditchburn, 7 May 1923, RG 10, vol. 3661, file 9755-6.

[68] Ditchburn to Pattullo, 10 October 1921, RG 10, vol. 3660, file 9755-5.

[69] *Winters v. United States*, 207 U.S. 576-577 (1908). See also *Conrad Investment Co. v. United States*, 161 Fed. 829 (C.C.A. 9, 1908), *United States v. Parkins*, 18 Fed. 2d 642 (D.C. Wyoming, 1926), *United States v.*

A. S. Williams, a legal officer and future Deputy Superintendent for the DIA, and H. W. Grunsky, legal advisor for the Dominion Water Power Branch, were two of the best informed federal officials concerning the American precedent. Before being hired by the Dominion government in 1915, Grunsky had worked for the Government of British Columbia to provide advice in matters related to water rights within the Railway Belt.[71] What is significant here is that even an expert like Grunsky, who had worked for the province, clearly thought that water rights on Indian reserves existed in Canada. On July 27, 1921, commenting on the decision of the Board of Investigation, which invalidated the Indian water claims filed by the Reserve Commissioner, Williams also wrote Duncan Scott that the Board's decision was "incorrect" because he believed that the "rights of Indians in Canada to have water for domestic, agricultural and irrigation purposes must practically stand upon the same footing as that of the Indians of the United States."[72] Using language very similar to that of the Supreme Court's decision in the Winters case, Williams explained the reason Indians needed to obtain water:

> The avowed purpose of the Crown when making treaties with Indians, as shown by the policy of this treatment of them extending over many years, was and is to encourage Indians in habits of industry and to induce them to engage in pastural

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Cedarview Irrigation Co. and *United States v. Dry Gulch Irrigation Co.* (Equity Nos. 4427 and 4418, D.C. Utah, 1923-unreported), *United States v. Orr Water Ditch Co.* (Equity Docket A-3, D.C., Nev. 1926-unreported), *United States ex rel Ray v. Hibner*, 27 Fed. 2d 909, 911 (D.C. Idaho 1928), *United States v. Morrison Consol. Ditch Co.* (Equity No. 7736, D.C. Colo. 1931-unreported), *United States v. Powers* 305 U.S. 527 (1939), *Anderson v. Spear-Morgan Livestock Co.*, 79 P. 2d. 667 (Montana, 1938), *United States v. McIntire*, 101 Fed. 2d. 650 (C.C.A. 9, 1939).

[70] *Winters v. The United States*, 207 U.S. 577. See also *The United States v. The Rio Grande Dam & Irrigation Co.*, 174 U.S. 690, 702. The judgement is similar to the Burrard Company case. The Supreme Court of the United States previously made this jurisdiction question on Indian reservation clear in the *United States v. Winans*, 198 U.S. 371.

[71] J.B. Challies, "Report of the Superintendent of Water Power Branch," 1915, in Canada. *Sessional Papers*, 17.

[72] A.S. Williams to Duncan Scott, 27 July 1920, RG10, vol. 3660, File 9755-4.

> [sic] pursuits and in the cultivation of the soil in order that they may not only become self-supporting but that they may eventually take up the habits and busy themselves with the enterprise of civilized people, and it was intended that eventually these Indians should obtain individual allotments for their reserves and occupy and own such allotments in severalty and when these allotments should be made the Indians should utilize their individual lands in the most approved manner advisable.[73]

Another point raised by Williams, Grunsky, and other federal officials in reference to the Winters doctrine was that water rights for Indians should be considered to have taken effect at the time when reserves were set aside.[74]

The federal policymakers were divided in their decision to push for the adoption of the American Winters doctrine in Canada. Some of them feared that the adoption of the American doctrine would increase the friction with the province. They preferred pursuing conciliatory political avenues and sought provincial cooperation. Thus, they held on to the same approaches that their predecessors had taken in the late nineteenth century. Unfortunately, like them, they too failed to gain provincial support. Quite contrary to what had happened in the Winters case in Montana and a few other states of the American West, no federal representatives filed a case against the province or non-Indians settlers to higher federal courts.

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[73]Ibid.

[74]For example, H. W. Grunsky stated his opinion to J. B. Challies, Director of the Dominion Water Power Branch. He said that it was "fair to assume that when the Indian reserves were created, waters required by the Indians for domestic, irrigation, and other purposes went with the lands, irrespective of any provincial statutes relating to the recording of water rights." Grunsky to Challies, 5 September 1919, RG 10, vol. 3660, file 9755-4. Also see *Winters v. United States*, 577.

From Confrontation to a Compromise: the Indian Water Claims Act, 1921

Having met with strong provincial opposition against the idea of advancing the Winters doctrine for the benefit of the British Columbia Indians, Dominion officials chose not to litigate the issues. They did so for reason of political and financial expediency. After 1910, these officials basically followed application procedures set by the Board of Investigation for the acquisition of Indian water rights. This strategy was a futile exercise for the advancement of the Dominion position, as the Board of Investigation hearings between 1919 and 1921 demonstrated. At these sessions, the board members persistently rejected the federal conception of Indian water rights. The major objective of Lane was to argue strongly against the validity of the Indian Commissioners' records at the hearings of the Board of Investigation in 1921. This was because he wanted to protect the rights of non-Indian record holders. Lane believed that when Euro-Canadian licensees applied for water rights in the late nineteenth century, they had no way of knowing about the existence of Indian Commissioners' grants because they were not registered on provincial records. At the hearings on the Nicola Agency, Matthew Balls, Dominion District Engineer stationed in interior British Columbia rebuffed Lane's argument by pointing out that Indians had been using water well before the date of Indian Commissioners' records. He said that, in this case, if settlers came in the 1870s or the 1880s and obtained priority records over Indians', it "seems to me to be rather unfair to the Indians." Lane dismissed Balls's argument with the cynical comment that "[t]hat might be a good argument on your prescriptive class, but the Board cannot deal with it."[75]

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[75] "Re Water Act of 1914," RG 10, vol. 11026, file WR-2, pp. 33-34.

In an attempt to resolve the impasse, Chief Inspector Ditchburn opted for a diplomatic tactic. By meeting with members of the British Columbia Cabinet in the spring of 1921, he appealed to their sense of moral obligation toward the assimilation of Indians into the arts of agriculture. His vigorous effort at least succeeded in gaining sympathy from W.D. Carter, the newly appointed Deputy Attorney-General and former employee of the Indian Affairs Department, who agreed with Ditchburn that water claims entered by the Indian Reserve Commissioners should be made valid by the provincial authority.[76]

Ditchburn's mediation also slightly moderated the attitude of members of the Board of Investigation. After attending the Board's hearings for the Kamloops and Okanagan agencies in the summer of 1921 (after the Nicola Agency hearings), Balls observed that "the Board is undoubtedly sympathetic" for the Indians' claims.[77] Dominion's solicitor Ellis also found that the Board would be cooperative as long as its power remained unchallenged. At the same time, however, Ellis pointed out that some misunderstanding between the two sides still existed over the issue of determining the priority date of Indian claims. Ellis's statement described the situation more accurately. Ellis reported that the Board generally granted Indians conditional water licenses that would give them an ample water supply only for the irrigable acreage they held.[78]

In the summer of 1921, Ditchburn also promoted federal remedial legislation. By the fall of 1921, however, he realized that the Dominion government would not bring

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[76]Ditchburn to Scott, 23 June 1921, RG 10, vol. 3660, file 9755-5.

[77]M. Balls to R. G. Swan, District Chief Engineer, 28 July 1921, RG 10, vol. 3660, file 9755-5. For years, Balls had actually undertaken most of the works in investigating and determining the quantity of water Indians were entitled on reserves in the plateau region. According to him, the Board of Investigation basically approved the records filed by Balls without any opposition. With Ellis, Balls also had attended almost every hearings of the Board regarding Indian water rights.

forward a bill for Indian water rights in the current session. Desiring quick action on the issue, he brought the idea to the province. On October 10, Ditchburn sent a memorandum to Minister Pattullo recommending the passage of "some remedial legislation" at the coming session of the provincial legislature.[79] Ditchburn's effort backfired. Pattullo acted promptly and introduced a bill to the Legislative Assembly in Victoria in late November. However, Pattulo's bill did not provide what Ditchburn wanted. The bill principally endorsed the provincial positions. Without a revision, the British Columbia government passed Pattullo's bill in December 1921.[80]

Rather than dispute the bill and assert Dominion power over Indian water rights, Ellis, Ditchburn, and other Dominion officials simply accepted this outcome. They did not take it as a loss, but instead, thought of it as a partial win partly because they had obtained a promise that the provincial authority would absolve the DIA from the payments for water record applications and annual water rentals. The provincial government passed an order-in-council on February 2, 1922, to confirm this deal. Along with Ellis and Ditchburn, Indian Agent John Smith at Kamloops welcomed it and wrote the DIA that "this is a most gratifying result of the untiring efforts of the Chief Inspector."[81] Ellis also reported to Scott that "[t]he Act is not as extensive as we hoped in the first place, but at the same time

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[78]Ellis to Scott, 12 August 1921, RG 10, vol. 3660, file 9755-5.

[79]Ditchburn to Pattullo, 10 October 1921, RG 10, vol. 3660, file 9755-5.

[80]"An Act respecting certain Claims to Water for Use on Indian Reserves," was assented on December 3. Section 4 provides that "[e]very licence issued under this Act shall be subject to the provisions of the 'Water Act, 1914,' and to the jurisdiction of the Board." Indian Water Claims Act, ch. 19 (1921). British Columbia. Legislative Assembly. *Journals of the Legislative Assembly of the Province of British Columbia*, 2d Session, 1921 (Victoria: William H. Cullin, 1921), 129, 131.

[81] John F. Smith to Assistant Deputy and Secretary of the Department of Indian Affairs, 7 February 1922, RG 10, vol. 3660, file 9755-5.

it puts us in a better position than we were and enables us to ask for further consideration at future Sessions."[82]

Backed by the new legislation and the Water Act, the Board of Investigation now took full responsibility for water administration without having to face any further challenges from the federal authorities. It carried out hearings to settle lingering water problems on Indian reserves by approving most requests from Indian agents and federal engineers. Nevertheless, the problems of water shortages among the Indians remained one of the most serious concerns of the federal agents and Indians. This will be discussed in the following chapter.

Conclusion

Despite their differing opinions about the Indian water rights jurisdiction question, both provincial and federal officials shared the belief that whatever rights Indians had, they were held at the "pleasure of the Crown." A number of Indian testimonies and petitions, which asserted inherent aboriginal rights to water, did not sway either federal or provincial officials. Rather than addressing this key issue, the two governments were only interested in determining how much water the Indians were entitled based on the Lockean premise of yeoman ideal. Hence they focused on "reasonable use" (later determined by irrigable acreage). For the Native people, the restriction of water access in terms of the western notion of priority-based rights did not correspond with their customary laws. A family or

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[82]J. N. Ellis to Duncan Scott, 17 December 1921, RG 10, Vol. 3660, File 9755-5.

the entire community traditionally collectively owned water and enjoyed exclusive rights to a certain water stream.[83]

The discussion between the Board and federal representatives at the hearings in 1921 regarding the Water Act of 1914 reveals further that government officials did not regard oral testimonies of the Indians as sufficient evidence to prove Indian water rights. They only relied on water records entered either under provincial or federal authorities. However, those government officials who had worked many years with the Indians, such as agent John Smith in Kamloops, readily acknowledged the validity of Indian testimonies. At the discussion of water rights on Ashcroft Reserve no. 2, Smith suggested to J.F. Armstrong, Chairman of the Board of Investigation, that he acknowledge the oral statements of Indians as evidence to prove their use of water by arguing that "I don't suppose any other evidence would be as good as the Indians themselves." However, even Ellis dismissed Smith's point and told him that: "I want sufficient evidence to satisfy the Board if the Board thinks it necessary to have it."Although his statement does not clearly indicate the extent to which Ellis acknowledged the importance of oral testimonies, it did reflect the time when Native peoples were not even regarded as part of legally accountable parties in the decision-making process of their own rights.[84] This systemic marginalization of Native voices has bedeviled the Aboriginal rights struggle in British Columbia to the present.

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[83] "Report Re Indian Water Rights and Records in B.C., Royal Commission on Indian Affairs for B.C., 1914," RG 10, vol. 11026, file WR-1, 19. Chief Camille on the Canoe Creek Reserve of the Williams Lake Agency also declared "We naturally claim the first right to the water." His claim was against the B.C. Cattle Company, which was located upstream used the considerable amount of water. See pages 1-2.

[84]Re Water Act of 1914, RG 10, vol. 11026, file WR-2, 89, 123-125. M. Ball also suggested Armstrong hear oral evidence of the Indians to prove their prior use of water before the arrival of the first settler.

Chapter 4

Anatomy of Water Conflicts:

Indians and Settlers in the British Columbia Dry Belt

While Dominion officials struggled for legal power over Indian water rights in British Columbia, government engineers-surveyors, DIA agents, and, more importantly, Native peoples themselves, had to deal with the acquisition and control of actual water in conflict with settlers and speculators. The gold rushes in the Fraser valley (1858-1860), Cariboo country (1860s), and the Columbia River basin (1860s) lured large number of settlers into the Indian territories of the Fraser, Thompson, and Columbia river valleys. The newcomers found the rich soil and abundant bunchgrasses in the interior dry belt of British Columbia suitable for irrigation farming and ranching. Those settlers, who were well connected with government agents and could obtain up-to-date information about changing government regulations, quickly learned the importance of obtaining water records for irrigation purposes. Although colonial and later provincial authorities did provide limited protection for the Indian people by setting aside reserves, they consistently neglected to exercise their power to protect Indian water rights on lands contiguous to the reserves. This failure alone largely prevented Indians from successfully undertaking farming.

By the time the provincial Board of Investigation was established in 1909,

well-to-do settlers largely dominated provincial water records. Under provincial authority, they constructed irrigation ditches and storage dams, which often diminished water supply to Indian reserves, thereby damaging Indian farming and undermining their livelihood. As discussed in the last chapter, provincial officials and settlers constantly denied the priority water claims of the Indians by resorting to technical interpretations of provincial laws. Against these problems, the Native people in the dry belt vehemently struggled to regain control over water rights as part of their larger aboriginal rights quest. To achieve this end, Indian bands adopted various political tactics. Native political battles for water were especially strong on the Kamloops and Neskonlith Indian reserves.[1]

Among the many Native peoples who suffered from water problems in British Columbia at the time, the Secwepemc (formerly known as Shuswap Indians) were the most successful in gaining the attention of federal officials regarding their water rights and reserve irrigation issues. For this reason, I will focus my attention on the Kamloops and Neskonlith reserves and show how the Secwepemc Indians living on these two reserves developed their irrigated agriculture while battling with nearby settlers for control of the precious water resources they needed. Tracing their responses is particularly important because it not only clarifies the roles these Native people played in water conflicts but also demonstrates their intention to make water claims a significant part of their larger aboriginal rights struggle. The struggle resulted into two provincial court cases in the early twentieth century, both involving the Secwepemc people. I will

[1] The word of "Neskonlith" came from chief's name "Nisquaimlth." The Department of Indian Affairs tended to write "Neskainlith," while officials in the Dominion Water Power Branch wrote "Neskonlith."

discuss one of the cases, one which specifically dealt with water rights on the Kamloops reserve.[2]

Equally important, an examination of the water rights struggle of the two Secwepemc bands reveals that, at the local level, the participants were not simply divided into Native and non-Native parties. Some ranching entrepreneurs believed that they could further their own interests by establishing an alliance with DIA officials and Indians, while others sought to advance their position by disrupting irrigation activities on Indian reserves. These are the sorts of complex positions and "grey areas" that have until recently been a neglected part of Canadian Native history in the twentieth century.[3] In addition, the storage dam issue on the Kamloops and Neskonlith reserves will demonstrate the considerable power that Indians and their agents exerted over local settlers. I will discuss how the DIA attempted to protect its dam project for the Neskonllith people from the damage claims of non-Indian settlers. The examination of these relations will show how the lives of Indians were closely interconnected with those of neighboring settlers and vice versa. In many ways, both Indians and settlers strove to benefit from each other, creating emotional and legal ramifications.

Today, the latter spelling is officially used.

[2] The other case, *Attorney General of Canada v. Louis Crosina*, initially started its water disputes in 1906. Nigel D. Bankes traces its litigation history in "The Board of Investigation and the Water Rights of Indian Reserves in British Columbia," in Kerry Able and Jean Friesen eds., *Aboriginal Resource Use in Canada: Historical and Legal Aspects* (Winnipeg: University of Manitoba Press, 1991), 235-239.

[3] The following discussion of colonial land policies in British Columbia considerably owes to author's conversation with Historical Geographer, Cole Harris. The manuscript of his book *Making Native Space* has been most useful to my understanding of the colonial land issues.

Prelude to Indian Water Conflicts: Secwepemc agriculture and colonial land policies.

Although farming was not part of the pre-contact economies of the Secwepemc Indian people of the interior British Columbia,[4] it became an important component of their subsistence and trading economy in the early post-contact era.[5] Recognizing the strategic importance of the Kamloops area as a key location along the trade route connecting the Columbia and Fraser river basins, the Pacific Fur Company and the North-West Company established She-waps post and Fort Kamloops in 1811 and 1812, respectively. It was about this time that the fur traders or neighboring Indians living in the lower Fraser River valley probably introduced potatoes to the Secwepemc in the hope of establishing solid trade relations with them.[6]

By the time Hudson's Bay Company (HBC) trader, John Tod, arrived at the abandoned and desolated Fort Kamloops in August 1841,[7] the Indians were producing

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[4] The Secwepemc territory encompassed about 180,000 square kilometers of present-day British Columbia southern interior. It included Aschcroft, Kamloops, and Windermere (in the Rockies) in the south, the Fraser River valley from Pavillion to Williams Lake-Soda Creek in the west, Quesnel Lake and Cariboo Mountains in the north, and the Rocky Mountain ranges in the east. Marianne Boelscher Ignace, "Shuswap," in Deward E. Walker ed., *Handbook of North American Indians: Plateau*, vol. 12 (Washington, D.C: Smithsonian Institution Press, 1998), 204.

[5] Ibid., 206-209. The Secwepemc and other neighboring interior Natives traditionally harvested and ate local "Indian potatoes" or western spring beauties (*Claytonia lanceolata*). The taste of its corms, when cooked, resembled potatoes. Roberta Parish, Ray Coupé and Dennis Lloyd eds. *Plants of Southern Interior British Columbia* (Vancouver: B.C. Ministry of Forests and Lone Pine Publishing, 1996), 258. Simon Fraser noted this root when descending the Fraser River in 1808. W. Kaye Lamb ed. *The Letters and Journals of Simon Fraser, 1806-1808* (Toronto: Macmillan Company of Canada ltd., 1960), 83.

[6] John Jacob Astor's Pacific Fur Company competed with the North West Company's Kamloops operation only for about a year. The North West Company, in turn, became merged with the Hudson's Bay Company in 1821. Richard Somerset Mackie, *Trading Beyond the Mountains: The British Fur Trade on the Pacific, 1793-1843* (Vancouver: University of British Columbia Press, 1997), 329.

[7] Tod went to Fort Kamloops to takeover the position of Samuel Black, who had been killed by a Native suspect. Tod constantly pursued the suspect without success. Robin Fisher, *Contact and Conflict: Indian*

enough potatoes to supply Tod's men. One month after his arrival, for example, Tod sent two of his Indian helpers to obtain a few kegs of potatoes from the Indians. Three days later, they came back with nine kegs. Next spring Indians from the upper lake were still able to visit the fort and share potatoes with Tod's starving men. After learning about the reliability of the Indian supply, Tod regularly sent his men to procure considerable quantities of potatoes from them, especially during the months between September and November. In October 1843, Tod's men obtained about sixty bushels of good quality potatoes from a "young chief" of the upper lake [Neskaimlth]. In the meantime, Tod had started farming; but his operation was not as productive as that of the Secwepemc growers. For example, in March 1843, he employed some Indian families to clear potato patches at the new post site along the North Thompson River. After planting over seventeen kegs of seed potatoes in April, the new patches yielded only fifteen kegs of potatoes.[8] In 1862, an outbreak of smallpox decimated the population of Secwepemc people,[9] but that did not stop them from planting potatoes. By the time colonial officials visited the Kamloops area in 1865, the Secwepemc had approximately 100 acres of their land under cultivation.[10]

Along with smallpox, the colonial land policies of the 1860s created serious problems for the Secwepemc in terms of using land and other resources. In October

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–*European Relations in British Columbia, 1774-1890*, 2d ed. (Vancouver: University of British Columbia Press, 1992), 38; John Tod, "Trading Experiences on the Thompson River, 1841-1843," UBC Special Collections.

[8] Tod, *Trading Experiences.*

[9] According to Ignace, the population of the Secwepemc before 1862 was between 7,000 and 9,000. Since the outbreak of the smallpox epidemic, the population constantly declined and became about 2,000 by 1900. The number of bands decreased from 25 to 17. Ignace, "Shuswap," 216.

[10] Walter Moberly to Joseph Trutch, 22 December 1865, in British Columbia, *Papers connected with the*

1862, acting on the instruction of Governor James Douglas in Victoria, Assistant Commissioner for Lands and Works, William G. Cox, visited the Kamloops area to set aside reserves for the present-day Kamloops, Neskonlith, Adams Lake, and Little Shuswap Indian bands. As instructed through Richard C. Moody, the Chief Commissioner of Lands and Works, Cox's was to "mark out distinctly all the Indian Reserves in your District, and define their extent as they may be severally pointed out by the Indians."[11] Douglas's main objective of making his men set aside Indian reserves in interior British Columbia was to clear the remaining country for the anticipated white settlers. After placing stakes in the ground and generally defining reserves, Cox gave copies of notices to chiefs Gregoire and his son Nesquaimlth of the Neskonlith people and Chief Petite Louis (or Chelouis) near Kamloops. At the time Cox did not formally survey these two so-called "Douglas" reserves due to time constraints. The area of land that Cox marked out for the Douglas reserves amounted to approximately about 384,000 acres (or 600 square miles).[12] The notices warned the settlers "not to cut timber, interfere or meddle in any way with the rights of the Indians on the Reserve."[13]

The settlers, who knew parts of these reserve lands were ideal for ranching and farming, thought Cox's "grants" were too generous. While some ranchers acknowledged Native rights and paid money to the chief for bringing cattle on Native land, those who were not willing to pay were blocked by strenuous Native resistance. One settler, Henry Nind of Lytton, complained to the colonial secretary in Victoria, that

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Indian Land Question, 1850-1875 (PILQ) (Victoria: Government Printer, 1875), 33.

[11] R.C. Moody to W.G. Cox, 6 March 1861, PILQ., 21.

[12] Moberly to Trutch, 22 December 1865, PILQ, 33.

[13] "Copy of paper given by Mr. Cox to Gregoire and son, Nisquaimlth," 31 October 1862 and "Copy of

the local settlers in the Kamloops area found the Indians "jealous of their possessory rights." "[Indians] are," he continued, "not likely to permit settlers to challenge them with impunity; nor, such is their spirit and unanimity, would many settlers think it worth while to encounter their undisguised opposition."[14] One old settler, James Todd, attempted to negotiate a land purchase from the Kamloops Indians by relying on his "friendly" relationship with Chief Nesquaimlth.[15] This action had the potential of creating chaos in the sphere of land transactions by circumventing government authorities and thereby threatening their power to regulate settlement. Partly alarmed by this possibility, the government quickly, and unilaterally, decided to reduce the sizes of the reserves. Although today the Neskonlith Band contests the legality of the reduction, which was undertaken without their consent, the colonial government believed that it had the legal right to do so based on the labor theory of property. In 1865, the new Chief Commissioner of Lands and Works, Joseph W. Trutch, enthusiastically advocated this reduction policy in his letter to the Colonial Secretary in Victoria. He legitimated the reduction by contending that "the claims of Indians over tracts of land, on which they assume to exercise ownership, but of which they make no real use, operate very materially to prevent settlement and cultivation...."[16]

This belief corresponded with the colonial "savage" myth of the time, which shaped the image of "savage" people in sheer contrast to the "civilized" utilitarian ideal of farming and industry. The myth convinced Trutch that only those from industrial

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Notice in possession of Petite Louis, Chief of Kamloops Indians," 31 October 1862, both in PILQ, 32.

14 Phillip Henry Nind in Lytton to the Colonial Secretary, 17 July 1865, PILQ, 29.

15 Ibid.

16 Trutch to the Colonial Secretary, 20 September 1865, PILQ, 30.

countries in Western Europe could make the best use of land in British Columbia. His primary interests in promoting rapid agricultural settlement blinded him from acknowledging that the Secwepemc people had used the Douglas Reserve area for cultivating and trading potatoes and other crops for many years as well as for hunting, fishing, and gathering purposes. Trutch believed that cultivation, logging, or ranching by non-Indians represented the only truly beneficial uses of the land:

> Much of the land in question is of good quality, and it is very desirable, from a public point of view, that it should be placed in possession of white settlers as soon as practicable, so that a supply of fresh provisions may be furnished for consumption in the Columbia River Mines, and for the accommodation of those travelling to and from the District.[17]

Although the decision of the colonial administration of British Columbia to reduce the reserves might have seemed to be an easy policy to implement, the engineers and surveyors who had to carry out the task had to conceive a plan that would not provoke the Indians. In the Kamloops area, engineer-surveyor Richard D. Moberly made several attempts to persuade the Indians to accept the scheme, but Nisquaimlth and Petite Louis vehemently opposed it. At the time of his negotiations with the Indians, Moberly had no specific information about Douglas's instruction to Cox, but he nevertheless went ahead and told them that Cox's "grants" were "worthless" because he had lacked the power to make them. It was only Douglas, Moberly contended, who had power to authorize land grants. Nevertheless, Moberly did not forcefully impose the reduction policy on the Indians partly fearing it would meet with violent resistance.[18]

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[17] Trutch to the Colonial Secretary, 17 January 1866, PILQ, 32-33.
[18] Moberly to Trutch, 22 December 1865, PILQ, 34.

In 1866, the colonial government authorized Truch to offer monetary compensation or gifts to the Indians in exchange for reducing their reserves. This time, Trutch sent Edgar Dewdney to survey the reduced boundaries of the Indian reserves, mainly reserving lands for occupation and agricultural use but not traditional use. In his report on his assignment, Dewdney did not make it clear whether he had provided any explanation to the Indian chiefs about the reductions or the new colonial policies that were behind them. Rather, after the survey, during which he was accompanied by a few Indian representatives, Dewdney merely noted that all the "Indians appeared perfectly satisfied with their reserves as laid out by me, and I think that no trouble may be apprehended from any of them in future about their land."[19]

Dewdney's self-serving statement would prove to be totally erroneous, as he himself would learn in the following decades as a member of the House of Commons (1872-1878), later as the Superintendent General of Indian Affairs (1888-1892), and finally as the Lieutenant-Governor of British Columbia (1892-1897).[20] In those capacities he received persistent land claim submissions from the Secwepemc and other British Columbia Native people, who repeatedly claimed their aboriginal rights to hunt, fish, and gather in the cutoff territories. Unfortunately for the Indians, however, Dewdney and Trutch, who absolutely refused to recognize aboriginal rights to land and

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[19] Edgar Dewdney to the Chief Commissioner of Lands and Works, 8 November 1866, Ibid., 37-38. Dewdney would later become the member of the House of Commons, Indian Commissioner, the first governor of the North-West Territories, and the superintendent general of Indian Affairs.

[20] From 1879 to 1888, Dewdney served as Indian Commissioner for Manitoba and the North-West Territories and became largely involved in treaty-making processes. See Arthur J. Ray, *I Have Lived Here Since the World Began: An Illustrated History of Canada's Native People* (Toronto: Lester Publishing Ltd. and Key Porter Books, 1996), 215-217; Margaret A. Ormsby, *British Columbia: A History* (Toronto: Macmillan of Canada, 1958), 538.

water, played fundamental roles in shaping Indian land policies in the North-West Territories and British Columbia.[21] While these two government officials, and others, merely regarded land and water as resources to be used for Indian agriculture, they had much more meaning for the Secwepemc people.

The Colonial and Provincial Encroachment of Indian Water Records, 1869-1888.

Against the wishes of the Secwepemc people, the reduction of the Kamloops and Neskonlith reserves opened more land for settlers to make pre-emption claims under the Land Act of 1865. By 1869, some old settlers like James Todd, Robert Thompson, and John Holland, who lived near the Kamloops Reserve, and Whitfield Chase and James Ross, who lived near Neskonlith Reserve, had claimed the cutoff reserve lands. These individuals also obtained water rights to Paul Creek (or St. Paul's Creek) and Neskonlith Creek, respectively for irrigation purposes.[22] Colonial water regulations required the publication of notices before licenses could be issued, but there is no evidence that suggests the province informed the Indians about the pending applications, and the

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[21] Trutch initially believed that the Indians would not be able to use land for agriculture or any other industrial purposes. For example, commenting on the reduction of reserves for the Secwepemc and others Indians, he wrote to the Colonial Secretary in 1867 that: "The Indians have really no right to the lands they claim, nor are they of any actual value on utility to them; and I cannot see why they should either retain these lands to the prejudice of the general interests of the Colony, or be allowed to make a market of them either to Government or to individuals," PILQ, 42.

[22] According to DIA records, each James Ross and George Hoffman held a water record dated in 1869. Ross came to the area in the mid-1860s, but Hoffman obtained the record in the beginning of twentieth century (possibly 1907) when he took over the ranch on the north side of the South Thompson owned by his father-in-law, Thomas Woodside Graham. See E.H. Tredcroft, "Report re Additional Irrigation Supply for Niskonlith Indian Reserve No. 1 and Adams Lake Indian Reserves Nos. 4 and 4 A," RG 10, vol. 7605, file 12154-10, pt. 1; and Joyce Dunn, *A Town Called Chase* (Penticton, British Columbia: Theytus Books, 1986), 60-66.

Indians did not know about the water records that affected their water supplies.[23] In fact, even in later years, Indian agents and provincial authorities lacked this knowledge until water disputes erupted between the Kamloops Indians and the Western Canadian Ranching Company in 1906. Before then, both parties customarily shared water, with Indians obtaining two thirds of their supply from the creek. The discovery in 1906 of the 1869 Todd-Thompson water record changed this situation drastically. It meant that the company was entitled to most of the creek's water.[24] This marked the turning point in local water conflicts, which eventually led to the court dispute.

Before discussing the court decision, however, it is necessary to explore the nature of 1869 record, as well as other colonial and provincial water records that affected the Indians of the Kamloops and Neskonlith reserves. When Peter O'Reilley, the Gold Commissioner in Yale, granted water rights to James Todd and Robert Thompson in 1869, he noted that their rights would not interfere with those of the Indians.[25] At the bottom of the Todd-Thompson record, O'Reilley wrote that: "This record is made subject to the rights of the Indians, of using water on the Reserve opposite Kamloops."[26] Although O'Reilley's note recognized the prior rights of the Indians and the importance of Paul Creek to them as the only source of gravity supply available on the reserve, neither he nor

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[23] Although there is no record of the Kamloops Indians objecting to the water records, it was highly possible scenario that under the leadership of Chiefs Louis and Neskaimlth they would have vehemently resisted such grants had they known them. In 1868, the Secwepemc on the Soda Creek Reserve near Williams Lake were strongly determined to fight against claims by John Adams, who had posted his notices to claim Indian lands. Observing the increasing tension among the Indians at St. Joseph's mission, the Rev. McGucking warned Trutch that "I already see that the Indians of Soda Creek would sooner risk their lives than abandon their native soil." The Rev. McGucking to Trutch, 12 May 1868, PILQ, 48.

[24] Ashdown H. Green's report on the water records related to Paul Creek, 10 May 1906, RG 10, vol. 7606, file 12154-12, pt. 1.

[25] W.E. Ditchburn to D.C. Scott, 2 May 1921, RG 10, vol. 3660, file 9755-4; and PILQ, 38-39.

[26] *Western Canadian Ranching Co. v. Department of Indian Affairs*, 29 April 1921, RG 10, vol. 3660, file

any other authorities filed water records on behalf of the Indians. Possibly this was because laws were not clear at the time about who was responsible for protecting the Indian rights to water. Also, government authorities did not specify whether Indians could even enter water claims themselves in the way non-Indians did. Initially James Douglas had allowed Indians to pre-empt tracts of lands on nearly the same terms as non-Indians,[27] but later colonial and provincial land laws excluded Indians from the benefits of this legislation. Likewise, colonial and provincial legislation failed to define what power, if any, the gold commissioners[28] or the Chief Commissioner of Lands and Works had over Indian water rights even though the Chief Commissioner often acted to lay out Indian lands under Governor's authority.[29]

After joining the Union in 1871, British Columbia stipulated that the Lieutenant Governor (Trutch served as the first governor) had the power to adjudicate Indian water rights by issuing orders-in-council, although there is no evidence that he ever exercised this prerogative. When the joint federal-provincial Indian Reserve Commission clarified the boundaries of the Kamloops and Neskonlith reserves (and those of others) in 1877,

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9755-4.

[27] In order to allow Indians to hold land under pre-emption, Douglas spelled out four major conditions. Firstly, the Indians must reside continuously on their farms. Then they must build a house of squared logs with shingled roofs, not less than 30 feet by 20 feet, and sidewalls 10 feet high. Thirdly, they must clear, enclose, and cultivate in the first year two acres of wood land, or 5 acres of prairie land. Until the end of the fifth year, they must cultivate three acres of woodland or 6 acres of prairie land. Finally, the Indians must obtain consent of the Governor to convey such land. William A.G. Young to R.C. Moody, 2 July 1862, PILQ, 25.

[28] Under section 2 of the Gold Fields Act (1858) and later under the Ordinance to amend the Laws relating to Gold Mining (1867), the Governor of British Columbia appointed Chief Gold Commissioner and Gold Commissioners, who assumed jurisdiction over mining and possessed power as judges of the Mining Court to resolve disputes over land and water or regulate mining operations. See British Columbia, *Proclamations, Acts, and Ordinances, 1858-1871* (New Westminster and Victoria, 1871).

[29] For example, the 1870 Land Ordinance does not provide a provision related to the Indians, Ibid., 1870, 33 Vict., no. 144, "An Ordinance to amend and consolidate the Laws affecting Crown Lands in British

government agents finally attempted to specify the quantity of water the Secwepemc reserves were entitled to receive. The commission said of the Kamloops Reserve that:

> The Prior right of the Indians as the oldest owners and occupiers of the soil to all the water which they require or may require for irrigation and other purposes from St. Paul's Creek, and its sources, and northern tributaries, is, so far as the Commissioners have authority in the matter, declared and confirmed to them.[30]

In the same year, it also recognized the prior right of the Neskonlith Indians to the land and water on their reserve: "The prior right of the Neskonlith Indians as the oldest owners or occupiers of the soil to all the water which they require or may require for irrigation and other purposes from Neskonlith Lake and Creek, as far as the Commissioners have authority in the matter declared and confirmed to them...."[31]

In accordance with these decisions, the commission granted 500 miner's inches[32] of water per year to the Kamloops Indians. The problem was, however, that government officials did not file the record at the Dominion or provincial land offices until 1888. This neglect was partly because the commissioners did not think it was necessary to file water records for the Indians. In addition, they assumed that they had law-making

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Columbia, " sections 30-37.

[30] *Western Canada Ranching Co. v. Department of Indian Affairs*, D.L.R. 361; W.W. R., 835. See also RG 10, vol. 3660, file 9755-4. The case report was included in this file.

[31] Diana Jolly, *First Nations Water Rights in British Columbia: A Historical Summary of the Rights of the Neskonlith First Nation* (Victoria: British Columbia Ministry of Environment, Lands and Parks; Water Management Branch, 2001), 3.

[32] Until the implementation of the Water Act of 1914, officials had used three systems almost interchangeably in measuring the quantity of water in British Columbia. The miner's inch system originated with ditch diversion of water for mining purposes. By the size of the headgates shaped by inches, miners measured the water running through them per second. A flow of 0.028 cubic feet per second is equal to one miner's inch. The other two systems were cubic-foot per second (374 gallons per minute) and acre-foot per annum. For the first time, the Water Act distinguished the different uses of these systems for specific purposes. The former system was used to measure domestic supply, while the latter became the indication for irrigation supply. One acre-foot is equal to the quantity of water enough to

powers regarding Indian affairs. As a result of the delay, the official priority date was September 26, 1888. It turned out to be a liability for the Native inhabitants,[33] as the Neskonlith people already had been experiencing water problems with neighboring settlers by the early 1880s. They requested the federal government to fulfil the promise made by the Reserve Commissioners several years earlier. Except for writing a letter to the provincial government asking it to take the necessary step, federal officials did nothing else to protect Neskonlith rights.[34]

Western Canadian Ranching Company and the Kamloops Indians, 1880s-1906

In the meantime, the Kamloops Indians faced the encroachment of a large ranching company, which bought some 8,900 acres of land, part of which was situated to the east of the reserve on the upper stream of Paul Creek. In 1882, the owner of the company, Thaddeus Harper, applied for 250 inches of water to irrigate his large pastureland known as the Harper's Meadow. This had been part of the Secwepemec territory that William Cox recognized. Employing large gangs of men, Harper started constructing irrigation ditches to divert water from Paul Creek.[35] In 1886, as part of his irrigation works, he lowered the outlet of Paul Lake, from which Paul Creek drains water, with the objective of increasing the discharge of water to his ditches. In the following year, he approached the DIA to ask for permission to build a more elaborate storage

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cover one acre of land to the depth of one foot. *Statutes of British Columbia*, 1914, 4 Geo. 5, c. 81.

[33] *Western Canada Ranching Company v. Department of Indian Affairs*, (1921) 2 W.W.R. 834-5.

[34] Jolly, *First Nations Water Rights in British Columbia*, 3-4.

[35] Because of their earliest use of gang plows, Harper's ranch became known as the Gang Ranch. This

facility. Harper suggested to the DIA agent in Kamloops that the government share the cost of constructing a storage dam with him on the condition of providing some of stored water to the Native people living along the lower stream.[36] It is likely that this approach from Harper prompted the DIA agent to apply to the provincial authorities for a water record in 1888.

The Kamloops Indians persistently resisted Harper's effort to control water in Paul Creek. Recollecting the time in the late 1880s, experienced Hudson's Bay Company trader and now Indian agent, Joseph William MacKay, reported that the Indians "strongly objected to any interference being taken with what they considered their water-course."[37] In justifying their objection, the Natives also argued that Israel W. Powell, superintendent of Indian affairs (1872-1889), had previously assured them of protection from the disposition of their water rights. The elders made a point of emphasizing to MacKay that the entire flow of Paul Creek belonged to them.[38] They were outraged to learn that Harper had lowered the outlet of Paul Lake. A number of men from the reservation tried to fill the cut unsuccessfully. MacKay sided with the Indians, and directly opposed Harper's irrigation scheme. His effort met with a stout reply from the rancher, who continued his effort even at the added cost of having to consult a legal expert in Victoria. However, Harper's excessive expenditures for the ranch had already saddled his business empire with unsustainable debt. As a result, in

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extended to substantial areas of the Secwepemc territory. http://wlake.com/genweb/gang.html.

[36] J.W. Mackay to A.W. Vowell, 13 July 1891, RG 10, vol. 7606, file 12154-12, pt. 1.

[37] MacKay to Vowell, 13 July 1891, RG 10, vol. 7606, file 12154-12, pt. 1.

[38] Ibid.

1888, Harper sold his ranch to the Western Canadian Ranching Company.[39]

By the early 1890s, the diminished flow of water in Paul Creek became obvious to both the Kamloops Indians and the Ranching Company. By this time, the Indians had substantially extended the area of their cultivation by constructing their own flume and water gauge. Meanwhile, the Ranching Company had begun to suffer from overstocking and sought a larger grazing area. Further complicating the situation was the fact that a number of settlers began diverting water upstream of Paul Lake without regard to the prior water records held by the company and the Indians. For example, in 1896, A.G. Pemberton recorded 500 inches of water from Hyas Lake, from which Paul Lake and Paul Creek drain water. Frustrated by the "trespass" of the creek, some angry Indians cut the Ranching Company's storage dam at Paul Lake. When the Company further attempted to increase the storage capacity of the lake by raising the height of its dam in the late 1890s to remedy the shortage of water supply in the creek, the Indians again attempted to stop the new construction. At one point, some Indians confronted the Company's employees with rifles to stop the project. Although these incidents aggravated the relationship between the Company and the Indians, the Company's manager, I.B. Martin, had reason not to confront the Indians and the DIA. Martin still wanted to maintain friendly relationships with the Indians because the Company desperately needed more pasturage area to feed its expanding livestock herds. Accordingly, he approached the Indians, offering to pay them 100 dollars a year for using part of their reserve land. This overture provoked a strong opposition from Indian agent,

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[39] Ibid.

who thought it would establish a "bad precedent" for the Indians.[40]

Despite these water shortage problems, MacKay and his successors became more aggressive in their effort to transform the Indians into bona fide farmers. Their efforts included trying to control the Indians more and moderate their claims against local settlers. MacKay believed that the reason why the Indians persistently claimed ownership of the entire flow of the creek was because they were "half tutored aborigines" who lacked a proper understanding of property rights. Using language that resonated with John Locke's property theory, he argued that time and patience would eventually make the Indians learn that they were entitled to claim water only when they could use it effectively. They also would have to learn that "they must not let it [water] run to waste." MacKay also subscribed to the old colonial idea that the presence of white neighbors would give Indians the essential opportunity to learn about farming, especially about irrigation, the construction of ditches, and "the safest and most economical methods" of directing the flow of water over lands.[41]

Forming an Odd Alliance, 1906-1920

While Indians fought against non-Indian reclamation works, the DIA gained a strange ally with the Western Canadian Ranching Company. As noted earlier, this company strongly opposed A.G. Pemberton's irrigation works in the upper stream, which was drawing away crucial supplies. The Company manager approached his friend, who had become the new Indian agent, Archibald Irwin, with a proposition to halt

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[40] Ibid.
[41] Ibid.

Pemberton's irrigation works. In February 1906, acting upon the suggestion of the Indian agent, the Company's manager, C.A. Holland, wrote Arthur W. Vowell, Superintendent of Indian Affairs in British Columbia, that the Company wanted to cooperate with the DIA in "preventing the continued invasion by Mr. Pemberton of the Indians' and the Company's rights." Holland suggested that Vowell send a competent surveyor to investigate the extent of Pemberton's water rights. He suspected that Pemberton had used his 1896 record merely as a "blind" to conceal his trespass. Holland also stated that the company was willing to share with the DIA the cost of a lawsuit against Pemberton. The company was especially apprehensive that continued water losses in Paul Creek threatened its substantial investment of $2,500[42] for its storage dam under the new water license in 1904.[43]

Pemberton did not readily succumb to the threats of the ranching company or the DIA, however. He strenuously asserted his right, arguing that the Company's allegation of trespassing was unfounded. Once surveyor Ashdown H. Green inspected Pemberton's ditches, he found the questionable irrigation works did adversely affect water flows in Paul Creek. Even then, Pemberton remained adamant, contending that he was merely taking water from a lake, which was not connected to Paul Creek.[44] After examining Green's report, Vowell wrote Pemberton in June 1906 and ordered him to close his ditches and open his dam before the end of the month. Vowell also warned that

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[42] According to "Consumer Price Index for Canada, classified by main components, 1913 to 1975," the general consumer price for $1 in 1913 is approximately $4.83 in 1975. The rough estimate of $2,500 in 1913 is equivalent to $12,075 in 1975. In 1905, the average annual earnings for supervisory and office employees in Canada was $846. See F.H. Leacy, M.C. Urquhart, and K.A.H. Buckley eds., *Historical Statistics of Canada* (Ottawa: Canadian Government Publishing Centre, 1983), D 280-287, K8-18.

[43] C.A. Holland to A.W. Vowell, 9 February 1906, RG 10 vol. 7606, file 12154-12, pt. 1.

if he failed to comply, the DIA would take legal action against him.[45] Pemberton did not respond to Vowell's letter and continued his irrigation operation. Rather than promptly pressing forward with litigation, however, the department waited several months for Pemberton's reaction. The documentary record does not explain this delay. Indeed, ultimately DIA officials never acted to protect the interests of the Indians from Pemberton's encroachment. Limited departmental financial resources and fears of ongoing hostilities may have been some of the reasons. A letter of former agent MacKay to Vowell in 1891 suggested this:

> Water disputes are in their nature difficult to explain, and to settle, legal proceedings in connection therewith are long, tedious, and expensive; the feelings of the contestants become aggravated beyond endurance, and they often wind up by fighting thereby increasing their troubles.[46]

Another reason for the federal government's failure to act was likely related to the fact that in interior British Columbia the DIA recently had been preoccupied with a lawsuit involving Williams Lake Indians and settler Louis J. Crosina regarding the encroachment of two storage dams that substantially diminished these Indians' water supply. This case took almost twenty years to be completed, making it clear that MacKay's fears were well founded.[47] The DIA hesitated to use its limited financial resources to pursue what it

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[44] Ashdown H. Green to Vowell, 29 May 1906, Ibid.

[45] Vowell to Pemberton, 16 June 1906, RG 10, vol. 1282, National Archives of Canada (NAC).

[46] MacKay to Vowell, 13 July 1891, RG 10, vol. 7606, file 12154-12, pt. 1.

[47] Williams Lake Indian Reserve #1 or Sugarcane Reserve had used water from Five Mile Creek (south of 150 Mile House) by using water record dated in 1870. Crosina argued that the Indian record was null and void because it had never been authorized by Lieutenant Governor in Council though assistant water commissioner recognized it. In 1906, the county court in Ashcroft ruled against the Indians, allowing Crosina to keep two storage dams, while also allowing the Indians to keep one. This dispute did not end here. The Crosina case continued to affect the Indians in the 1920s. "Louis Crosina dispute PTA," RG 10 vol. 11301, series C-ll-4. According to this author's informant, even in the 1980s, the use of water

considered to be minor dispute with Pemberton.

The Kamloops Indians thought otherwise. During the course of the McKenna-McBride commission hearing from 1913 to 1916, Indian agent John F. Smith and these Indians clearly expressed the need to secure water, especially from Paul Creek. At the time, according to agent Smith, Indians had an agreement with the Western Canadian Ranching Company to take half of the 500 inches of water that was then available from the creek (Subsequently, the Company conceded two-thirds of the water to them). Although Smith thought the agreement represented a generous offer from the company, Chief Louis and many other Indians remained unsatisfied. Alexander Bob, a member of the reserve, testified that the "white man takes half of the water, and he has no right to take any of it [from Paul Creek]." Chief Louis also expressed his grievance to the commissioners, stating that the Ranch stopped "my water from coming." Rather than relying on the local DIA agent, the Indians attempted to take control of their irrigation matters. Even though Smith had appointed an Indian named Peter Bushy as a water bailiff in charge of distributing water, Chief Louis and others successfully curtailed Bushy's power. In response, Smith attempted to employ a non-Indian as water bailiff instead, but the Indians strongly objected. They wanted to manage their own affairs. Testimonies in front of the Commission clearly demonstrated that the Kamloops Indians would not abandon their long-standing claims to the ownership of the creek and its water.[48]

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from the same creek again became the focus of water dispute between the Indians and the 153 Mile Ranch.

[48] "Report re: Indian Water Rights and Records in B.C.," RG 10, vol. 11026, WR 1, 78-80, 111-112; Smith to Assistant Deputy and Secretary of the DIA, 27 February 1918; and "Kamloops Indians issued their resolution," 5 December 1924, RG 10, vol. 7606, file 12154-12. Pt. 2. Another important cause of

The Western Canadian Ranching Company Case

By 1920, the Indians, agent Smith and the Ranching Company all regarded the water supply from Paul Creek as being unreliable. The Indians and Smith turned their attention to the installation of an electric pumping system as the only solution. They believed that this would make successful agricultural possible on the reserve. While the Kamloops Indians sent petitions to the DIA to obtain permission and financial assistance for the pumping system, they received surprising news. In August 1920, the Board of Investigation held hearings and validated the Indians' prior right to Paul Creek for 500 inches. The Board also recognized the priority date of the conditional license to be December 8, 1869, one day before the priority date of the Thompson-Todd record. This was an extraordinary action for provincial authorities to take because it recognized the priority of water rights granted by the Indian Reserve Commissioners in 1877. Although this Board's decision did not address the problem of the diminishing water supply from Paul Creek, Smith and the DIA's legal representatives welcomed it nonetheless.[49] According to the ruling, the final license was to be issued in November 1930 upon completion of all required water works on the reserve.[50]

The Western Canadian Ranching Company was equally surprised at the Board's

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the water shortage for the Kamloops Indians from Paul Creek was the seepage problem. The earthen ditches, which diverted water from Paul Creek, were constructed without a proper survey by engineers. In addition to seepage, those ditches often could not hold water, losing considerable amount. Major A. McGraw, inspector of Indian Agencies in Vernon, to Duncan C. Scott, 22 February 1918, RG 10, vol. 7606, file 12154-12, pt. 2.

[49] John F. Smith to the Secretary of the DIA, 9 August 1920, RG 10, vol. 7606, file 12154-12, pt. 2.

[50] B.C. Water Rights Branch, "Determination and Order for a Conditional License for Irrigation Purposes," RG 10, vol. 3660, file 9755-4.

determination. The company promptly filed an appeal against it at the British Columbia Court of Appeal. In April 1921, the court ruled in favor of the Company. The court's unanimous opinion was that the Board did not have the power to issue a water license on the basis of a record that had been entered by an Indian commissioner because these agents were not authorized to do so by provincial laws. Concurring with two other judges, Judge Eberts declared that the Indian Reserve commissioners did not have power to grant water rights to the Indians. Gold Commissioner Peter O'Reilley's note on the priority of Indian water rights in 1869 was regarded as the "then rights of the Indians," meaning that if the Indian rights still were to be recognized as valid, it would make Thompson-Todd record useless.[51]

The DIA took this major setback very seriously and discussed what future course of action it should take. Ditchburn wrote to Scott that the decision "is going to affect the Indians of the Kamloops reserve very seriously as it practically means that we have no right to the water which the Indians have been using since 1862 or even prior to that time." Anticipating that the decision would determine the course of Board's rulings on Indian water rights in coming years, he suggested that "something will have to be done along legal lines in order to establish the Indian rights to the use of water from a prescriptive standpoint."[52] On August 6, 1923, Duncan C. Scott and Ditchburn met with

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[51] *Western Canada Ranching Co. v. Department of Indian Affairs*, 60 D.L.R. 360-363. The case was also reported in 2 W.W.R. (1921) 834. Former Chief Commissioner of Lands and Works, Frederick J. Fulton of Kamloops, represented the Company. His role in this case might have been important. Having led the provincial Irrigation Commission in 1907, Fulton had influential roles in forming provincial water laws and establishing the Board of Investigation. Similar to J.E. Lane, solicitor for the Board of Investigation, Fulton's position was to nullify the Indian Reserve commissioners' power to grant water rights to the Indians, W.E. Ditchburn to D.C. Scott, 2 May 1921, RG 10, vol. 3660, file 9755-4.

[52] From Ditchburn to Pattullo, August 28, 1923, .RG 10, vol. 3660, file 9755-4.

T.D. Pattullo, Minister of Lands, and Premier Oliver in Victoria to discuss the Kamloops Indian case along with two other outstanding cases – one on Oregon Jack Reserve No. 3 and the other on Lower Similkameen Reserve No. 6. It was clear some remedial legislation was urgently needed. Scott and Ditchburn recommended the protective provision, which would secure sufficient amounts of water for Indians to irrigate their reserves, since the provincial appeal court had ruled that the Board of Investigation lacked the authority to recognize rights granted by federal authorities.[53] Despite all of these legal suits and petitions, Pattullo declined to provide relief measures for the Indians. By February 1924, the officials in the Indian Department and the Power Branch gave up and considered the cases closed without having achieved any productive results.[54]

In the meantime, the Kamloops Indians and their agent again focused their effort on trying to build the pumping system and implementing other measures to assure adequate water for irrigation. In June 1922, the Council of the Kamloops Band unanimously decided to press forward with the pumping scheme and urgently requested the DIA to approve using most of the band's funds.[55] This scheme, along with the need to repair irrigation systems, required an outlay of over $20,000. The proposal immediately drew the attention of the manager of the Western Canadian Ranching Company. He suggested that the company share the cost in return for being part beneficiary of the water obtained. By having the DIA as its business partner, the manager also hoped that the DIA would share the expensive cost of repairing for the

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[53]Ibid.

[54]Dominion Water Power Branch, "Progress Report July 1st to December 31st, 1923: Indian Water Rights Investigation," RG. 10, vol. 3661, file 9755-7.

[55] Petition, 8 February 1920, RG 10, vol. 7606, file 12154-12, pt. 2.

ditches to prevent seepage. The DIA was not in a mood to cooperate with the company, however, because of its bitter experience in the 1921 appeal decision that went against the interests of the Kamloops Indians. With the Company now fully controlling the water distribution from Paul Creek and Paul Lake, the DIA administration saw no reason to spend money for repairing the ditches. In the spring of 1924, federal engineers stepped in and suggested that a permanent agreement be reached so that the proposed works could go ahead with the view of using the project to patch up differences between the various parties. The DIA and the Company immediately were receptive to this idea. In particular, they were interested in making an agreement in which both parties would receive final licenses from the Board of Investigation with the priority date of 1888. This would mean that the Company would have to waive its priority of the 1869 records. The two parties would equally divide the quantity of water. In addition, the Company would have to open the dam on May 1, even though it would not need water for irrigation until the middle of the month. Both parties would use water until 30 September. The DIA, in turn, would agree to share the cost of maintaining the dam and ditches as well as the cost of fixing the seepage problems. The DIA and the company finalized an agreement in March 1925.[56]

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[56] Mathew Balls, Assistant Engineer, to R.G. Swan, Chief Engineer, Dominion Water and Power Branch, 27 May 1924, RG 10, vol. 7606, file 12154-12, pt. 2.

Table 1. B.C. Water Licenses related to Paul Creek and Paul Lake, 1869-1915.

Priority Date/ License Number	Licensee	Sources / Land	Quantity	1925 Agreement
1869 (Dec. 9)/ C.L. 5600	Western Canadian Ranching Co. (entered by Robert Thompson and James Todd)	Storage right to Paul Lake	350 acre feet per annum (from Oct. 1 to June 15)	New priority date 1888 (Sept. 26) with 2,500 acre feet of storage right to Paul Lake
1869 (Dec. 9)/ C.L. 5601	Western Canadian Ranching Co. (entered by Robert Thompson and James Todd)	Irrigation and domestic water from Paul Creek/ Lots 283 and 285 (233 acres)	699 acre feet per annum and 1,000 gallons per day	New priority date 1888 (Sept. 26)
1869 (Dec. 14)/ C.L. 5840	Western Canadian Ranching Co. (entered by John Holland)	Irrigation and domestic water from Paul Creek/ Lots 1 and 2 G6 (250 acres)	625 acre feet per annum and 500 gallons per day	New priority date 1888 (Sept. 26)

1888 (Sep. 26)/ C.L. 6467	Indian Agent (J.W. Mackay)	Irrigation and domestic from Paul Creek/ Kamloops I.R. #1	2226 acre feet per annum, including 12,000 gallons per day	Priority date 1888 (Sept. 26) with 2,500 acre feet of storage right to Paul Lake
1897 (Sep. 8)/ C.L. 5211	Western Canadian Ranching Co.	Irrigation and domestic water from Paul Creek/ Lots 282 and 286	1015 acre feet per annum and 2,000 gallons per day	New priority date 1888 (Sept. 26)
1897 (Nov. 20)/ C.L. 3605	P. Botta	Irrigation and domestic water from Paul Creek/ 80 acres of S.E. 1/4 26 & S.W. 1/4 25-20-15	200 acre feet per annum and 1000 gallons per day	
1904 (March 29)/ C.L. 5210	Western Canadian Ranching Co.	Storage water from Paul Lake (supplement for C.L. 5211)	1015 acre feet per annum (from Oct. 1 to 1 June)	New priority date 1888 (Sept. 26)
1915 (Feb. 8)/ C.L. 2636	Western Canadian	Irrigation water from Paul Creek/	240 acre feet per annum	New priority date 1888 (Sept. 26)

	Ranching Co.	100 acres		
1915 (Feb. 8)/ C.L. 2637	Western Canadian Ranching Co.	Storage water from Paul Creek (supplement for C.L. 2636)	240 acre feet per annum	surrendered

Native Roles in Farming: Neskonlith Irrigation and Storage

By the 1920s, partly because of the rapid depletion of salmon after the Fraser River blockages due to railway construction at Hell's Gate in 1913, farming had become an indispensable part of the livelihood of the Kamloops, the Neskonlith and other neighboring Secwepemc peoples.[57] World War I veterans like Chief Louis on the Kamloops Reserve and Chief William Pierrish on the Neskonlith Reserve played significant roles in overseeing agricultural activities. Even though the DIA agent attempted to control reserve affairs in general by appointing new authorities, such as Indian water bailiffs, some traditional chiefs maintained actual power over farming and irrigation. The late chief George Manuel of the Neskonlith Band recollected that during his childhood in the 1920s, a traditional chief would have led the people into the fields to tend crops in the growing season. The chief organized men to work for planting and harvesting, and women to provide food. According to Manuel, many men, women, and children, including himself, worked all day, breaking ground with livestock and carrying

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[57] "Brief Prepared by the Aboriginal Native Rights Regional Committee of the Interior Tribes of British Columbia," Joint Committee of the Senate and the House of Commons on Indian Affairs, *Minutes of Proceedings and Evidence*, no. 1, 1 April and 4 May, (Ottawa, 1960), 600.

water from the river or creek.[58]

The traditional and elected chiefs also had the responsibility of organizing labor for the purpose of maintaining the flumes and ditches needed for irrigation. The chief often negotiated with the DIA agent to obtain sufficient food and wages for these irrigation workers. In 1929, for example, Pierrish asked agent Ewen MacLeod for food and enough lumber to repair decaying flumes and ditches.[59] In 1931, the Neskonlith Band Council under Pierrish unanimously decided to request that the DIA provide financial assistance for building an irrigation system to divert water from Bear Creek into Neskonlith Lake for the purpose of increasing the volume of water in the lake. An additional system of pipes and new ditches was proposed to redirect water from the lake to the Neskonlith Reserve and the neighboring Sahhaltkum Reserve.[60] The Indian leaders considered this scheme to be essential to increase their water supply and secure their harvests.

Federal officials looked into the matter, and the records they left reinforce the picture of Indian livelihood being inextricably linked with agriculture and water use. For example, E.H. Tredcroft of the Dominion Water Power and Hydrometric Bureau visited the Neskonlith Reserve in April 1931 to inspect the possible course of the requested irrigation scheme. He noted that the Neskonlith and Adams Lake Indians were in

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[58] Peter McFarlane, *Brotherhood to Nationhood: George Manuel and the Making of the Modern Indian Movement* (Toronto: Between the Lines, 1993), 25.

[59] The Neskonlith chiefs had made this type of request several times as early as 1911. See Indian Agent W. Neild to Assistant Deputy and Secretary of the DIA, J.D. McLean, 2 September 1911; and Ewen MacLeod to W.E. Ditchburn, 22 October 1929, RG 10, vol. 7605, file 12154-10, pt. 1.

[60] Chief Etienne Narcisse of the Sahhaltkum Band, Band councilor, and many of the Band members later held a meeting and strongly endorsed Neskonlith's request. Chief Etienne Narcisse to Ewen McLeod, 13 January 1931, Ibid.

desperate need of sufficient water supply to offset the encroachments of settlers and ranchers. According to his report, the Natives contended that their living conditions on the reserves were deteriorating because "the amount of water obtained by them for irrigation purposes during past years has been so small that they have been unable to cultivate their lands." Even though Tredcroft found that the Neskonlith people cultivated about 540 acres out of 1,165 acres of arable land, they told him that the water supply had not been sufficient to prevent crops from drying up. After talking to the Indian agent and others, Tredcroft concluded that "the large number of Indians residents thereon depended almost entirely upon agriculture for their livelihood, and the totally inadequate supply of water for irrigation purposes."[61]

Although Tredcroft and federal engineers understood the urgent need to improve irrigation systems on the reserve, their expectations of the proposed project were not the same those of the Indian proponents. Agent MacLeod stressed the importance of securing water for the Band as a means of transforming the Indians into self-sufficient farmers. As the national economy plunged into the Great Depression, MacLeod regarded irrigation works on the reserve as an essential part of a much-needed relief measure. He made this point forcefully in a letter to the Secretary of the DIA in 1931:

> Personally, I feel very strongly and do protest against the expenditure of moneys on domestic water supplies, schools, or anything else, until such time as irrigation is installed for the lands of Sahhaltkum and Neskonlith and Kamloops Bands. Large sums of money are spent annually on doctors, hospitals, and nurses for Indian treatment, when, undoubtedly, to my mind, after a long number of years' experience, the cause of most of the Indian diseases in the interior of British Columbia Dry Belt, is caused [sic.] by malnutrition. Lack of water to raise crops

[61] E.H. Tredcropt, "Report re Additional Irrigation Supply for Niskonlith Indian Reserve No. 1 and Adams Lake Indian Reserves Nos. 4 and 4A," 2 April 1931, Ibid.

on their lands is the primary cause.[62]

The Neskonlith people had maintained their reclamation interests in Neskonlith Lake since 1898, when they had built a storage facility and diverted water from the lake. During the years between 1931 and 1932, the Neskonlith people rebuilt this facility improving the structure and adding a spillway to control the water level in the lake more easily. The chiefs recruited the labor and supervised most of the construction work. In addition to the new storage dam, the Indians hoped that the Bear Creek diversion plan would remedy the water shortages caused by the excessive diversions of water by non-Indians, who held superior provincial water records. Throughout the 1930s, the DIA hired a solicitor from Kamloops in attempt to make agreements with these prior record holders. Similar to the agreement between the Kamloops Indians and the Western Canadian Ranching Company, the purpose was to increase the water supply for the Indians in exchange for DIA financial assistance for the repair of seepage problems and to provide for the maintenance of ditches. Despite many meetings and discussions, these efforts failed because of settler's excessive demands and opposition. George Hoffman, for example, who held the crucial 1869 water record from Neskonlith Creek, having taken over his father-in-law's ranch in 1907, strenuously objected to the proposed agreement. He demanded more benefits.[63]

In addition to Hoffman's objection to the proposed agreement, another speculator living on the shores of Neskonlith Lake attempted to bar DIA's storage works project. In

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[62] Ewen MacLeod to Secretary of the DIA, 23 January 1931, Ibid.

[63] DIA Engineer to Duncan Scott, 16 October 1931; agent W.J. Ferguson to W.E. Ditchburn, 21 December 1931; Ferguson to Ditchburn, 1 June 1932; G.W. Black, barrister-at-law, to the Indian Commissioner for

the spring of 1932, the owner of the Chue Ah Louie Estate complained that the new DIA dam flooded part of his land along the Neskonlith Lake shoreline. He demanded $900 in monetary compensation for 8.5 acres of beach land, which he pre-empted in 1903 for the price of $5 per acre.[64] The DIA disagreed with Louie's contention, arguing that the new dam was not any higher than the previous one. According to its investigation, the flooding did not seem to have damaged Louie's relatively valueless land. Government officials noted that the new spillway and the Neskonlith watchman, who monitored and controlled it, made the dam less likely to cause flooding. In addition, as the DIA officials discovered later, Louie's estate was long arrears in payment for pre-emption; Louie merely was hoping to obtain the money he needed to pay off his debt of over $1,000.[65] DIA officials and engineers from the Dominion Water Power and Hydrometric Bureau, who analyzed the impact of the dam on the Louie estate, unanimously recommended buying the entire property to settle Loiuie's claim. This was not accomplished until 1939 when Louie died.[66]

British Columbia, 19 October 1933; RG 10, vol. 7605, file 12154-10, pt. 2.

[64] Although DIA records persistently show that William Louie was the major contestant of the issue, Joyce Dunn's book *A Town Called Chase* shows William Louie was the son of Ah Louie who passed away in 1956. This date is much later than what the DIA records say (1939). If Dunn's information is right, the major contestant could have been Ah Louie. William Louie operated a stern-wheeler from Savona on Kamloops Lake to Enderby on Spallumcheen River for many years. Dunn, *A Town Called Chase*, 61.

[65] Cornwall and Archibald Barristers, etc, to G.S. Pragnell, Inspector of Indian Agencies, 7 December 1932; Ferguson to Ditchburn, 20 May 1932; Ditchburn to Ferguson, 23 May 1932; Chas C. Perry, Assistant Indian Commissioner for B.C., to DIA, 26 January 1933; C.E. Webb, District Chief Engineer of the Dominion Water Power and Hydrometric Bureau, to J.T. Johnston, Director of the Bureau, 3 February 1934, RG 10, vol. 7605, file 12154-10, pt. 2.

[66] In this dispute, Frederick Fulton represented Louie's interests and argued that the DIA raised the height of its dam, which caused the flood of Louie's estate. The Comptroller of water rights did not accept this case, ruling against Louie and Fulton in 1937. See Fulton and Morley, barristers, to Comptroller of Water Rights, the Board of Investigation, 5 May 1937; Webb to Johnston, 31 May 1937; "The Statement re Claim of William Louie et al for alleged flooding of lands on Niskonlith Lake, B.C.," 10 February 1938; Webb to Johnston, 10 March 1938; W.J.F. Pratt, Private Secretary, to T.J. O'Neill, MP, House of Commons, 30 March 1938; Webb to Newman Taylor, Superintendent of Lands, 8 June 1939; Webb to T.S. Mills,

Conclusion

These entangled stories of water conflicts among the Secwepemc people, settlers, federal officials, provincial judges and provincial authorities have demonstrated the very complex relations the four parties had because each held somewhat different interests. It shows that the anatomy of Indian water rights in this context defies a simple characterization of the nature of Indian water struggles in the dry belt of British Columbia. It was a complex episode in which the various parties advanced competing agendas. At one point, federal and provincial authorities had reached common ground in recognizing the priority rights of the Kamloops people, but the ranching company and the provincial court rejected this conclusion. We also have seen the strange alliance that the ranching company and the DIA officials forged, even though the Indians persistently expressed their opposition to the use of their water by the company. Meanwhile, the Kamloops and Neskonlith Indians actively pursued their interests with strong leadership of the band chiefs. Their persistent effort to retain control of irrigation matters was closely connected to their interests in protecting their self-governing rights.

After World War II, agricultural life on reserves underwent a gradual transition. By the end of the 1940s, many Neskonlith and Kamloops people had stopped using the ditches they had constructed during the 1920s and 1930s. Although William Pierrish vigorously led his people in the construction of the irrigation system connecting Bear

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Surveyors and Engineering Branch, Department of Mines and Resources in Ottawa, 13 June 1939; RG 10, vol. 7606, file 1254-10, pt. 3.

Creek, Neskonlith Lake and Adams Lake in the 1930s, the ditch soon fell into disuse. In 1949, George Manuel made an effort to restore it in the hope of reinvigorating farming on the reserve, but he could not interest his people in the idea. A key reason was that increasing industrial development, as well as expansion of neighboring towns, drew more people outside of the reserve.[67] Nevertheless, the problems with water rights continue to affect the Neskonlith Band to this day.

In the meantime, the Western Canadian Ranching Company and Hoffman's ranch ceased operations. Soon after the death of George Hoffman in 1944, the Hoffmans sold their ranch. As of 2002, the current owner of the Hoffman ranch, which is located the western boundary of the Neskonlith Reserve no. 1 across Neskonlith Creek, still has water conflicts with the Neskonlith band regarding water rights to the creek and Neskonlith Lake.[68] The Western Canadian Ranching Company sold its holding of the old Harper ranch in 1947. After various families briefly owned the Harper Ranch during the latter half of the twentieth century, the Kamloops Band purchased 44,000 acres of the ranch for $6.9 million in 1988. In 2000, the band acquired full ownership of the ranch and all of its assets.[69] In this way the Secwepemc Indians are now gradually "reclaiming" their rights although the underlying legal rights issues pertaining to water on Indian reserves remain unresolved.

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[67] McFarlane, *Brotherhood to Nationhood*, 40-41.

[68] In August 2002, Janice Billy, Skahiish Manuel, and Jennifer Dick of the Neskonlith Band kindly helped me examine the contested diversion sites at both Neskonlith Creek and Neskonlith Lake dam. The current shortage of rain, logging operations in the mountains through which Neskonlith creek runs, and above all, the large amount of water diversion by the current ranch owner have all contributed to the dramatic depletion of creek water available on the reserve for growing organic vegetables.

[69] Keith Matthew, "Kamloops Indian Band Purchases Historic Harper Ranch," *Aboriginal Newspaper of British Columbia and Yukon*, 14 November 1999,

http://www.ammsa.com/raven/NOV99.html#anchor3320823).

Chapter 5

Indian Water Rights and Irrigation in the Treaty 7 Region

Historians and other scholars have paid scant attention to Native irrigation agriculture in the area of present-day southern Alberta. Sarah Carter's path-breaking study of prairie reserve agriculture, *Lost Harvest: Prairie Indian Reserve Farmers and Government Policy* (1990), still stands alone. Focusing on southern Saskatchewan, Carter's work importantly stresses that many Plains Cree people became motivated to practice agriculture even before the treaty-making and reserve era began in the 1870s. She contends that the Indians, rather than the federal government, were the ones who showed a sustained interest in deriving economic benefits from agriculture.[1]

A key question arises here concerning the extent to which Carter's findings apply to other Native peoples living in the semi-arid lands of the western prairies, particularly of southern Alberta. As the following discussion will show, the Indians in the Treaty 7 region reacted in complex ways to water and irrigation development schemes. They did so at a time when the federal government pressed them to take up farming and ranching. This chapter will explore the extent to which the Native people of Treaty 7 readily yielded to this

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[1] In support of Carter's argument, economic historian Carl Beal demonstrates that the Indians in the Treaties 4 (1874) and 6 (1876) regions already participated in the commercial economy and were well acquainted with the fundamental economic concept of debt and credit, spending, buying, selling, and investing in future production by the 1970s. Sarah Carter, *Lost Harvest: Prairie Indian Reserve Farmers and Government Policy* (Montreal and Kingston: McGill-Queen's University Press, 1990), ix, 37-49, 18-43; and Carl Beal, "Money, Markets and Economic Development in Saskatchewan Indian Reserve Communities, 1870-1930," (Ph.D. dissertation, University of Manitoba, 1994), especially chapter 3.

pressure, or opposed it. A recent study on the Blackfoot Confederacy demonstrates that the transition from a buffalo-hunting economy to an agricultural one was very difficult; the study also assumed that most Native Peoples in southern Alberta wanted to maintain the federal ration system introduced in 1877 rather than opt for the uncertain potential of irrigation farming.[2] I will show that, in spite of the initial reluctance during the late nineteenth century, irrigation agriculture gradually but steadily became an integral part of life for many Treaty 7 Indians in the early twentieth century. During this transitional period, a few of them became highly successful farmers on their reserves while still maintaining their traditional lifestyle and ceremonies. This was especially the case on the Blackfoot Reserve.

With these regional variations in mind, I will examine how the Native people in present day southern Alberta or the Treaty 7 region coped with irrigation and water rights policies of the federal government between the late nineteenth century and the early twentieth century. This question will be addressed in the context of two case studies: one concerns the first large-scale irrigation scheme that was undertaken on the Blackfoot Indian Reserve; the other deals with the Calgary Irrigation Company's canal project, which cut through the Sarcee Reserve and supplied water to the Calgary area between the 1890s and early 1907. These cases provide the context to explore the history of Native irrigation agriculture in the Treaty 7 region and the Dominion government's struggle to create a model agricultural society in the notoriously unstable and unpredictable climate of the semi-arid Rocky Mountain foothills and adjacent prairie. While the government made this attempt, metropolitan areas such as Calgary and Lethbridge were emerging and required

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[2] Hana Samek, *The Blackfoot Confederacy, 1880-1920: A Comparative Study of Canadian and U.S. Indian*

irrigation and hydro projects to supply them with water and power. These metropolitan needs generated economic growth and adversely affected Treaty 7 Nations, including the Blackfoot (or Siksika), Blood, Peigan, Sarcee (Tsuu T'ina), and the Stoney peoples.[3] My discussion of this irrigation history complements that of the story of British Columbia and helps to further our understanding of how governments and Indians dealt with competing water rights and needs in the Canadian semi-arid West.

Another issue I will explore concerns the extent to which Indian water policies in the North-West Territories and later Alberta developed differently from those in British Columbia and the bordering states. Studies of cross-border Native issues have mostly been comparative studies of Indian policies in the two countries. However, few analyses have focused on the differing policies regarding Indian water rights in Alberta and British Columbia. The important difference here is that, prior to the Alberta Natural Resources Transfer Agreement of 1930, there were no federal/ provincial jurisdictional battles over water rights in Alberta because the Dominion held Crown title.

Establishing the Agricultural Empire

The idea of establishing an agrarian society in the semi-arid short–grass lands of southern Alberta became increasingly popular in the 1890s. The Minister of the Interior and of Indian Affairs, Clifford Sifton (1896-1905), and especially newly elected Liberal MP from Edmonton, Frank Oliver, who succeeded Sifton from 1905 to 1911, spearheaded an aggressive campaign to establish large-scale agrarian settlements in southern Alberta.

Policy (Albuquerque: University of New Mexico Press, 1987), 66.

[3] The Siksika and Tsuu T'ina have replaced the Blackfoot and the Sarcee and become common usage in recent years. However, I will use the old terms in most of the historical discussion of this chapter. I will use

This entailed reducing the dominating power of local cattle ranchers. Oliver was particularly vigorous in attacking those pro-ranching government officials, such as William Pearce of Calgary, who was Superintendent of Mines in the Interior Department from 1885 to 1901. He challenged Pearce's contention that the short-grass region of southern Alberta, which is an area having an average annual rainfall of fifteen inches (38.1 centimeter) or less, was best suited for ranching.[4]

Pearce's argument largely paralleled that of American geologist/ ethnologist John Wesley Powell, who explored the Colorado Plateau region in 1869 and 1871. In his 1878 report to Congress entitled *Report on the Lands of the Arid Region of the United States*, Powell contended that the idea of the 160-acre homestead, which had been promoted under the Homestead Act of 1862, was not suitable to the arid environment of the trans-Mississippi West. Powell thought that only small-scale irrigated farms, or large-scale ranches, would be appropriate there. Otherwise, the federal government would have to initiate very costly large-scale irrigation projects in order to sustain extensive agricultural settlements. Though remaining cautious about the extensive settlement idea because of his belief that ranching would be the best occupation in the Great American "desert," Powell knew that sooner or later the government would have to deal with the issue of large-scale settlements in the West. Later, Pearce adopted a similar perspective. Both Pearce and Powell understood that if any farming development was to be introduced to the arid part of

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the contemporary terms only in the discussion of contemporary issues.

[4] David H. Breen, *The Canadian Prairie West and the Ranching Frontier, 1874-1924* (Toronto: University of Toronto Press, 1983), 88-89; Ted Byfield ed., *The Birth of the Province*, vol. 2 of *Alberta in the 20th Century: A Journalistic History of the Province in Eleven Volumes* (Edmonton: United Western Communications Ltd., 1992), 226-227.

the American West and Western Canada, irrigation would be essential component.[5]

The idea of promoting irrigation initially did not gain popular support among the policymakers in both Congress and Parliament. By the early 1880s, however, American policymakers and leading hydraulic engineers became increasingly aware of the economic potential of irrigation projects in the West. Aware of this change in American policies, Pearce quickly began promoting irrigation in southern Alberta after he was appointed superintendent of mines in 1884 in charge of natural resource development; meanwhile, he staunchly held on to his vision that ranching should be supreme in southern Alberta. He recommended to his colleagues in Ottawa that irrigation in the prairies would have to be financed by the federal government rather than by private enterprise. Pearce's proposition initially failed to gain support because many policymakers in Ottawa like Sifton and later Oliver, who, similar to policymakers in Washington in the 1870s, believed that "Rain Follows the Plow." Thus, they dismissed the idea that irrigation was necessary in the Great Plains region. There were still others who discounted the possibility of agricultural development in the region in the belief that it was part of the great American desert, or the so-called Palliser's triangle. These adverse perspectives had the effect of delaying development in the region. Moreover, some influential entrepreneurs in the east had already heavily invested their capital in the ranching industry of southern Alberta and they

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[5] William Cronon, "Landscapes of Abundance and Scarcity," in Clyde A. Milner II, Carol A. O'Conner and Martha A. Sandweiss eds., *The Oxford History of the American West* (New York and Oxford: Oxford University Press, 1994), 606-607; Marc Reisner, *Cadillac Desert: The American West and Its Disappearing Water* (New York: Penguin Books, 1986), 25-38; Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York and Oxford: Oxford University Press, 1985), 131-156. Regarding Powell's character, Worster writes: "A complicated man, filled with such inconsistent impulses, Powell is a difficult man to read in the sum." [p. 133] The same can be said of Pearce.

wanted to protect their business from the threat of agricultural encroachment.[6]

It was not until the early 1890s that Ottawa became committed to pursuing irrigation projects in the arid portions of the entire North-West Territories. In part, this shift of opinion was a response to a severe drought in southern Alberta that lasted from 1887 to 1895. Along with the development of railways, the rising price of wheat for the overseas market in the beginning of the 1890s also served as a catalyst.[7] Likewise, the increasing population in British Columbia and the province's booming logging and mineral economy provided an expanding market for products from Prairie farms, thereby luring the investment into the region.[8] Finally, the successful operation of Mormon farmers in Cardston, south of the Peigan Reserve, and their leader Charles Ora Card's several visits with Prime Minister John Macdonald in 1888, helped convince the federal government of the potential benefits irrigation could bring to the agricultural economy of the area of present day southern Alberta.[9] Shortly thereafter, a new high quality bread wheat, named Marquis, was developed. It required a much shorter ripening period and yielded larger returns than its predecessor, Red Fife wheat. Marquis wheat thus opened more land for the

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[6] David C. Jones, *Empire of Dust: Settling and abandoning the Prairie Dry Belt* (Edmonton: University of Alberta Press, 1987), 13. David Breen's work on cattle ranching also demonstrates that the ranching empire formed organizations to fight against the settlement ideas. They had established strong political ties with influential policy-makers in Ottawa in order to dominate the economy in southern Alberta. See Breen, *The Canadian Prairie West and the Ranching Frontier*, 70-95. About the indifference of Ottawa to irrigation, see C.S. Burchill, "The Origins of Canadian Irrigation Law," *Canadian Historical Review* 29: 4 (December 1948), 359.

[7] Andy Albert den Otter, *Irrigation in Southern Alberta, 1882-1901* (Lethbridge, Alberta: Historical Society of Alberta, 1975), 9-10.

[8] Pearce wrote to the Interior Department in the fall of 1893 that British Columbia's lumbering and mining would provide market for hay, coarse grains and vegetables. See Pearce, "The Calgary Irrigation Company was incorporated during the last Session," William Pearce Collection, Series 7, 3-4, University of Alberta Library.

[9] E. Alyn Mitchner, "William Pearce: Father of Alberta Irrigation" (M.A. Thesis: University of Alberta, 1966), 35.

wheat economy. This variety began to dominate prairie farming after 1892.[10]

With increasing understanding and support from his superiors in Ottawa, Pearce began drafting an irrigation bill that was based on the ideas that were current among irrigation promoters in the American West. Pearce and his friend, surveyor J. S. Dennis, visited several western States in order to gather information about irrigation and obtain specific advice about the wording that should be included in an irrigation bill. These two Canadians visited the leading American irrigation promoters of the day, such as engineers George G. Anderson of Denver, Colorado, Elwood Mead of Laramie, Wyoming and J.W. Mackie of Tulare, California. The ideas of these Americans greatly influenced Pearce's and Dennis's thinking about federally initiated irrigation measures and the profit potential of the irrigation business.[11] At this point, however, Pearce and Powell held somewhat different opinions about the best irrigation model. Pearce shared Mead's idea that government engineers and other technocrats should have administrative control.[12] Powell, on the other hand, favored giving control to local water districts. This goal was to create a yeoman farming society based on 80-acre autonomous irrigation homesteads divided by natural river basins.[13]

In addition to Mead, Francis Newlands of Nevada, who drafted the Reclamation

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[10] Arthur Lower writes the date of the discovery of Marquis was 1892, while Don Tompson says 1904. Perhaps, Lower's information is wrong. In 1892, Saunders's brother, A. P. Saunders, created the Red Fife variety. Marquis came later by cross-breeding with Red Fife. See J. Arthur Lower, *Western Canada: An Outline History* (Toronto and Vancouver: Douglas & McIntyre, 1983), 145; and Don W. Thompson, *Men and Meridians: The History of Surveying and Mapping in Canada*, vol. 2 1867 to 1917 (Ottawa: Queen's Printer and Controller of Stationary, 1967), 2.

[11] Mitchner, "William Pearce,"144; Elwood Mead, "Water Rights in Wyoming, 1898," and Pearce to J.W. Mackie, President of the Tulare Irrigation Company, 26 August 1890, William Pearce Collection, Series 7, 1-1.

[12] Charles F. Wilkinson, *Crossing the Next Meridian: Land, Water, and the Future of the West* (Washington, D.C.: Island Press, 1992), 238.

[13] Worster, *Rivers of Empire*, 131-143.

Act of 1902, and other irrigation promoters in the circle of the International Irrigation Congress, especially its chairman William Smythe, strongly influenced Pearce's vision. These men believed that the future irrigation of the American West would require federal legislation to abrogate the traditional practices of common law water rights.[14] Most Irrigation Congress delegates also forecast that large-scale irrigation projects would bring huge economic benefits to the West, and to their water businesses in particular. They regarded the principle of riparian water law as a great obstacle to their economic interests. As Pearce observed while attending the Irrigation Congress convention in Los Angeles in 1893, "the riparian right to water was condemned in the strongest possible language."[15] The riparian law gave water rights to the individual owners of the land adjoining natural watercourses. The promoters of prior appropriation thought that this common law practice would prevent large-scale irrigation promoters (many of whom ran irrigation businesses) from realizing their plans of creating large agrarian settlements and to provide the "safety-valve" for immigration in the West.

While economic incentives played a major role in determining the course of irrigation policies, large-scale irrigation promoters, such as Mead and Pearce, also attempted to protect interests of yeoman farmers from the encroachment of private monopoly. Partly incorporating the utilitarian conservation philosophy vehemently advocated by the "Progressive" Theodore Roosevelt administration in the beginning of the

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[14]Smythe and Powell had major disagreement on the future of irrigation in the West at the third annual convention of Congress in 1893. Smythe and other pro-large-scale irrigation parties won the majority, making Powell resign from the organization. Despite his negative opinion of state-sponsored large-scale irrigation projects, Powell's idea of federal involvement in irrigation projects remained influential. This idea became incorporated in Newland's draft for the Reclamation Act in 1902. Wilkinson, *Crossing the Next Meridian*, 236-247.

[15] Pearce to T. Mayne-Daly, Minister of the Interior, 24 October 1893, William Pearce Collection, series 7,

twentieth century, these technocrats believed that nationalized reclamation projects could bring about social reform. Although many private entrepreneurs in the Great Plains still favored laissez-faire economic policies over federalization of reclamation legislation, Mead's alternative idea of giving the state of Wyoming ownership in perpetuity of all natural water sources, for example, gradually influenced policymakers and bureaucrats in the United States.[16] Under his Wyoming scheme, the building of ditches became the foundation of water rights on the basis of priority of appropriation.[17]

Irrigation policies in Western Canada were no exception. When Pearce worked on finalizing his Canadian bill with the help of George L. B. Fraser of the Justice Department in the early 1890s, he supported this line of thought about irrigation and water rights. In 1893, for example, he explained the aim of his proposed bill to the Minister of the Interior, T. Mayne Daly, who had instructed Pearce to draft it:

> What the bill has aimed at is first to destroy Riparian Rights and provide reasonable protection for so called vested rights; that being done, the machinery is provided whereby one can cheaply protect himself in any irrigation; that is, take what water he requires doing no one else any damage, if damage ensues, the mode of assessing it is provided for, enforce his right to carry the water out of a stream across private lands, with or without the consent of the owner, protect his ditch or other works from being damaged or destroyed, give him the right to use and otherwise depose of the water, so long as it is beneficially applied, no wasting, no favouratism in prices charged being permitted, see that life and property are sufficiently protected by inspections of dams and other works which may endanger life or property or both; leave given to the Governor-in-Council to make further regulations.[18]

The bill was first introduced to Parliament in 1893. Initially it raised uncertainties among

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[16]Wilkinson, *Crossing the Next Meridian*, 89-91, 125-26, 238; and Worster, *Rivers of Empire*, 162-163.

[17] Mead, "Water Rights in Wyoming, 1898," in the Pearce Collection, Series 7, 1-11; *Irrigation Institutions* (London: Macmillan Company, 1907).

policymakers about the abandonment of riparian rights and nationalization of irrigation projects. It took Peace several months to convince the Minister of the Interior that the majority of settlers in the semi-arid region supported the bill. Despite last minute objections from the Canadian Pacific Railway, which was concerned about the loss of its riparian rights in the railway belt, Parliament passed the Pearce's bill in 1894 without major revisions. It was promulgated as the *North-west Irrigation Act.* Although the act had been largely modeled after American state and territorial laws (the federal Reclamation Act did not exist yet), it also incorporated precedents from other arid/ semi-arid countries like Australia, Egypt, India, and Italy, and, to a lesser extent, the province of British Columbia. This was because, while collecting voluminous information on irrigation across the world, Pearce and Dennis had discovered that in the countries where large-scale irrigation took place such as Egypt, Italy and India, central governments controlled water rights. In addition, they learned that in the state of Victoria, Australia, ardent irrigation promoter Alfred Deakin had successfully pushed forward irrigation legislation in 1886 as the *Victoria Irrigation Act*, which was based on California irrigation practices. The Act had provisions that largely incorporated American irrigation ideas, particularly those about the state ownership of water. Pearce induced these provisions in the Canadian irrigation act, thus preceding American federal legislation nearly a decade.[19] British Columbia had anticipated this federal move in its Land Acts of the 1880s and in its first water development legislation, the *Water Privilege Act* in 1892, which abandoned exclusive

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[18] Pearce to T. Mayne-Daly, October 24, 1893, William Pearce Collection, Series 7, 1-11.
[19] Burchill, "Origin of Canadian Irrigation Law," 357; Ernestine Hill, *Water Into Gold* (Melbourne: Robertson & Mullens, 1937), 54-72; and "North-West irrigation Act, 1891-1913," the Pearce Collection, University of Alberta Archives, Series 7, 2.

riparian rights to water.[20]

By successfully promoting the *Irrigation Act*, Pearce secured the future of his Irrigation Company's projects. Pearce's company was incorporated in 1893 as the Calgary Irrigation Company. It planned to divert water from the Bow and Elbow rivers for the purposes of irrigation and the production of hydropower.[21] It was authorized to sell or lease water and waterpower to settlers. By 1896, the company had irrigated over 15,000 acres of land in the Calgary area by building and using a 60-mile long main canal. It was the first federally incorporated company that undertook irrigation on such a scale.[22] In the same year, the North Western Coal and Navigation Company and the Alberta Railway and Coal Company merged, creating the Alberta Irrigation Company. This Company began its operation in the region south of Lethbridge by diverting water from the St. Mary's River, which traverses the eastern margin of the Blood Reserve.[23]

While these developments were unfolding, Dennis took a well-deserved career for himself by becoming superintendent of the Irrigation Branch and later superintendent of irrigation for the Canadian Pacific Railway. His roles in making irrigation policies within Dominion lands became even greater in later years. In 1903, he was appointed Superintendent of Irrigation and British Columbia Land Commissioner with his office in Calgary.[24]

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[20] *Statutes of British Columbia,* 1888, 51 Vict., c. 10; *Statutes of British Columbia*, 1892, 55 Vict., c. 47.
[21] *Statutes of Canada,* 1894, 57-58 Vict., c. 30, "An Act respecting the utilization of the waters of the North-west Territories for Irrigation and other purposes"; *Statutes of Canada*, 1893, 56 Vict., c. 71, "An Act to incorporate the Calgary Irrigation Company"; *Statutes of Canada*, 1894, 57 Vict., c. 106, " An Act respecting the Calgary Irrigation Company."
[22] The Macleod Irrigation Company was officially the first irrigation enterprise in southern Alberta. See Burchill, "Origins of Canadian Irrigation," 357.
[23] Otter, *Irrigation in Southern Alberta*, 7-15. The company changed its name to the Canadian North West Irrigation Company after 1899.
[24] William Pearce Collection, Series 7, 3/ 12; James B. Hedges, *Building the Canadian West: The Land and*

Circumventing Indian Reserves

In the process of preparing for large-scale irrigation projects in southern Alberta, policymakers and entrepreneurs commonly neglected to consider Indian water rights on reserves. Since most reserves in the Treaty 7 region were situated along major rivers, such as the Bow and Oldman rivers, many irrigation projects would inevitably affect the Indians and vice versa. Despite his well-known expertise in water rights issues, Pearce had little interests in local Indian rights to water. This became amply reflected in the North-west Irrigation Act, which did not contain a provision about Indian rights. His voluminous writings and correspondence, which have been saved in his archival collection, contain no evidence to show that he consulted the Indian Act provisions or the terms of the Indian Treaties in drafting his irrigation bill. His major concern about Native peoples in the 1890s focused on the Sarcee Reserve, which presumably would limit the scope of his irrigation development projects. The Sarcee Reserve (69,120 acres) was particularly problematic for him because it was situated only about 16 kilometers southwest of Calgary. Because of this location, it became the first "obstacle" that the Calgary Irrigation Company had to deal with in order to move forward with its Elbow River diversion scheme. The company wanted to route a canal through the reserve.[25] In June 1894, less than a month before the passage of the North-west Irrigation Act, a company representative wrote to Hayter Reed, Deputy Superintendent General of Indian Affairs (1893 to 1897), requesting permission to lease a portion of the Sarcee Reserve in order to construct a 20-mile section of canal. It

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Colonization Policies of the Canadian Pacific Railway (New York: Russell & Russell, 1939), 175.

[25] According to James Big Plume of the Tsuu T'ina Nation and the Treaty 7 Water Rights Coalition, William Pearce owned part of the lands required for the canal. The project appeared to benefit Pearce to a large extent.

also wanted to irrigate some of the reserve land. At the time the company speculated that the Indians needed no more than 2,000 acres out of the 10,000 acres that the Company proposed to irrigate. The remaining 8,000 acres would be made available for non-Indian use.[26] Considering that the population on the reserve was 226 in 1896, the small portion of land left for the Indians suggested that the company did not consider the farming or stock raising needs of the Sarcee Indians.[27] On this point, Pearce thought he represented the majority of opinion in the Calgary area. In March 1895, he wrote Alexander M. Burgess, the Deputy Minister of the Interior, that "Calgary had been for years insisting on the removal of this Indian Reservation."[28]

As soon as the news of the Calgary Irrigation Company's irrigation project reached other communities around Calgary, they immediately objected to the idea of using water to irrigate Indian reserves. For instance, residents of Springbank, which was situated about twenty kilometers west of Calgary along the Elbow River, opposed the Calgary Irrigation Company's plan for this reason in the winter of 1894. On November 5, 1894, Senator James A. Lougheed sent a letter of protest on behalf of the irrigation district to the Calgary Irrigation Company. He argued that the Springbank district had "a stronger moral or equitable claim to" water from the Elbow River for the purpose of irrigating 21,200 acres. Lougheed argued that the amount of water required for the Sarcee Reserve would interfere with the rights of the Springbank people.[29]

Despite this objection from the influential Senator, the Interior Department

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A telephone conversation with James Big Plume, 15 November 2000.

[26] Peter Turner Bone to Hayter Reed, 30 June 1894, RG 10, vol. 8055 772/ 31-5-4-145-2.

[27] DIA, *Annual Report for 1896*, 424.

[28] Pearce to Burgess, 8 March 1895, William Pearce Collection, Series 7, 3/ 5.

[29] A protest letter to Calgary Irrigation Company by the Springbank Co. was forwarded to the Interior

considered that the Calgary Irrigation Company's project would be of interests to the larger public and allowed it to undertake construction as soon as the DIA and the Sarcee Indians gave their consent. In 1894, the request from the Company reached Hayter Reed, who was an ardent proponent of assimilation. He thought the project "will be of great value to the [Sarcee] Reserve." Reed wrote to his superior, Daly, in July 1895, to suggest that his Department should ask for irrigation service from the company rather than demand monetary compensation for the surrender of the portion of the reserve that the Calgary Irrigation Company wanted.[30] Reed then instructed Indian Agent Samuel B. Lucas, who was based in Calgary, to ask the Sarcee people for their consent to the proposed land surrender on the condition that he and the Minister of the DIA would promise the Indians "the most favourable terms possible from the Company for the privilege."[31] Early in September 1895, agent Lucas reported that he had obtained written consent from the Chief and the Council of the Sarcee people.[32] However, many Sarcee chiefs, as well as other members of the Nation, did not seem to be well informed about the plan. Many thought it was another road construction project when some land surveyors and construction workers came to the reserve and offered the residents a small amount of tea and tobacco.[33] In addition, having conducted extensive research on this issue, James Big Plume of the Treaty 7 Water Rights Coalition argues that on August 2, 1895, agent Lucas obtained the "consent" from a few chiefs without properly consulting the Sarcee people.[34] Nevertheless,

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Department on 9 November 1894, William Pearce Collection, Series 7, 3/ 4.

[30] Hayter Reed to T. Mayne Daly, July 19, 1895, RG 10, vol. 8055, file 772/31-5-4-145-2.

[31] Reed to A. E. Forget, Assistant Indian Commissioner, 24 July 1895, Ibid.

[32] Forget to Reed, 16 September 1895, Ibid.

[33] A. J. McNeill to J. D. MacLean, 10 April 1909, Ibid.

[34] A telephone conversation with James Big Plume, 15 November 2000. Big Plume's argument is partly based on Lucas's diary, which indicates that Lucas did not properly obtain consent from chiefs. The diary on

agent Lucas reported that the Indians "will look for an early intimation as to what arrangement has been made with the Irrigation Company."[35]

Assuming that the Sarcee formerly gave consent, the DIA quickly gave its approval to the Company, but Department officials and the Company spent the next several years trying to clarify the privileges the Sarcee Reserve people had obtained by surrendering a portion of their lands. Finally, in May 1898, the DIA's assistant surveyor for the North-West Territories, Archibald W. Ponton, met with P. Turner Bone, the Company's managing director, to discuss an agreement. Bone proposed that the Company should pay an annual fee for the surrendered land at the price of one dollar per acre, continue furnishing a sufficient quantity of water to irrigate the 2,000 acres of reserve land, and supply additional water to a natural reservoir on the reserve by providing engineering assistance.[36] The DIA appeared to be satisfied with the proposal although their record does not say how Indians reacted to this accord. In 1896, the Company completed the canal and made water available for the next cultivation season to irrigate some 10,000 acres of reserve lands. The Department celebrated the achievement by declaring that from now on if "frost does not prove disastrous, crops can be ensured, and all the hay necessary to meet the Indians' wants and to place upon the market can, under all conditions in the future," be obtained because of the ditch. It also believed that "hopes may continue to be entertained that the efforts of reclaiming the savage, through the expenditure of money, energy and patience, may, at no distant day, show that he [an Indian] may be ranked as a useful

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1 August 1895 also reveals that Lucas and P. T. Bone from the Calgary Irrigation Company met great difficulty in persuading chiefs to agree with the canal project.

[35] Forget to Reed, 16 September 1895, RG 10, vol. 8055, file 772/ 31-5-4-145-2.

[36] A.W. Ponton to Forget, 23 May 1898, Ibid.

member of the community."[37]

This mood of optimism soon faded away, however. The Company's canal-building technology did not anticipate the harsh environmental conditions of the region. In the summer of 1899, Chief Inspector of Indian Agencies, Thomas P. Wordsworth, examined the ditch on the Sarcee Reserve and found it to be a total failure.[38] The heavy rains of 1897 had severely damaged the headgates on the Elbow River and also the works of other reclamation companies. The condition of the ditch had further deteriorated because several coulees washed out its structure, and cattle and horses had trampled down the banks. In addition, the return of a succession of wet years starting in 1896 made irrigation almost unnecessary. This ruined the Company's business. In early 1907, it declared bankruptcy and ended its short history of operation. As a result, the ditch fell into disrepair.[39]

The demise of the Company left the promises to the Sarcee unfulfilled. Originally the Company had requested that the DIA lease the Sarcee land for more than 21 years, or possibly 42 years. In 1909, two years after the bankruptcy, the DIA did not attempt to assume any responsibility for compensating the Sarcee people. Instead, it muddled the whole issue by resorting to an administrative whitewash. In April of that year, an Indian Agent reported that "there is nothing on file to show that there was any contract or agreement made between the Department and the Company." Therefore, he concluded that the Company did not owe any money to the Sarcee Indians.[40] The DIA closed the case

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[37] DIA. *Annual Report for 1896*, xxxii.
[38] Indian Agent Alexander McNeill to DIA Secretary, 10 April 1909, RG 10, vol. 8055, file 772/ 31-5-4-145-2.
[39] Mitchner, "William Pearce," 82-85.
[40] Indian Agent McNeill to DIA's Secretary, April 10, 1909, RG 10, vol. 8055, file 772/ 31-5-4-145-2.

without obtaining consent of the Sarcee. However, the issue re-emerged in 1995 when the Sarcee (Tsuu T'ina) made a specific claim on the issue and asked for compensation. In 1997, an agreement was reached by both parties, which gave the Tsuu T'ina Nation $ 3.6 million to compensate them for the breached promise about a century ago.[41]

Spearheading the Irrigation Project on the Blackfoot Reserve

Partly stimulated by Pearce's irrigation scheme in the 1890s, DIA officials attempted to conduct irrigation projects on prairie Indian reserves. The Blackfoot Reserve, which was located about 75 kilometers east of Calgary and encompassed 300,800 acres at the time on both sides of the Bow River, soon became the center of DIA's attention. This was because some Blackfoot Indians had undertaken the construction of an irrigation ditch under the supervision of the DIA's Dominion Land Surveyor. The scale of the project, if completed, would become the largest one in the Treaty 7 region. As Hayter Reed extolled in the DIA's *Annual Report* of 1896, the Blackfoot project was "the most important work of irrigating the [reserve] land" throughout Manitoba and the North-West Territories.[42] The DIA officials particularly liked the fact that Indians had begun undertaking a "civilization" effort to join the larger agrarian society. Knowing about the previous unsuccessful attempts to farm in the Treaty 7 region because of drought years, Reed was encouraged by the project's potential. For Reed, and many other DIA officials involved, irrigation mostly symbolized the advancement of the assimilation project and the fulfillment of a moral mission. In the annual report he declared that "hopes may continue to be entertained that the efforts of reclaiming the savage, through the expenditure of money, energy and patience,

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[41] www.ainc-inac.gc.ca/nr/prs/j-a1997/apr21a.html.

may, at no distant day, show that he may be ranked as a useful member of the community."[43]

For the federal officials, who had worked among the Treaty 7 Nations since the late 1870s, the progressive Blackfoot project seemed to signal a huge turnaround in their assimilation effort. When the government had first attempted to induce agriculture among Treaty 7 Nations during the treaty-negotiation at the Blackfoot Crossing in the summer of 1877, the officials found that most Native negotiators, except for some Stoney leaders, did not show particular interest in agriculture.[44] The other Nations that appeared to be indifferent about farming at the time were mostly interested in adding livestock, or engaging in other businesses.[45] On the Blackfoot Reserve, for example, Indians worked to open coal mines, labored as navies on the Canadian Pacific Railway, and found employment on neighboring ranching companies and in other enterprises. Despite these wide economic interests and activities, Blackfoot Indian leaders seemed to have placed priority in securing government food rations. This was largely because the prominent and influential Chief Crowfoot believed that sustaining the level of rations that the government provided as part of treaty agreements had to be the major priority during the 1880s. He spread the idea among many Blackfoot Indians that if they took cattle from the government, it would stop supplying rations to them. Even several years after his death in 1890, this belief prevailed on the reserve. Another reason the Blackfoot made little progress in

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[42] DIA, *Annual Report of 1896*, xxx.
[43] Ibid., xxxi.
[44] In government documents at the time, the spelling "Stony" appeared to be common usage, while today "Stoney" is most frequently used.
[45] Treaty 7 Elders and Tribal Council with Walter Hildebrandt, Sarah Carter, and Dorothy First Rider, *The True Spirit and Original Intent of Treaty 7* (Montreal and Kingston: McGill-Queen's University Press, 1996), 254.

developing agriculture in the 1880s was that the local environment was particularly limiting for contemporary Euro-Canadian grain farming technologies.[46]

With the increasing accessibility to the new irrigation technology during the early 1890s, federal officials hoped many of these problems could be cleared. In the fall of 1893, the DIA sent its experienced Dominion land surveyor and assistant surveyor of Indian reserves for the North-West Territories, Archibald W. Ponton, to find a suitable site for an irrigation ditch on the Blackfoot Reserve. Upon arrival, Ponton observed that the reserve land was not generally encouraging for the establishment of irrigation agriculture because it was a sparsely wooded open prairie with rolling hills and deep coulees. Many of the coulees ran too deep to bring water up to the land for irrigation without reliable and costly water pump. On the south side of the Bow River, a range of sand dunes called "the Peigan Sand Hills" discouraged any farming. With the exception of the Bow and a few other creeks, all water sources went dry in late summer when it was most needed for agriculture. Nonetheless, he also found that Chief Crowfoot, Old Sun and others had already harvested potatoes, oats and hay. After closely examining the soil and land elevation, Ponton concluded that the only feasible site for irrigation appeared to be at what the Blackfoot people called "Old Sun's Bottom," which they had named after a prominent chief. It was located about three miles south of Gleichen, the agency headquarters, on the north side of the Bow River. Here the soil generally proved more favorable for agriculture in the north, particularly on the Bottom, where some Indians had produced a considerable amount of hay. The relatively low elevation of the bottomland appeared to be the only area where it was possible to divert water from the Bow. Ponton estimated that, with the ditch diverting

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[46] Samek, *The Blackfoot Confederacy*, 66; and Lucien M. Hanks and Jane Richardson Hanks, *Tribe Under*

water from the Bow, an area of over two thousand acres could eventually become arable.[47]

Deputy Minister Reed quickly approved Ponton's plan. It was one of the earliest and last projects in which the DIA took the initiative without assistance from the Reclamation Branch (later the Dominion Water and Power Branch). The routine practice in British Columbia, for example, involved the Department asking surveyor-engineers in the Irrigation Branch of the Interior Department to obtain the detailed descriptions of proposed irrigation works, or what the North-West Irrigation Act termed memorials, in order to obtain approval from government authorities. Although J.S. Dennis initiated a hydrographical survey on the Bow in 1894, it was not until the beginning of the twentieth century that survey results became available regarding the seasonal flow fluctuations of the river. Even Ponton admitted in 1895 that government engineers knew "so little" about the hydrography of the Bow River that "until observation had been maintained through a number of years, all engineering projects in connection with the river must be largely experimental."[48] Knowing that irrigation was still in the experimental stage in the 1890s in the North-West Territories, and therefore it was a highly risky business, the DIA decision was hasty. One explanation for its adventuresome move was that the DIA did not have to take any financial responsibility for carrying out the "experimental" project. In 1893, the Department knew that the Indians had earned about three thousand dollars the previous summer by selling timber taken at Castle Mountain, northwest of Banff. Because the Blackfoot Reserve did not have trees, the government had established a 26 square mile (6,734 hectares or 16,640 acres) timber reserve for them near the Canadian Pacific

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Trust: A Study of the Blackfoot Reserve of Alberta (Toronto: University of Toronto Press, 1950), 29-30.

[47] DIA, *Annual Report for 1899*, 128-9; A. W. Ponton to Hayter Reed, 7 October 1893, RG 10, vol. 3907, file 107.1178.

Railway's Castle Mountain station. Having decided to use the money to facilitate assimilation, the Department concluded that Ponton's proposal was the most likely to achieve that goal. As it became clearer later, however, this belief was erroneously based on the fact that Reed and other DIA officials did not understand the risk of irrigation.[49]

Ponton commenced the project about a week after his instructions arrived from Reed through Indian Agent Magnum Begg on October 12. Ponton's first task was to find ways to induce the indifferent Blackfoot to dig the ditch, because it was the policy of the Department to employ Indian workers with as little financial assistance from the government as possible. After spending some time with the people, he concluded that the Blackfoot were not interested in day labor. Nor did they want payment in goods. He also observed that if the Department issued money orders for payment, those Indians who had accumulated debts to store merchants would not work. They suspected that merchants would deduct their debts from the money orders. Ponton concluded that a contract system with cash payments would most likely secure Blackfoot workers. Though Ponton's idea of cash payment was not popular among DIA officials, it did interest several Blackfoot, who started working on the project in October and continued until frost stopped them in November 1893. In the following year, the work resumed on May 4 with a larger cadre of workers from the reserve. They built a considerable part of the six-mile main canal (4.5 miles) by June 23. On completion of six miles, they opened the headgate and the water seemed to flow in the canal successfully.[50] In July 1894, Ponton reported to Indian Commissioner Amédéé E. Forget in Regina that the contract system had "proved a great

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[48] Ponton, "Report on Irrigation at the Blackfoot Reserve," January 1895, RG 10, vol. 3907, file 107.178.
[49] A. W. Ponton to the Superintendent of Indian Affairs, 7 October 1893, DIA, *Annual Report of 1893*, 179.
[50] A. W. Ponton to the Superintendent of Indian Affairs, 16 July 1894; and Ponton to the Superintendent of

success so far, and is the only means of obtaining adequate returns of work for wages from an Indian." At the time, some twenty Indians worked daily on the ditch.[51] This number rapidly increased in the following months to about fifty by the beginning of October.[52] By June 1895, the Indians constructed altogether seven miles of a main canal and lateral ditches. On June 16, water flowed throughout the entire irrigation system. Indian Commissioner Forget reported that the "effect upon the adjacent lands, which are at present under grass, was almost immediate and very marked, and it is readily apparent that such portions of these bottom lands as will this year and hereafter be brought under cultivation, will be decidedly superior to other lands on the reserve not thus privileged."[53]

In May 28, 1896, Dennis visited the Blackfoot Reserve as Chief Inspector for the Interior Department. He examined Ponton's irrigation ditch and was surprised to hear that the Indians had completed the entire work. What surprised Dennis most of all was that the Blackfoot workers had used only spades to dig a twelve to fourteen feet (3.657 to 4.267 meters) deep cut in the main ditch near the intake. Then they increased the slope of the banks by deepening the cut two more feet. Dennis wrote that this outcome "completely dispelled the impression which I have up to this time held, that Indian labour would be of little use in an undertaking of this character." The ditch also impressed Hayter Reed. He commented that "I must confess to having been more than surprised at the results accomplished, and do not hesitate to say that the workmanlike manner in which the cuts and fills have been completed would do credit to many of our experienced ditch

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Indian Affairs, 5 August 1895, *DIA, Annual Report of 1894*, 154, 180.

[51] A. W. Ponton to A. E. Forget, 5 July 1894, RG 10, vol. 3907, file 107.178.

[52] Magnus Begg to Indian Commissioner in the North-West Territories, 3 October 1894, Ibid.

[53] A. E. Forget to the Superintendent of Indian Affairs, 20 September 1895, DIA, *Annual Report of 1895*, 198.

contractors."[54]

With the ditch nearly completed, the next DIA goal was to transform the Blackfoot people into family farmers. Before the completion of the irrigation system, crops on the reserves in the Treaty 7 region generally were meager because of the long lasting drought. On the Blackfoot Reserve, for instance, the searing sun and the high wind with menacing dust had scorched plants and halted the growth of crops except for hay and potatoes, which seemed somewhat adapted to the soil and weather. The irrigation ditch, therefore, gave Indian Agent Magnus Begg and farm instructor George H. Wheatley hope of reducing the risk of drought and thereby stimulating Indian interests in farming on the reserve. So far they had induced a few Indians to fence their lands in severalty and prepare for planting by breaking the lands with oxen. Observing this on his visit, Dennis became convinced that "if the Indians can be induced to undertake the farming of this area in small holdings, and are educated in an intelligent use of the water by careful supervision for a few years, the area in question will produce sufficient to provide for all the needs for this band." His optimism corresponded with that of other officials, who were convinced that irrigation of the Blackfoot Reserve would successfully produce abundant crops of oats, hay and vegetables.[55]

This crop combination was typical on the Blackfoot and other Treaty 7 reserves. The emphasis on oat and hay production was because the Indians and their agents primarily aimed at livestock production. They planted some commercial crops, mostly wheat and barley, after the construction of the irrigation system. Also, they continued to plant potatoes for subsistence. This had been the only crop that had survived the drought of the

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[54] DIA, *Annual Report for 1896*, xxxi.

early 1890s.[56] The cropping pattern of the Indian reserves in the Edmonton area was starkly different, from that of the rest of the Treaty 7 region and that of Treaty 6. The Treaty 6 region, for example, produced wheat and barley in much greater quantities than the Treaty 7 region. In the season between 1893 and 1894, for instance, the Hobbema (Ermineskin Tribe) and Edmonton (Enoch Cree Nation) agencies of Treaty 6 produced 8,001 bushels and 1,500 bushels of wheat respectively and 2,000 bushels and 2,062 bushels of barley. The Hobbema and Edmonton agencies also harvested 870 bushels and 1,255 bushels of oats. In contrast, the Blackfoot harvested only five bushels of wheat, 103 bushels of barley, and 298 bushels of oats.[57] These statistics highlight how challenging an occupation farming was especially for Indians in the 7 regions.

Based on his years of experience throughout the territories and Manitoba, Ponton was especially aware of the risks of Prairie reserve farming. For this reason, he recommended that the DIA should employ more white farmers to aid Indian irrigation. In March 1896, Ponton recommended that the DIA appoint W. S. Cosgrave as an assistant to instruct and supervise Blackfoot farming and stock raising operations.[58] Cosgrave had previous experience working as Inspector for Indian Reserves in the North-West Territories under Ponton. In this capacity he had gained considerable knowledge about farming and survey work. Ponton needed Cosgrave to devote his entire time working with Indian farmers on the Blackfoot irrigation project. This was because Ponton had to attend to many

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[55] J. S. Dennis to the Secretary of the DIA, 24 May 1896, RG 10, vol. 3907, file 107.178.
[56] DIA, *Annual Report for 1892*, xxxii.
[57] DIA, *Annual Report for 1894*, 244-245.
[58] In 1895, one of the farm instructors and ration issuers called Frank Skynner was killed by a Blackfoot man named Scrapping High, who thought his sick son had died because Skynner did not give him food. This incident not only lessened the number of white staff on the reserve but also convinced Ponton that he needed someone sensitive to Indian matters. See *Daily Herald*, 5 April 1895.

other duties on several reserves throughout the territories. He had strongly advised Indian Commissioner Forget in Regina that matters related to employment, superintendence and payment for the irrigation ditch be completely under Ponton's control so that irrigation matters could proceed smoothly. Ponton also thought the Indians would pay more respect and attention to him and farm instructors if he had absolute authority over all irrigation matters. Ponton pressed this issue partly because he needed to make sure that the numerous ponies owned by the Indians did not tramp across the ditch and damage it. The problem was that he lacked the authority to prevent it. Ponton had to ask Forget to instruct the local Indian agent to keep the ponies away from Old Sun's Bottom.[59]

Ponton apparently believed that an even more urgent problem that had to be dealt with to transform the Blackfoot into bona fide farmers concerned curtailing a series of sacred Blackfoot religious ceremonies that reaffirmed their faith in the Sun spirit through the Sun Dance.[60] Ponton joined with missionaries and other DIA officials in arguing that these ceremonies were a great obstacle to the development of irrigation agriculture. During the time the Indians were engaged in the construction of the ditch, Indian agent Begg often reported that he was unable to prevent the Blackfoot workers from leaving their irrigation work to attend the Sun Dance ceremonies and annual horse races in May and June. Their absence at this time greatly frustrated Begg and Ponton, because irrigation is most efficiently carried out during these months. This is when the water levels of the Bow River and other streams issuing from the Rocky Mountains generally rise. In June 1895, for example, just as Ponton started filling the partially completed ditch with water in

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[59] A W. Ponton to A. E. Forget, 21 March 1896, RG 10, vol. 3907, file 107,178.
[60] Hugh A. Dempsey, "The Blackfoot Indians," in R. Bruce Morrison and C. Roderick Wilson eds., *Native Peoples: The Canadian Experience*, 2d ed. (Toronto: McClelland & Stewart Inc., 1995), 391-395.

preparation for irrigation, a large number of Indians had already left for Calgary to attend annual races. The same thing had happened in the previous year. Ponton, Reed, Begg and others involved in the project hoped that the irrigation work would discourage the Indians from attending these gatherings.

The failure to stop the Blackfoot Sun Dance made these officials fear that the continuance of the ceremonies among the Blackfoot would "demoralize" not only the Blackfoot, but also others on neighboring reserves. This was because the DIA and missionaries had been seriously attempting to curtail all forms of traditional activities in Western Canada following the infamous passage of the "potlatch law" in 1885, which outlawed the traditional gathering activities of the Northwest Coast Indians.[61] When the ditch was finally completed in March 1896, Ponton became even more worried about the effect the Sun Dance might have on his irrigation experiment. He knew that hard preparatory work was required to make the farming successful. The Indians first had to make a fine tilth, that is, surface mulch, by tilling the ground repeatedly. Then they would have to plow and seed carefully with well-lined furrows to facilitate the proper application of water. This was a complicated and time-consuming process. In his report on March 24, Ponton wrote:

> The annual gathering to hold a dance, is perhaps the worst pressing matter requiring attention, the demoralizing effect of allowing this large band to live on the Governments [sic.] bounty in utter idleness during that season of the year—15th May to July 30th—when if any attempt is to be made towards their own maintenance, plowing, seeding, and gardening must be attended to, is sufficiently apparent. But this practice during the past two years prevented the completion of special work on the ditch, which should have been carried out. If this is to continue at this same season, year after year, when the river is in flood and the

[61] Douglas Cole and Ira Chaikin, *An Iron Hand Upon the People: The Law Against the Potlatch on the Northwest Coast* (Vancouver and Seattle: Douglas & McIntyre and University of Washington Press, 1990.

water available for irrigation, no success can be expected.[62]

Having previously supervised the irrigation project on the Blood Reserve, Ponton also worried that the Blackfoot would be distracted from his project by the continuance of the annual ceremonies. Ponton's worries proved to be unfounded. Somehow the Blackfoot Indians managed to attend their ceremonies and complete the irrigation work. Initially the irrigation ditch appeared to make a major difference after its completion. In the harvesting season between 1897 and 1898, for example, the Blackfoot harvested 1,394 bushels of barley (mostly for horses) and 50 bushels of wheat along with ever increasing quantities of potatoes and hay. Although the wheat production did not become successful, the amounts of barley, hay, and oats harvested that season represented growing agricultural activities with particular interests in grazing cattle and horses.[63]

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[62] Although much smaller in scale and only utilized for the agency garden, the Blood project received high acclaim from government officials. Ponton had created a watering system in which the current of the river automatically moved a wheel attached with buckets, which raised water from the river to the land. With this system, the Blood people began farming, and Ponton wanted to maintain the effort without any disruption. Indian agent James Wilson welcomed this new addition, saying that "[t]his method of irrigating will suit our village system very well, and it has one great recommendation, viz., that it can be done at little cost." However, without large-scale irrigation the crops would not grow on the reserve as Indian agent and many Blood people understood. See A. W. Ponton to Indian Commissioner of the North-West Territories, 21 March 1896, RG 10, vol. 3907, file 107.178.

[63] Ibid., 445.

TABLE 2: Agriculture on the Blackfoot Reserve, 1890-1899.[64]

	Hay (ton)	Barley (bushel)	Oats (bushel)	Wheat (bushel)	Potatoes (bushel)	Other Roots*	Horses	Cattle
1889-90			2317		6646	130	1037	515
1890-91			136		3485	35	1545	
1891-92	460		400		4920		1499	141
1892-93	90	10	65		3661		1141	30
1893-94		103	298	5	1323		1732	46
1894-95	440	30	106	14	548		1645	17
1895-96	597	142	150	16	3100	348	2152	66
1896-97			84	14	3592	75	2952	188
1897-98	647	1394	315	50	4276	582	2984	305
1898-99	1377		2519		3395	732	3283	441

This increase proved to be short-lived, unfortunately, because of the unstable semi-arid weather of the Rocky Mountain foothills. The return of wet years in southern Alberta from 1896 and the subsequent flood of 1897 in the Bow valley, which severely damaged the major works of all the irrigation companies in the Calgary area, also adversely affected the Blackfoot irrigation to some extent.[65] In June of that year, the flood submerged the houses of Indian farmers and destroyed most of the crops in Old Sun's

[64] Other roots include carrots and turnips, which were the major roots other than potatoes at the time. The horses include stallions and geldings, which were dominant, mares, colts, fillies and foals. The cattle are bulls, work oxen, steers, milk cows and young stock. This table is compiled from DIA's *Annual Reports* from 1890 to 1900.

[65] DIA, *Annual Report for 1897*, 133.

Bottom. Although both the agent and Ponton reported that the flood did little damage to the ditch, it nonetheless required more repair works, including the removal of silt and gravel.[66] Agent George Wheatley, who took over Ponton's responsibility on the Reserve in 1897, had to entice the Blackfoot to do the repair work. Again, the Indians showed little interests in receiving payments of beef or flour, which the DIA initially tried to offer, but they were willing to work for 25 cents a day even though the total cost for the laborers was less than the sum that would have been required to pay them in food.[67] By this time, the people had become increasingly distrustful about the government food ration system because of DIA agents' favoritism in food distribution, some instances of food poisoning, and continuing starvation and malnutrition especially among the children.[68] With an appropriation of $250 in cash payment, therefore, the Indians repaired the ditch partially, but the completion of the repair required additional money, which did not come until next year. The continuing wet weather made irrigation unnecessary, and farmers and the agent began to neglect the ditch.[69]

Even the number of the Blackfoot interested in farming appeared to decrease at this time. In July 30, 1899, Ponton revisited the reserve and inspected the ditch. Although the wet weather prevented him from thoroughly examining the condition of irrigation on Old Sun's Bottom, he found "the crops backward and generally disappointing, with the exception of a few fields." The area under irrigation was still much less than Ponton's original intention, which was over 2,000 acres. As farm instructor Cosgrave explained to

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[66] A. W. Ponton to A.E. Forget, 23 August 1897, RG 10, vol. 3967, file 107,178.
[67] A memorandum from Samuel Bray, Clerk of the DIA, to the Secretary of the DIA, John D. MacLean, 9 September 1897, Ibid.
[68] Treaty 7 Elders and Tribal Council, *The True Spirit and Original Intent of Treaty 7*, 161-63.
[69] A. W. Ponton to A. E. Forget, 20 May 1898, RG 10, vol. 3967, file 107,178.

Ponton, the Indians left most of the irrigable area without irrigation due to the wet weather. In fact, the Indians had used water from the ditch only for a few days in the summer of 1899. The flood and the general increase in the water level in the Bow River had changed the valley landscape and hampered the function of the intake ditch, making the canal an inefficient means to convey water from the river. In addition, and somewhat ironically, the Indians and DIA inspectors found that the ditch always seemed to work best in wet seasons when the Indians did not need to use it. Some Indians, including the DIA appointed head chief, Calf Bull, refused to irrigate their lands to raise oats.[70] Nevertheless, in July 1899, the DIA obtained a water license for the Blackfoot people to irrigate 2,200 acres of Old Sun's Bottom under the provision of the North-West Irrigation Act.[71]

Besides the weather, another significant factor that discouraged the Indians in their irrigation efforts was the introduction of a water toll system by agent Wheatley in 1899. He did so without receiving instruction or authorization from his superiors or Ponton, who supposedly had the entire authority over irrigation matters. Wheatley collected tolls from those Indians who harvested hay, oats and root crops on the land irrigated by the ditch. What especially troubled Ponton and other DIA officials about Wheatley's action was that his unfair treatment of individual Indians when collecting the tolls. For example, Crooked Meat String and appointed minor chief Little Axe paid about $10 each for their relatively extensive crop and hay fields, while Crow Shoe had to pay $14.96 for much smaller fields of oats and hay. Although all three of these Blackfoot had practiced agriculture for more than ten years, Little Axe seemed to get more favorable treatment than many other reserve farmers. Little Axe originally cultivated oats and potatoes on the south reserve in the

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[70] A. W. Ponton to J. D. MacLean, 21 March 1900, RG 10, vol. 7604, file 12104-2.

beginning of the 1890s, when agent Wheatley was a farm instructor there and befriended Little Axe. He moved to Old Sun's Bottom when ditch construction was well under way. About one month after Wheatley was appointed agent, he appointed Little Axe as a minor chief of the Calf Bull's Band in September 1897; and thereafter, Little Axe began increasing his wealth. In 1899, he became one of the most highly recognized and accomplished individuals to be mentioned in DIA's annual report. At the time, he owned 70 head of cattle, two sets of double harness, two mowing machines and rakes, two sets of bob-sleighs, a good shingle-roofed house, stables, corrals and 160 acres of fenced pasture land.[72]

TABLE 3: The List of Indians Who Paid Tolls for the Use of the Irrigation System in 1899.[73]

	Hay (ton)	Oats (bushel)	Roots (bushel)	Toll
Bears Direction	100			$2.76
Big Old Man		130		$4.02
Big Road	5	370	10	$17.82
Boss Rib Medicine	20	120		$6.12
Boss Rib Medicine's son				$0.70
Bull Bear		70		$2.88

[71] F. H. Peter to F. Pedley, 13 November 1912, Ibid.
[72] DIA, *Annual Report for 1898*, 126-27; *Annual Report for 1899*, 131, 580.
[73] "Statement of Tolls collected from Indians for Hay and Oats: Blackfoot Irrigation Ditch, 1899," RG 10, vol. 7604, file 12104-2.

Calf Child	15	200		$6.06
Crooked Meat String	35	372		$10.38
Crow Shoe	10	60		$16.96
Dying Young Man		120	30	$4.32
Greasy Forehead	10	310	47	$13.14
Left Hand	10	250	22	$8.40
Little Axe	120	303	195	$9.34
Little Back Bone	3	110		$3.48
Little Walker				$1.38
Low Horses Son	5	120	30	$6.12
Many Good	5	80	35	$1.92
Northern Eagle	15	100	180	$15.01
Old Brass		100	50	$3.66
Old Cree's Widow	50			$1.26
Old Crow		160	80	$6.48
The Pheasant	5	170		$7.98
Raw Eater No. 1	3	140		$5.58
Red Old Man	20	160		$5.34
Running Martin	130		19	$3.24
Running Rabbit's son	5	150	30	$8.76
Skunk Tallow		120		$3.48
White Pup	5	320	93	$15.00

Yellow Horse		70	80	$3.24
Yellow Tail Feathers	130	35		$6.12

When the toll list reached Ponton's desk in the spring of 1900, he found it unacceptable because there clearly was no regular rule being applied in toll collection. He wrote John D. MacLean, Secretary of the DIA, that "tolls should be collected for the maintenance of the ditch only, and that the same percentage should be collected according to the total value of each Indian's crops; at their market value whether sold or not" (underlined in the original text).[74] In 1901, the DIA transferred Wheatley to the Birtle Agency in Manitoba and assigned agent John A. Markle from Birtle to take over the agency at Gleichen. In 1904, as the new inspector for Indian agencies, Markle reported on the irrigation system. He noted that the Indians continued to make little use of the ditch due to the rain and their dissatisfaction with the toll system.[75]

In 1905, the dry years returned to southern Alberta and adversely affected farming. In Old Sun's Bottom, a large shallow lake had formed during the wet seasons, but it quickly dried out. In May 1906, Markle asked John MacLean to send him 200 dollars for making the ditch workable again.[76] However, DIA record does not show that any money was ever sent for ditch repairs. The Indians and Markle, along with other local agents and farm instructors, did not pursue the matter for years. As a result, the condition of the ditch rapidly deteriorated. As the local agent later reported, the headgates "were washed away,

[74] A. W. Ponton to J. D. MacLean, 30 April 1900, RG 10, vol. 7604, file 12104-2.
[75] J.A. Markle to J.D. McLean, 4 May 1906, Ibid.
[76] Ibid.

channel of river at intake completely changed, ditch filled in at various places."[77] In November 1912, the Commissioner of Irrigation, F. H. Peters, wrote from the regional Interior Department office located in Calgary to Francis Pedley, Deputy Superintendent General of Indian Affairs, asking if the DIA still wanted to keep rights to the ditch, or abandon it completely by canceling the water license issued in 1899.[78] In January next year, without consulting the Blackfoot, the DIA opted for the termination because the full repair of the ditch would be costly.[79]

Considering that most irrigation works constructed by non-Indian companies had been destroyed by the floods by 1910, the Blackfoot ditch had, in fact, endured remarkably well. However, as time changed, so also did needs. The current Indian agent was no longer interested in the ditch. One of the major problems with it was that the entire survey and construction works had been undertaken in wet years. After 1905 the flow pattern of the Bow valley changed due to sedimentation and the ditch was ill-suited for the new environment. Inspector Markle explained this in January 1913, when he remarked that the ditch "would only take in water from the Bow river when the river [is] at high water and that it would be necessary to either deepen the ditch about 3' or place an obstruction across the river just below the intake." Either way, the cost would be considerable. Another reason that the ditch worked only in wet years was that its low velocity led to the accumulation of silt, especially when the water level was low.[80] Furthermore, Indian agent J. H. Gooderham thought Old Sun's Bottom had been wet enough during the growing the

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[77] J. H. Gooderham to J. D. MacLean, December 4, 1913, Ibid.
[78] F. H. Peters to F. Pedley, November 13, 1912, Ibid. The government filed the application in 1896.
[79] J. D. MacLean to F. H. Peter, 15 January 1913 and W. W. Cory to F. Pedley, 30 January 1913, Ibid.
[80] P. A. Fetterly, Assistant Hydraulic Engineer, "Report on the proposed Irrigation of Certain Areas in the Blackfoot Indian Reserve near Gleichen, Alberta," 26 June 1931, Ibid.

seasons of the last ten years. Therefore, he agreed with Markle that it would be more appropriate to spend money for other lands that desperately needed irrigation. No record shows that the DIA officials ever consulted Blackfoot leaders about their decision.[81]

The Aftermath

The DIA's effort to transform the Blackfoot Indians into yeoman farmers by implementing an irrigation system had largely failed. That said, it must also be stressed that, when compared to most non-Indian irrigation works that were built at the time, the Blackfoot ditch was one of the most elaborately designed and neatly constructed systems. In addition, the project considerably changed the opinions of federal officials, such as Dennis, Reed and others regarding the ability of the Blackfoot to quickly understand construction works and learn the skills needed to carry them out using only the most basic implements. The Indians also did all the maintenance and repair jobs themselves under the instruction of a non-Indian farm instructor. Although the project had strong supporters and detractors within the reserve community, increasing numbers of individuals began to accept irrigation farming as part of their livelihood while maintaining their interests in the Sun Dance and other traditional ceremonies and practices. In other words, it did not matter very much how alien the idea of irrigation agriculture was for the Blackfoot in the 1890s. As with many other treaties 6 and 7 Indians, the Blackfoot quickly adjusted to the changing circumstances in order to better their lives.

In 1910, the Blackfoot made an agreement with the federal government for the surrender of 115,000 acres of their reserve to facilitate the Canadian Pacific Railway's

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[81] J. A. Markle to J. H. Gooderham, 1 January 1913, Ibid.

irrigation scheme. In exchange they received about $1.8 million, including capital investment for an agricultural enterprise on the reserve. This agreement made the Blackfoot people one of the richest reserve Indian groups in Canada at the time. In June 1911, the government sold another 12,522 acres for over one million dollars. With the fund these sales established, the Blackfoot Indians began to acquire furnished houses, barns and sheds along with wells near their farms, farming machines and better seeds for wheat, oats and barley.[82]

Although the Blackfoot experienced many social improvements afterward, the DIA had to wait for several more years to see visible progress in Blackfoot agriculture. By 1921, these people cultivated an impressive 5,500 acres of wheat and 1,400 acres of oats. After making several visits to the reserve in 1921, Indian Commissioner William M. Graham of Regina observed that "the work done on the [reserve] land was equal to that in the White settlement adjoining." "The farms are," he continued, "all properly squared up, well fenced and the Reserve presents a businesslike appearance." The Indians even had their crops insured in case of unpredictable weather, which proved wise in the spring of the year when a hailstorm completely destroyed some portion of the farmland. Graham also suggested that the DIA bring the irrigation ditch on Old Sun's Bottom back into use with proper engineering assistance.[83]

The DIA's engineer F. A. Burfield, surveyed the area and found Ponton's system would be partly workable. Instead of taking water directly from the Bow River, he proposed to divert water from Skeleton Coulee, which was connected with the Bow. By this time, however, the CPR had claimed almost all the water in the coulee, only leaving the

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[82] Hanks and Hanks, *Tribe Under Trust*, 48-50; DIA, *Annual Report for 1912*, 172-174.

Indians the water wasted by the company. The cost of the entire project for the Indians was estimated to be about $1,300, which was much less than what Indian agent J. H. Gooderham had estimated for the full repair of the Ponton's ditch nine years earlier. Although the government initially assumed that the new system could irrigate about 650 acres, the uncertain availability of water reduced the irrigable area to of 419 acres at most. In addition, the DIA had to make an agreement with the CPR regarding the use and cost of the waste-water. Agent Gooderham decided to carry on the project this time even though he had declined to spend money to repair Ponton's ditch about ten years ago and had allowed the cancellation of water license from the Bow for the same financial reasons.[84] If he had kept the ditch and license, things would have been much easier and faster. This reveals pitfalls of the DIA's arbitrary dealings with Indian affairs and its lack of long-term vision. The arbitrariness of the DIA became even more escalated in the Treaty 7 region because of its highly fluctuating wet and dry cycles of the semi-arid climate, which also drove many white farmers away from the region.

The ditch project dragged on for almost thirty years. After the DIA's decision to re-use the old Blackfoot ditch in 1921, the DIA engineers spent another ten years obtaining the detailed engineering report that was needed from the Interior Department's hydraulic surveyor on the Bow River. The DIA then waited for another six months to hear from the CPR regarding its agreement to supply water to the Blackfoot Reserve for a price.[85] This pattern of lingering and arbitrary Indian water policies became prevalent on other Treaty 7 Indian reserves from the 1920 to the 1930s. As Carter concludes, the real problem for

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[83] W. M. Graham to J. D. MacLean, 17 August 1921, RG 10, vol. 7604, file 12104-2.
[84] G. H. Gooderham to W. M. Graham, 12 June 1921, Ibid.
[85] Fetterly, "Report on the Proposed Irrigation of Certain Areas in the Blackfoot Indian Reserve," and S. G.

Native agriculture in the eastern prairies was not Indian labor but the arbitrary and parsimonious Dominion support, especially when it came to Indian commercial activities that could compete with non-Native economic interests.[86] Very similar conclusions can be made here about the Blackfoot irrigation practices.

Porter to T. R. L. MacInnes, 4 January 1932, Ibid.
[86] Carter, *Lost Harvest*, 258.

Chapter 6

Hydroelectric Dams and Stoney Water Rights, 1907-1938

Historians have often treated the expansion of homestead and metropolitan settlements, such as that of the cities of Calgary and Winnipeg, primarily as the result of the opening of the Canadian Pacific Railway. Consequently, their accounts often neglect to examine the significant role that the hydroelectric industry played in urbanization, or fail to consider the socio-economic impact the latter development had on neighboring Native communities. In fact, securing financing and properly administering a power supply was a major challenge for Calgary as it struggled to become an economic hub in Western Canada. Several years after the first successful large-scale hydroelectric development at Niagara Falls in New York State in the mid-1890s, major technological innovations in waterpower development soon reached the Calgary area just as it did for many other cities in the prairies. Engineering-entrepreneurs from the United States and the provinces of Ontario and Quebec spearheaded the establishment of hydroelectric dams on the Bow River. By the 1930s, Calgary already had witnessed the rise and fall of several power companies.

Three of the most significant early developments on the Bow affected the Stoney Indian Reserve. These were the Kananaskis, Horseshoe, and Ghost hydro projects. The contested area on the Stoney Reserve was on the upper Bow River near Morley, Alberta,

approximately 56 kilometers west of Calgary in the Rocky Mountain foothills. These hydroelectric schemes were the first to be developed on Indian reserves in Western Canada in the early twentieth century. A close examination of these cases will provide a better picture of the issues related to the Native water rights and hydroelectric dams, which proliferated in Western Canada after the World War II, even though certain problems appeared unique in those three developments.

Stoney traditional territory extended beyond the Morley Reserve to include the Jasper area in the north, the international border areas to the south, the Calgary area to the east, and roughly the provincial border to the west. The Morley area was their primary winter campsite.[1] After signing Treaty 7 in 1877 along with the Blackfoot, Blood, Peigan, and Sarcee, the Stoney people initially secured approximately 67,760 acres (109 square miles) of land, traversed by the Bow River and the Canadian Pacific Railway right of way. According to H.E. Sibbald, who first came as a missionary teacher and later became Indian Agent for the Stoney at the turn of the century, nearly two-thirds of the reserve was covered with spruce, Douglas fir, jack pine, lodgepole pine and popular. The mountainous character of the land, the rapidly changing temperatures, the dry chinook wind, the hail storms, short frost free period, and a soil that was mostly incapable of producing annual field crops deterred the early interests the Stoney people had in crop agriculture during the 1870s. In addition to the environmental constraints, irrigation projects did not materialize on the reserve despite a plan conceived by A.W. Ponton at the turn of the century. Without

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[1] Claudia Notzke, *Indian Reserves in Canada: Development Problem of the Stoney and Peigan Reserves in Alberta* (Marburg/ Lahn: Im Selbstverlag des Geographischen Instituts der Universitat Marburg, 1985), 9; and John Snow, *These Mountains are Our Sacred Places: The Story of the Stoney Indians* (Toronto and

irrigation, the Stoney harvested only small patches of potatoes. They mostly secured hay for their horses and cattle, because stock-raising and grazing were their most important sources of cash income. Even after the disappearance of buffalo, hunting continued to be their major economic livelihood.[2] Even though they did not develop the Bow River for their own purposes, they pressed their rights to its waters against the claims of developers. The detailed documentation of their struggle to do so has been unjustifiably neglected. As this chapter demonstrates, it is an important part of the story of the development of Indian water rights in Western Canada.

The history surrounding the development of the three hydroelectric dams on the Stoney Indian Reserves, and the subsequent land "surrender" agreements that were concluded during the first three decades of the twentieth century, highlight the formation of a distinctive local legal/political tradition. It combined components of both Aboriginal politics and evolving western water law, partly because the Dominion government lacked a sufficient knowledge of the legal issues regarding hydroelectric power production and water rights. This political uncertainty enabled Stoney leaders and DIA agents to be almost equally instrumental in having Aboriginal demands incorporated into the final agreements. These agreements took into account the terms of Treaty 7, the British North America Act, and the Indian Act. According to the Indian Act, surrendering part of reserve land required consent from Indians. This provision forced the Department of Indian Affairs to be involved in the entire negotiation process. During the negotiations related to the

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Sarasota: Samuel-Stevens, 1977), 2-7.

[2] Ibid., 24-33; H.E. Sibbald to Frank Pedley, Superintendent General of Indian Affairs, 27 July 1901, *Report of the Indian Affairs*, 1901, in *Sessional Paper* no. 27, 1902: 174-175.

dam-building projects, the Stoney made demands on the government in accordance with the terms of Treaty 7. When they made their claims, federal officials were uncertain about the extent to which the Stoney had retained their treaty rights to land and water associated with hydroelectric development. Consequently, the DIA often accepted the Stoney demands without undertaking their own legal investigation. The water surrender agreements ultimately demonstrated that both DIA officials and hydroelectric companies recognized the rights of the Stoney people to Bow River water. By providing a detailed account of negotiating processes, this chapter will explain how these extraordinary agreements came into being.

In focusing on this aspect of Indian water rights, I depart from conventional approaches to the half-dozen histories of hydroelectric dams on Indian reserves, which have focused on the negative impact dams have had on Indian lands in Western Canada and the American West, especially after World War II. Traditional studies emphasize the inundation of traditional hunting territories and burial grounds, the dislocation of Aboriginal villages, and the failure of the Indians to gain economic benefits from hydroelectric developments. Although these are important issues, these studies provide us with little understanding of the extent to which policymakers considered Indian water rights when negotiating for on-reserve hydroelectric projects.[3] Along with this

[3] For example, Richard H. Bartlett, "Hydroelectric Power and Indian Water Rights on the Prairies, *Prairie Forum* 14: 2 (Fall 1989): 177-193; Joy A. Bilharz, *The Allegany Senecas and Kinzua Dam: Forced Relocation through Two Generations* (Lincoln: University of Nebraska Press, 1998); Jack Glenn, *Once Upon an Oldman: Special Interest Politics and the Oldman River Dam* (Vancouver: University of British Columbia Press, 1999); Michael L. Lawson, *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944-1980* (Norman: University of Oklahoma, 1982); and James B. Waldram, *As Long As the Rivers Run: Hydroelectric Development and Native Communities in Western Canada* (Winnipeg: University of Manitoba Press, 1988).

consideration, my major objective here is to tell the story of how the Stoney attempted to deal with their water rights after facing the waves of urban electric needs and economic prospects in the three hydroelectric developments from the planning stages to their completion. I seek to disentangle this complex story in order to understand and appreciate the human aspects of the struggle for land and water among Indians, federal agents, and entrepreneurs.

To put the discussion in a proper context, I will begin with an examination of the nature of hydroelectric development in North America. This background is crucial to understanding its impact on the early history of Indian water rights in the North American west. After its technological breakthrough that made hydroelectric generation available for township developments in the late nineteenth century, the hydroelectric industry quickly gained striking socio-economic importance and political power in Canada and the United States. To understand why hydroelectric projects mattered so much to North American policymakers, even when they entailed paying heavy compensation to the Native communities, one has to consider the significance of these projects had to local economies in Western North America.

Establishing the hydroelectric development in Western Canada

Hydroelectric power generation became possible in the late nineteenth century only after such technological improvements as hydraulic turbines, Edison's direct-current electricity (and later alternating current electricity), electric generators, and transmission lines. Using water as a power source had been in practice for many centuries utilizing

many different types of water mills, but it was not until the early nineteenth century that American cities like Holyoke and Lowell in Massachusetts expanded the scale of waterpower-based manufacturing to a new level. At this time, industrialists began promoting urban expansion by systematically applying direct-motive waterpower to the operation of textile and paper industries from the 1820s to the 1850s. Along with availability of iron waterwheels, the French invention of "turbines" expanded power generation possibilities. They became widely used in North America between 1859 and 1903. This modern version of the waterwheel dramatically increased not only available horsepower for manufacturing purposes, but also the efficiency and operating lifetime of waterwheels.[4]

In the 1880s, Thomas Edison's immediate success in operating a central electric station to distribute electricity in the New York financial district opened more possibilities for the wide ranging use of electricity. The later modification of Edison's direct current electricity to alternating current and the development of the transformer made long distance transmission possible. When all these technologies became available in the early 1890s, the Niagara Falls Power Company quickly combined them and established the first successful large-scale hydroelectric enterprise in North America. In economic terms, the success of the company lay not only in its ability to win financial backing from major New York bankers, but also in its success in establishing a predominant position over the Niagara River system and the regional electricity market.[5]

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[4] Louis C. Hunter, *A History of Industrial Power in the United States, 1780-1930* (Charlottesville: University Press of Virginia, 1979), 205-230, 318-372.

[5] John H. Dales, *Hydroelectricity and Industrial Development: Quebec, 1898-1940* (Cambridge: Harvard

Significantly, the Niagara operation set many precedents. Most important, it showed entrepreneurs how profitable the industry could be. Also, the manner in which the Company managed its business generally laid the foundation for subsequent hydroelectric developments. In his detailed studies of hydroelectric developments in North America, for example, historian John H. Dales concludes that subsequent hydroelectric enterprises tended to monopolize an entire river system or more. This was because each project required heavy overhead costs, which always led a water power company to seek its maximum potential electric production capacity. This required them to be adaptive to various local conditions. Dales also argues that American hydroelectric developments tended to be urban-centered and the expansion of the industry moved from the city to its hinterland. In contrast, Ontario and Quebec, with the exception of Montreal and Toronto, along with Calgary and Winnipeg, power generation started in hinterlands and induced manufacturing industries to come to the vicinity of the power sites.[6] Regardless of the way development proceeded, the hydroelectric industry rapidly spread and became one of the most popular energy production methods in Canada and the United States during the twentieth century.[7]

In the Calgary area, the hydroelectric development on the Bow River demonstrated a similar pattern to the one Dales' identified for American development. With its population skyrocketing from 4,152 in 1901 to 43,704 in 1911,[8] the City attracted

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University Press, 1957), 13-23.
[6]Ibid., 8.
[7] Christopher Armstrong and H.V. Nelles, *Monopoly's Moment: The Organization and Regulation of Canadian Utilities, 1830-1930* (Philadelphia: Temple University Press, 1986), 3-7.
[8] Ibid., 6; *Canadian Encyclopedia*, vol. 1, s.v. "Calgary" (Edmonton: Hurtig Publishers, 1986), 257.

engineers and entrepreneurs, who immediately saw the potential of developing hydroelectric dam sites on the Bow River upstream from the City. The engineers who visited the Bow River at the beginning of the twentieth century noted that the River and its tributaries appeared to have several potential power sites, which was typical of a mountain stream having a steep and broken slope dotted with several falls. By 1911, believing that the provisions under the North-West Irrigation Act applied to water power applications, these engineers had filed several conflicting applications with the Department of the Interior for waterpower sites on the Bow River. These claims led the department to send Dominion Water Power Branch engineers investigate them during the winter of 1911-12.[9]

The initial attempts to establish waterpower sites on the Bow began as early as the 1890s, but they met with considerable physical and legal difficulties. In 1893, Quebecois entrepreneur Peter A. Prince, who headed the newly established Calgary Water Power Company (1889-), sought to build hydroelectric dams near the Kananaskis and Horseshoe Falls sites. Both of these locations are on the Stoney Reserve. Prince wanted the power for his saw mills. However, the low winter flow of the River, which is characteristic of mountain streams in this area, and other constraints, prevented Prince from realizing his vision.[10] In November 1905, the Canadian Pacific Railway competed with four other applicants for the right to build the dams and power plants in approximately same area.[11]

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[9] "Report of M.C. Hendry," 31 March 1913 in the *Annual Report of the Department of the Interior, Sessional Papers.*

[10] W. E. Hawkins, *Electrifying Calgary: A Century of Public and Private Power* (Calgary: University of Calgary Press, 1987), 3-56; "Report of K.H. Smith," 31 March 1914, in the *Annual Report of the Department of Interior, Sessional Paper*, 209-210.

[11] Other applications made to the DIA included Frank Oliver (1903: for Horseshoe Falls), O.G. Devenish of Montreal-based Guardian Assurance Company, Limited (for Kananaskis site), Alexander Smith of Smith & Johnston on behalf of E.R. Wood of Ontario (for Kananaskis site), and W.M. Alexander and W.J. Budd of the

J.S. Dennis, T.G. Shaughnessy, and William Whyte, who represented the Canadian Pacific bidders, contacted the Department of Indian Affairs as part of its application for Stoney Reserve water rights. When the DIA and the Interior Department learned that Canadian Pacific wanted water rights not for irrigation purposes, but solely for securing motive power, the officials from the two departments became uncertain about how to deal with the application properly. The level of the uncertainty increased when the Minister of the Interior, Clifford Sifton, ruled that the North-West Irrigation Act would not be applicable and the application had to be dealt with in "some other manner."[12] Without clear instructions from the Minister about the proper manner to deal with the question, many federal and local officials nonetheless sought answers by relying on this piece of legislation for matters relating to waterpower development at large. The Irrigation Commissioner of the Interior Department, who was stationed in Calgary, suggested to the Secretary of the DIA, John D. McLean, that he defer any action regarding the Bow River development applications until the Interior Department had investigated it. In 1906, the CPR withdrew its scheme supposedly because of the low winter discharge, which made the project unattractive.[13]

Although the CPR application was withdrawn, the federal government still faced the need to deal with anticipated hydroelectric developments. Federal authorities lamented the fact that the Dominion government did not have a proper statute to regulate such

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Montreal-based Builders' Supply and Construction Company, Limited (1906: for Horseshoe Falls).

[12] Commissioner of Irrigation to J.D. McLean, 13 November 1905, RG 10, vol. 7604, file 12119.

[13] *Annual Report of the Department of the Interior*, 1914, 210; J.D. McLean to Commissioner of Irrigation, 7 November 1905, RG 10, vol. 7604, file 12119; Commissioner of Irrigation to McLean, 13 November 1905, RG 10, vol. 7604, file 12119; J.A. Markle, Inspector, to McLean, 13 November 1905, RG 10, vol. 7604, file

schemes, and that they had not thoroughly investigated the legal question regarding waterpower on Dominion lands, especially in connection with Indian rights. With the Provinces of Alberta and Saskatchewan officially joining Confederation in 1905, some DIA authorities became even more confused about the jurisdictional questions concerning waterbed and water rights. For example, William A. Orr, whose legal opinion on land issues had considerable weight in the DIA, thought local governments had jurisdiction over water. Although he might have sided with the voices of Albertans who bitterly lamented the federal retention of land and natural resources of the province, his correspondence indicates that he did not know that the Dominion retained jurisdiction over natural resources in the prairie provinces after 1905. Section 21 of the Alberta Act of 1905 clearly stipulated that the revised North-West Irrigation Act of 1898 still controlled the water resources on all Crown lands in Alberta. The Irrigation Act contained two sub-sections regarding the construction of dams, reservoirs, and other reclamation works, but no provisions about waterpower.[14] The 1908 amendment to the Dominion Lands Act provided only modest extensions to the clauses dealing with the subject in the North-West Irrigation Act.[15] It was under these inadequate statutory guidelines that waterpower companies made their applications to the Department of the Interior for rights to waterpower on Dominion lands and the Stoney Reserve in the Treaty 7 region.

Without a clear legal reference, the City of Calgary decided to initiate its own

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12119.

[14]*Statutes of Canada*, 1905, 4-5 Ed. 7, c. 3, "An Act to establish and provide for the Government of the Province of Alberta [Alberta Act], sections 21 and 82; *Statutes of Canada*, 57-58 Vict., c. 30, "An Act respecting the utilization of the waters of the North-west Territories for Irrigation and other purposes [North-west Irrigation Act], sections 12 (7) and (8).

investigation of waterpower rights as early as 1903 with a vision of setting up a municipally owned power company. In November of that year, Charles W. Peterson, Secretary of the Calgary Board of Trade, asked the DIA how the City could acquire the right to use the waterpower at the Kananaskis Falls. In reply, all Peterson learned was that the Department expected the city to comply with the Indian Act in obtaining the land surrender that would be required from the Indians.[16] Calgary also consulted with Rodney J. Parke of Toronto, who had worked for the Niagara project. In 1909, the city established the Joint Power Commission, and invited William Pearce from the CPR to investigate hydroelectric power possibilities on the Bow.[17] By the time the Dominion Water Power Branch sent its engineers to survey the Bow River two years later, the CPR, the Calgary Water Power and Transmission Company, and the Montreal-based Calgary Power Company (after 1909), had already surveyed the area to a large extent. After making individual surveys, these public and private interests quickly applied to the Interior Department and the Indian Affairs Department for the lands they needed. In doing so, they became involved in negotiations for the first hydroelectric projects to take place on Indian reserves. In these negotiations, such prominent politicians as Frank Oliver (Interior and Indian Affairs Minister: 1905-11) and Richard B. Bennett (Justice Minister: 1926 and Prime Minister: 1930-35) played significant roles.[18]

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[15] *Statutes of Canada*, 1908, 7-8 Ed. 7, c. 20, "Dominion Lands Act amendment," s. 35.
[16] Charles W. Peterson to J.D. McLean, 26 November 1903; and Frank Pedley to Peterson, 7 December 1903, in RG 10, vol. 3686, file 13,119-2, 3, 4.
[17] Hawkins, *Electrifying Calgary*, 123.
[18] Ibid., 114-116.

The Horseshoe Falls Development, 1903-1909

The negotiation process for the Horseshoe Falls development went through a painful and complicated political process that involved not only the Stoney people and the DIA, but also the Calgary Power and Transmission Company and interested Dominion policymakers in Ottawa. Liberal MP, Frank Oliver, had made the first application for the Horseshoe waterpower site in 1903. At that time, William A. Orr of the DIA admitted that it was the very first time he had to deal with hydroelectric development on Indian reserves. Seeking the proper course to follow to deal with the application, he suggested the question be referred to legal experts. The Department record does not show if this was done, but, in any event, Orr instructed agent H.E. Sibbald, who was stationed at Morley in August 1903, to discuss the surrender proposition with the Indians. Chief John Chiniquay, who signed Treaty 7, was the only one of the three Stoney chiefs consulted at the time. Although the Chief had been known for his support for the Methodist Mission in Morley and the establishment of an agricultural way of life for his people, he and his son Thomas opposed the water development proposition partly because the chief thought that the reserve was too small to sell any portion. Agent Sibbald, in reaction, suggested to David Laird, Indian Commissioner in Winnipeg, that the size of the proposed surrender be reduced to win the Indians' approval for the scheme. About a week later, in his letter to the DIA, Laird endorsed this suggestion and added that the Indians would not be interested without being presented with a specific compensation offer.[19] Laird and Sibbald did not discuss the possibility that the Indians really wanted and needed more reserve lands, especially those

[19] Sibbald to David Laird, 17 August 1903; and David Laird to J.D. McLean, Secretary, DIA, 25 August 1903,

who belonged to the Wesley Band and Bearspaw Band. These two bands were asking for more reserve lands in their traditional territory based on their understanding of the terms of Treaty 7. The Stoney struggle for land would continue in later years, especially for the Wesley Band people, who would claim their right by "squatting" in the area on the Kootenay plains along the North Saskatchewan river, in fulfillment of their treaty rights.[20]

Although Chief Chiniquay clearly expressed his opposition to the dam, a group of surveyors entered the Stoney Reserve in the winter of 1905 and 1906 to examine the possible hydroelectric dam site. In December 1905, the DIA allowed J.S. Dennis of the CPR to conduct surveys of the Kananaskis Falls site on condition that no construction work was to be undertaken until the land was purchased.[21] The scale of the surveys in the winter was impressive enough for some Indians to think that the waterpower site must be of tremendous value. Their bitter experience in the past with the CPR made them more worried than curious this time. Railway construction had destroyed part of their limited land for hay and pasture and they had never received any compensation for their losses. They were more alarmed when the easily recognizable elderly missionary John Chantler McDougall arrived and drove around the Kananaskis area in April 1906. The Indians initially avoided confronting him, knowing what would come next. McDougall had played mediating roles between the Dominion government and the Stoney since the 1870s and been influential in persuading the Stoney people to sign Treaty 7. Because of his influence among the Stoney, the DIA had asked him to obtain an agreement from them. When he

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in RG 10, vol. 3686, file 13,119-2, 3, 4.

[20] See more detail in Snow, *These Mountains are our Sacred Places.*

[21] Memorandum by J.D. McLean to Pedley, 21 March 1906, in RG 10, vol. 3686, file 13,119-2, 3, 4.

finally was allowed to bring the matter in front of a general council of the Stoney on May 16, McDougall faced intense hostility from the people about the plan. He recalled that the Indians were "full of suspicion and resentment" because of the previous trespass of the CPR surveyors, who had entered their land without permission. McDougall also reported that he felt "guilt strongly with them on account of this trespass."[22]

The chiefs and councilors, however, decided at least to consider the surrender proposition and agreed to meet McDougall again in the following week. At their second meeting, held on May 22, 1906, two chiefs and three councilors eventually gave their support to the proposition, which had been revised to accommodate their terms. McDougall witnessed their signing of the agreement along with agent Thomas J. Fleetham. Those who signed included Chief Moses Bearspaw, Chief Peter Wesley, Councilor Jonas Two Youngmen, Councilor James Swampy, and Councilor John Mark. The concessions that the Stoney leaders proposed and obtained in the final agreement were substantial. First, in exchange for surrendering Kananaskis Falls and Rapids covering a distance of one mile spanning the river they received $110,000.[23] Here, the surrender clearly stipulated that the Stoney considered these features to be "our water powers and land." Secondly, the Indians were to receive $7,150 (about $12 per acre) for the 600 acres of land that was required for the dam. The agreement further specified that the Indians would receive one tenth

[22] John McDougall to DIA, 25 May 1906, in RG 10, vol. 3686, file 13,119-2, 3, 4.
[23] According to "Consumer Price Index for Canada, classified by main components, 1913 to 1975," the general consumer price for $1 in 1913 is approximately $4.83 in 1975. The rough estimate of $111,000 in 1913 is equivalent to $531300 in 1975. See F.H. Leacy, M.C. Urquhart, and K.A.H. Buckley eds., *Historical Statistics of Canada* (Ottawa: Canadian Government Publishing Centre, 1983), K8-18.

($11,715)[24] of the sum on the completion of the surrender. The federal government was supposed to deposit the rest in the trust fund held on their behalf by the DIA for later distribution on a per capita basis.[25]

The Indian Affairs Department, however, wanted more land, including the Horseshoe Falls site, which is situated slightly downstream. The Superintendent General of the Department, Frank Pedley,[26] again asked McDougall to obtain the Stoney's agreement to an extension of the surrender to expand the portion of the Bow River for two and a half miles instead of one. The department also suggested separating the concession into two parts: waterpower rights and land rights, because the officials were not sure if the River was the property of Indians. On June 6, 1906 the DIA also asked McDougall to convey the message to the Stoney that "as far as they [the Stoney people] have a proprietary interest in the water powers their interest will be fully protected by the Department when these are disposed of." The Department basically accepted the rest of the Stoney proposition.[27]

On June 13, Frank Pedley again wrote McDougall. This time, his instruction was more specific and detailed. Pedley told McDougall to assure the Stoney that the "Government is anxious that the Indians should receive for the use of the water power everything that the interests developing the power can afford to pay." He suggested that the Indians propose a selling price of ten dollars per acre of the land and a $25 annual

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[24] In accordance with the consumer price index, if $7,150 and $11,715 was paid in 1913, the value is approximately equivalent to $34,535 and $56,583 in 1975 respectively. Ibid.
[25] Stoney Chiefs and Councilors to DIA, 22 May 1906, in RG 10, vol. 3686, file 13,119-2, 3, 4.
[26] In October 1913, Pedley was accused of speculating on the sale of Indian land and forced to retire. E. Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada*

payment for the waterpower up to 1,000 developed horse power, as well as one additional dollar per horse power in excess of 1,000 horse power. When making this proposal, Pedley was well aware that some towns in Ontario sold electricity at $10 per horse power per year, but he did not want to discourage a potential company to enter the bid for the hydroelectric development by suggesting this rate to the Stoney. About this issue, he intimated to McDougall that the "Department desires to be in a position to say to any parties who might come forward with an offer to develop the power just what the land and the power would cost them." At this point, Pedley was careful enough to explain that the inducements were not to benefit the government. He assured McDougall that "the Government has no interest in this matter beyond securing a utilization of the water power to the mutual benefit of the white people and the Indians."[28]

Pedley's suggestions were largely incorporated into the second proposal drafted by the chiefs and councilors of the Stoney people. This time Chief Peter Wesley signed along with Councilors Jonas Two Youngmen and John Mark. Other leading band members joined them: Hector Crawler, Paul Ryder, Luke Powderface, Thomas Chiniquay, and Moses House. They accepted the surrender of approximately 3,000 acres of land, which was about five times more than been included in the previous offer. The price of the land was still ten dollars per acre. The Indians specified that the payment was to be made in the following three different ways: twenty-dollars per capita ($13,000), 300 head of cows and heifers (worth $9000), and the rest was to be entrusted to the agent in Morley for fencing

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(Vancouver: University of British Columbia Press, 1986), 22
[27] The DIA to McDougall, 6 June 1906, RG 10, vol. 3686, file 13,119-2, 3, 4.
[28]Pedley to McDougall, 13 June 1906, RG 10, vol. 3686, file 13,119-2, 3, 4.

and other purposes. The Indians also agreed to release the larger waterpower rights on the condition of receiving an additional annual five-dollar per capita payment similar to what they received as Treaty 7 entitlements.[29]

The Indian Affairs Department presented this proposal to the interested developers. Frank Oliver's party found it unjust and dropped out of the bidding. Since he was now the Minister of Interior and Indian Affairs, Oliver continued his interests in the Horseshoe Falls development. After the Montreal-based Alexander and Budd syndicate, known as the Builders' Supply and Construction Company, applied for waterpower rights in December 1906, Oliver supported it even though the DIA initially was reluctant to do so. When this application came from the Company, the DIA initially gave a short routine response, suggesting that some prior application had been in consideration. The department's attitude quickly changed, however, once the Department received a more detailed plan from consulting engineer Charles H. Mitchell in January 1907. Acting on behalf of the Alexander and Budd syndicate, Mitchell accepted the condition of $10 per acre for 320 acres and an annual rental payment for the waterpower of $1,500.[30]

With Alexander and Budd syndicate only being interested in the Horseshoe development, the Department again asked for changes to the Stoney proposal, reducing the size of the proposed surrender to 1,000 acres (at the same price of ten dollars per acre). Each band member would receive five dollars per annum if the deal was approved, and

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[29] Stoney Indians and chiefs to the DIA, 6 June 1906, RG 10, vol. 3686, file 13,119-2, 3, 4.

[30] Frank Oliver to John McDougall, 24 July 1906; The Builders' Supply and Construction Company, Limited, to Minister of the Interior, 21 December 1906; Secretary of the Department of the Interior to J.D. McLean, DIA, 11 January 1907; J.D. McLean to Alexander and Budd, 18 January 1907; Charles H. Mitchell to Frank Pedley, 27 January 1907; Mitchell to Pedley, 29 January 1907, in RG 10, vol. 3686, file 13,119-2, 3, 4.

chiefs and councilors would receive twenty-five dollars and fifteen dollars respectively. The method of payment was to be identical to treaty payments to which they were accustomed. This time, instead of cows and heifers, the Indians requested fifty western range brood mares that could be used for hauling logs and other purposes. Agent Fleetham had suggested this change because he anticipated that the Stoney would have to cope with the implementation of more strict game laws, which would adversely affect their subsistence hunting activities. Regarding waterpower, the Indians proposed that they receive the annual payment of $1,500 in advance. A good representation of the Indians, which included three chiefs and five councilors along with eleven other male members, endorsed the agreement on February 20, 1907.[31] The DIA accepted the proposal and sent a cheque for the sum of $3,350. Agent Fleetham distributed the amount on a per capita basis on March 13. On May 14, an Order-in-Council formerly approved the surrender. The project was supposed to be completed within two years.[32]

This official conclusion of the first waterpower agreement with Aboriginal people was not the end of the story, however. The Alexander and Budd syndicate, which now became incorporated as the Calgary Power and Transmission Company, faced a number of problems. The most serious one was to secure financial backing. In addition, it was not until August that the company submitted the detailed project plan. After it did so, the Company made sudden changes to it, which the DIA politely declined to approve despite

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[31]The major signatories were Chiefs Jonas Two Youngmen, Peter Wesley, Moses Bearspaw, Councilors John Mark, James Swampy, Hector Crawler, Amos Bigstoney, and George McLean or Walking Buffalo. Agreement of February 20, 1907; and T.J. Fleetham to Pedley, 21 February 1907, in RG 10, vol. 3686, file 13,119-2, 3, 4.

[32] Pedley to Fleetham, 4 March 1907; "Cash Statement" by Fleetham on 13 March 1907; and Clerk of the

Oliver's support for them.[33] Even though Garnet P. Grant, General Manager of the Company, promised to make the first payment of $10,000 in July to cover the land surrender payment, no cheque arrived at the DIA in 1907. In January 1908, the Stoney Indians began complaining about the commencement of construction without their having received the promised brood mares and money. On January 21, Superintendent Pedley wrote Frank Oliver that: "I certainly think it [the Company] had no right to go on the reserve without permission, and that, before being allowed to proceed the Company should accept the Department's proposition as to land and pay their purchase money due under the agreement." Pedley made no reference to the constant demand of the Stoney people for brood mares and one stallion (added later). On behalf of the Company, a law firm in Calgary sent apologies and requested the continuation of the construction. After some work had been done in February 1908, W.J. Budd notified Pedley that the Company had stopped its operations.[34]

The relationship between the DIA and the Calgary Power and Transmission Company worsened in 1908 and 1909. After having ignored the Department's letters for months, General Manager Grant resigned without notifying government officials. In spite of these problems, the Company received an extension of the payment due for additional forty-five days because of Oliver's backing. When the Company secretary finally sent a cheque for $2,250, it was neither endorsed nor addressed properly. Considering that the

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Privy Council to Pedley, 14 May 1907, in RG 10, vol. 3686, file 13,119-2, 3, 4.

[33] On behalf of the company, engineer Charles H. Mitchell requested the extension of the land surrender to further up the Bow River to embrace sufficient part of the rapids. Mitchell to McLean, 12 March 1908, in RG 10, vol. 3686, file 13,119-2,3,4.

[34] Pedley to Oliver, 21 January 1908; Jones, Nichols & Pescod, Barrister, Solicitors, Notaries, etc. to the DIA,

amount was insufficient even to cover the first payment, in January 1909, Pedley instructed agent Fleethan to return the cheque to the Company with the notice of the last sixty-day extension to meet the full payment. About a week prior to the end of this grace period, the President of the Company, Thomas Underwood, finally sent a personal cheque for $9,500. This still did not cover the full amount. He had to pay an additional $3,500 supplement. Although the payment considerably relieved the DIA, the Stoney people were not yet satisfied, for they had not received their horses. They complained bitterly that if they had got the mares two years ago, the size of their herd would have been much larger as a result of breeding. While they had waited, brood mares had become more difficult to acquire. This led Councilor George McLean, better known as Walking Buffalo, to propose to Department inspector John A. Markle that instead of horses, the Stoney people would accept a parcel of land southwest of the reserve. Instead of accepting this idea, in May 1909, the Secretary finally sent a cheque for $7,000 to Markle to procure the brood mares.[35]

Between 1909 and 1910, the Calgary Power and Transmission Company again experienced financial difficulties with the Horseshoe project. Nonetheless, the Company somehow managed to complete the project with the financial aid of some engineering firms in 1910, and soon afterwards, it merged with two other corporations and became the

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27 January 1908; W.J. Budd to Pedley, 13 February 1908, in RG 10, vol. 3686, file 13,119-2, 3, 4.

[35] S. Stewart, Assistant Secretary, DIA, to Grant, 14 September 1908; E.H. Crandell of the Calgary Power and Transmission Company to the Secretary of the DIA, 26 October 1908; Stewart to Crandell, 2 November 1908; Calgary Power and Transmission Company to Frank Oliver, 16 November 1908; Fleetham to Pedley, 26 December 1908; Pedley to DIA Accountant, 13 January 1909; Secretary of the DIA to Fleetham, 13 January 1909; President of the Calgary Power and Transmission Company to McLean, 13 March 1909; President of the Company to Pedley, 17 March 1909; Samuel Bray, Chief Surveyor of the DIA, to Pedley, 22 March 1909; President of the Company to Pedley, 26 March 1909; John A. Markle, Inspector of Agency in

Calgary Power Company. Lawyer Richard B. Bennett from Calgary and Montreal financier William Maxwell Aitken (later Lord Beaverbrook) led the new Company. They immediately sought to gain control of all the power sites on the Bow River.[36] During the winter of 1911-12, the Company and the Dominion government entered into an agreement to undertake the controversial hydroelectric development at the outlet of Lake Minnewanka, which is situated upstream on the Bow River near Banff within the Rocky Mountain National Park. This scheme called for raising the level of the lake twelve feet (3.65 meters). It also helped establish a strong connection between the Company and the Interior Department, through the Dominion Water Power Branch.[37]

Kananaskis Falls Development, 1912-14

The Calgary Power Company applied to the Interior Department for the right to develop waterpower at Kananaskis Falls on the confluence of the Bow and Kananaskis rivers. The Company planned to build a hydroelectric dam about two and a half miles above the Horseshoe Falls power plant. Similar to the latter dam, which was 140 feet (42.67 meters) long, the proposed dam would be a solid concrete structure, but considerably larger in size--being 725 feet (220.98 meters) long. The two plants would be connected with a transmission line that would supply electricity to the Calgary area. During the fall of 1912, the Calgary Power Company conducted surveys of the site and

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Red Deer, Alberta, to the Secretary of the DIA, 30 April 1909, in RG 10, vol. 3686, file 13,119-2, 3, 4.
[36] Hawkins, *Electrifying Calgary*, 121-147.
[37] "Report of M.C. Hendry," 31 March 1913, Report of the Department of the Interior, 1913, *Sessional Papers*, 1914, 71.

made its application to the Interior Department.[38] As in the case of the Horseshoe Falls project, the Calgary Power Company did not obtain permission from the DIA or the Stoney Council to enter the reserve for its preliminary surveys. In November 1912, the Interior Department gave preliminary approval to the expansion plan and asked the DIA to obtain the portion of land on the reserve that was needed. This time the DIA did not take the trespass seriously. The Indians, on the other hand, were greatly annoyed by this disrespect.[39]

In January 1913, the local DIA agent and the representatives of the Calgary Power Company held a meeting with the Stoney people. The agent failed to obtain an agreement from them. After their bitter experience with delayed payments of money and horses, and another recent trespass incident, the Stoney people had good reasons to refuse the new surrender unless the government and the Company gave them a better offer, one that included a free annual supply of geldings. The Stoney also repeated their previous request for a land grant in the Kootenay plains further north, an area to which the Wesley Band had repeatedly asserted an Aboriginal right. The Stoney also wanted an additional tract of land on the south side of the reserve. As before, the DIA refused to consider granting additional land to the Stoney Indians. In fact, some Department officials began considering a way to obtain the Kananaskis Falls site without the consent of the Stoney. Samuel Bray, the Chief Surveyor of the Department, wrote Deputy Minister Pedley that "the land required in the Stoney Indian Reserve at Morley by the Calgary Power Company may be sold to that

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[38] "Report of M.C. Hendry," 73-75.

[39] Assistant Secretary, Department of the Interior, to J.D. McLean, 22 November 1912, RG 10, vol. 8057, file 772/ 32-3-3, pt. 1.

company without a surrender from the Indians." He suggested obtaining authority from the Interior Department to certify the power site for the waterpower purposes.[40] In the end, the Indian Affairs Department did not resort to this extraordinary measure to escape its fiduciary responsibility.

On April 15, 1913, the Stoney drafted a surrender agreement with the help of Bray. Although it was generally modeled on the previous document, which consisted of a per capita payment, annual rental, and monetary compensation for the surrendered land, it increased the per capita demand to $25 per head in cash on completion of the surrender of 212 acres of land.[41] The Indians insisted on this higher price even though their Indian Agent J.W. Waddy thought this amount was too high to push forward for DIA approval. The water rental clause for $1,500 per annum appeared again, but, this time, the Stoney based it on a claim of riparian rights to water. This tentative agreement gained far more attention and support from the people on the reserve than the previous one had. The signatories included four chiefs, three councilors, and sixty-eight other members. The Stoney subsequently increased the amount of money they wanted for the 212 acres to the sum of $16,500, or about $77.83 per acre. This higher demand infuriated Bennett, who wrote McLean that: "I think you will agree with me that, with the restriction in question, $16,500 is an absurd price for the land." Assuming that an acre of fee simple land would normally cost $30 in the area, he believed that the land in the site was possibly worth less than $30 because of the restrictions to surrendered reserve lands. If the Company cancelled

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[40] McLean to the Secretary of the Interior Department, 23 November 1912; Agent at Morley to McLean, 11 January 1913; S. Bray to Pedley, 21 April 1913, RG 10, vol. 8057, file 772/ 32-3-3, pt. 1.

[41] The following dollar prices in 1913 are multiplied by 4.83 to find equivalent prices in 1975. Leacy et al

the lease of waterpower at any time, the land would revert to the DIA.[42]

The Stoney leaders rejected Bennett's argument and remained adamant with their demands. The negotiations continued throughout the year of 1913. The government officials noticed the accumulating frustration amongst the Stoney people, and "feared that serious trouble would arise." The Company secretary was optimistic, however, suggesting to Pedley that if a small payment was made to the Stoney for the time being, they would be pacified.[43] A DIA agent's report indicated otherwise. According to agent Waddy, the Stoney people had long been troubled with the way the Calgary Power Company conducted its surveys without their consent. They insisted that the land and water rights still belonged to them.[44] Chief Inspector of Indian Agencies, Glen Campbell, also went to Morley in July and investigated the situation. In his report, Campbell pointed out to his superiors that "if this property were owned by one of your own shareholders he would not even consider $100 per acre." Following this report and another recommendation submitted by DIA agent J.W. Waddy and inspector G.S. Worsley in the same month that the Stoney be paid $100 per acre and $1,500 in annual rent, Department secretary McLean demanded V.W. Drury of the Calgary Power Company pay the sum of $21,200, as well as the rental payment.[45]

About this time Walking Buffalo, who succeeded Chief Moses Bearspaw in 1913,

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eds., *Historical Statistics of Canada*, K8-18.

[42] Stoney Agreement, 15 April 1913; Samuel Stuart, Assistant Deputy and Secretary of the DIA, to George Cousins, Solicitor for the Calgary Power Company, 3 May 1913; R.B. Bennett to McLean, 28 May 1913; RG 10, vol. 8057, file 772/ 32-3-3, pt. 1.

[43] Dominion Water Power Branch to Pedley, 10 July 1913, RG 10, vol. 8057, file 772/ 32-3-3, pt. 1.

[44] G.S. Worsley, Inspector, RNWMP, "Memorandum re: Trouble between Indians and Calgary Power Company," 6 July 1913, RG 10, vol. 8057, file 772/ 32-3-3, pt. 1.

[45] G.S. Worsley, Inspector, to Agent Waddy, 8 July 8 1913; McLean to Drury, 21 July 1913, RG 10, vol. 8057,

decided to confront Bennett when he learned of latter's visit to Calgary. The two men discussed the agreement sometime in 1913. While Bennett strongly insisted on not paying the amount demanded by the Stoney people, Walking Buffalo became more unyielding on the issue, insisting on a payment of $100 dollars per acre. The failure of this meeting to produce an accord stiffened the resolve of the other Stoney leaders. In 1914, Walking Buffalo, Councilor Jonas Benjamin, and Dan Wildman, Jr. traveled to Ottawa to make their case. Before meeting with DIA officials at the capital, Bennett proposed a private meeting to discuss a possible agreement. After a lengthy negotiation, the Company representatives finally accepted the Stoney proposition.[46] The Calgary Power Company later added about 94 acres (88.4 acres for the site and 5.45 acres for the right of way) to the lands to be surrendered. Agent Waddy estimated that the plant site would be worth about $90 per acre and the land for right of way $100. However, the Company only agreed to pay $2,400 (about $27 per acre) for the flooded land and $100 for 5.45 acre right of way ($18 per acre). The DIA accepted the company's counter offer, regarding the amount sufficient. No record shows how the Stoney responded to the DIA's decision at the time. On June 15, 1914, 654 members of the Stoney Indians received their first per capita payment. The Calgary Power Company promised to pay the whole amount owed for the surrendered land by January 1, 1918.[47]

Between 1915 and 1918, the Company experienced financial difficulties because

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file 772/ 32-3-3, pt. 1.

[46] Grant MacEwan, *Tatanga Mani: Walking Buffalo of the Stonies* (Edmonton: Hurtig Publishers, 1969), 170-172.

[47] General Manager, Calgary Power Company, to McLean, 6 September 1913; Indian Agent at Morley to McLean, 13 December 1913; the 1914 agreement of surrender,

of the ever-expanding cost of the hydroelectric development at the Kananaskis Falls. To deal with cost overrides, the Company delayed making its payment to the Stoney people. This forced the Superintendent-General of the DIA, Duncan Campbell Scott, to repeatedly request the Company to make prompt payments. In the meantime, Walking Buffalo and other Stoney leaders monitored the construction of the dam and occasionally complained when they found that the Company had not built it the way it had promised.[48]

Ghost Development, 1927-38.

From 1919 onward, the Dominion government greatly improved waterpower regulations. The government began recognizing that waterpower development was part of its National responsibility. The Dominion Water Power Branch earnestly promoted the idea that it should play a greater role in power production. As the Superintendent of the Branch, J.B. Challies, reported in 1917, in the midst of World War I, "the growing dependence of industry on water-power, and the ever increasing use of hydroelectric energy, is forcibly exhibited." He stressed the importance of increasing electric production in Dominion lands on the basis of the fact that the per capita consumption of power in Canada, except for railways, was already higher than any other country. After learning from experiences of the American Bureau of Reclamation, Challies believed that waterpower legislation could play a crucial role in maximizing the use of waterpower resources and stimulating the National economy. He argued that in Canada, and to a lesser

[48] Calgary Power Company to the DIA, 11 September 1915; Duncan C. Scott to Calgary Power Company, 2 November 1915; Indian Agent at Morley to Scott, 17 February 1916; Scott to R.B. Bennett, 29 February 1916; Bennett to Scott, 2 March 1916; Bennett to Scott, 6 March 1916; Bennett to Scott, 18 March 1916;

extent in the United States, laws related to waterpower development were "surprisingly brief and inadequate, and have been subjected to the severest criticism from both the financial interests which seek development and the public."[49]

In 1919, the Dominion Water Power Act came in force to affect all Dominion lands except the railway belt of British Columbia, replacing the waterpower provision in the Dominion Lands Act of 1908. It authorized the "Director of Water Power," who was under the Minister of the Interior, to investigate, survey, and undertake all waterpower works in Dominion lands. The Dominion Water Power Regulations of 1921 dealt in considerable detail with waterpower development. As in the British Columbia Water Act, the Regulations adopted a licensing system rather than the patent system of the Dominion Lands Act. While the BC Water Act made water and waterpower a provincial property, the Dominion Water Power Act and Regulations regarded them as National property. As the utility industry increased its position in the National economy, the federal government intensified its control of water and waterpower.[50]

In accordance with these new laws, the Calgary Power Company again applied for a power site on the northeastern end of the Stoney Reserve in November 1927. It wanted to build a hydroelectric dam on the confluence of the Bow and Ghost rivers below the Horseshoe Falls site. The Company argued that the existing electric generating stations had reached their maximum capacity and the Ghost development would be necessary to

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Scott to the Calgary Power Company, 12 October 1916, in RG 10, vol. 8057, file 772/ 32-3-3, pt. 2.

[49] "Report of the Superintendent of the Water Power Branch, by J.B. Challies, 15 July 1915, in *Sessional Papers*, 1916, 5-6.

[50] *Dominion Water Power Act*, c. 19 (1919), sections 7, 11, and 13; *Dominion Water Power Regulations* (1921).

supplement the increasing power demands of Calgary along with lumber mills and a cement company located in the vicinity. Within five years, the Company planned to build a concrete dam about 200 feet (60.96 meter) long and 45 feet (13.71 meter) high with two power plants.[51]

In January 1928, the director of the Dominion Water Power and Reclamation Service, J.T. Johnston, notified the DIA that the Interior Department had given preliminary approval to the Ghost Development plan because it basically followed Service's comprehensive scheme for the "complete development" of the Bow River (1913). Johnston also suggested that the surrender agreement follow the precedent set by the Kananaskis settlement of 1914. However, because the Bow ran through both the Stoney Reserve and Dominion lands at the dam site, he noted that "the Indians would appear to have a half interest in the water-power, " although most of the land affected by the reservoir would be on the Reserve. Deputy Minister of the DIA, Duncan Campbell Scott, responded that his Department would be able to obtain the consent of the Stoney people to the proposed development without any substantial difficulties. At this time Scott did not think it was necessary to call a meeting with the Indians because the Company had not yet submitted detailed surveys, plans, and descriptions of all required lands.[52]

DIA authorities presented the proposition for the Ghost development to Stoney leaders in May 1928. DIA inspector of Indian Agencies, M. Christianson, held a

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[51] Calgary Power Company, Limited, "Dominion Water Power Application For a License to use and store for power purposes: The waters of the Bow River within the limits of the Proposed Ghost Development," 5 November 1927, in RG 10, vol. 8057, file 772/ 32-3-3, pt. 2.

[52] J.T. Johnston to J.D. McLean, 23 January 1928; Scott to Johnston, 27 January 1928, RG 10, vol. 8057, file 772/ 32-3-3, pt. 2.

whole-day meeting with the Stoney Indians on May 8. The Company superintendent F.J. Robertson and solicitor E.J. Chambers were also present. At this meeting, the Indians agreed to sell 1,229 acres of reserve land for the payment of $20,000.[53] In addition, the Stoney people requested the right to purchase 1,500 acres of land, known as the Potts Estate, which was situated on the southeast boundary of the Reserve. Chief Hector Crawler, Chief David Bearspaw, Councilors John Dixon, Amos Bigstoney, Dan Wildman, James Benjamin along with about forty men endorsed this proposal.[54] In June, the Calgary Power Company reduced the size of land for surrender to 1,144 acres, but promised to pay the same amount proposed in May.[55]

In the meantime, despite its past reluctance to acquire additional lands for the Stoney people, the DIA took the Stoney proposal of the Potts Estate purchase positively. In the fall of 1928, the Department officials attempted to acquire the Estate, but the owner, Ethel M. Potts, declined to give up a clear title to the land, including mineral rights. After unsuccessful negotiations for the clear title, the DIA became somewhat reluctant to conclude the land transaction immediately. In addition, Deputy Minister Scott arranged the payment for the Estate as soon as his Department received the sum of $20,000 from the Calgary Power Company. The Company excused the delay of its payment because it still waited for the Stoney Indians to come back from hunting and finalize their approval to the

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[53] In accordance to the consumer price index, $1 in 1928 is approximately worth $3.2 in 1975. $20,000 in 1928, therefore, is roughly equivalent to $64,000 in 1975. See Leacy et al. eds., *Historical Statistics of Canada*, K8-18.

[54] M. Christianson to W.M. Graham, Indian Commissioner, 9 May 1928; The Stoney Agreement, 8 May 1928; "Calgary Power Co. Buys Indian Land Along Bow River," the *Calgary Herald*, 28 May 1928, RG 10, vol. 8057, file 772/ 32-3-3, pt. 2. The *Calgary Herald* reported that over fifty men signed, but it was slightly exaggerated.

[55] E.J. Chambers of Bennett, Hannah & Sanford to the DIA, 15 June 1928, RG 10, vol. 8057, file 772/ 32-3-3,

surrender.[56]

In late January 1929, the voting for the final approval took place in the United Church on the Reserve. Before calling the poll, Inspector of Indian Agencies, Christianson, spent about four hours explaining the terms of surrender to the Band members. The *Calgary Herald* reported on the meeting:

> Prior to the actual voting a long discussion took place. Through an interpreter, Inspector Christianson explained in detail, what the purpose of the voting was and why it was necessary. The two chiefs of the Stoneys, Hector Crawler and John Dixon, with their councillors, joined vigorously in the debate and harangued their braves at length. At the conclusion of the discussion each voter stepped forward and affixed his signature or his mark to the official document which set forth that they agreed to surrender their ancient rights to the property.[57]

In total, 88 Indians signed the document. The legal representative of the Potts Estate, Chambers, was also present and notified the DIA officials that the legal papers to transfer the land to the DIA were completed. The purchase money for the land arrived in April from the Calgary Power Company. In turn, the DIA sent a cheque to Potts' agent.[58] The Department of the Interior issued the final license to the Company for the Ghost development under the revised Water Power Act of 1927. The terms of the license specified that it would be valid for fifty years commencing on December 31, 1929. Another important change to the license, which was authorized by the 1927 amendment, was the provision that declared it to be illegal for a member of the House of Commons of

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pt. 2.

[56] Duncan C. Scott to Agent T.F. Murray in Calgary, 31 October 1928; Scott to A.W. Merriam, R.B. Bennett's private secretary, 24 January 1929; RG 10, vol. 8057, file 772/ 32-3-3, pt. 2.

[57] "In Formal Manner Stoneys Vote Sale of Morley Land," *Calgary Herald*, 31 January 1929, RG 10, vol. 8057, file 772/ 32-3-3, pt. 2.

Canada, in this case R.B. Bennett, to benefit from the license.[59]

In less than a year after the issuance of the final license, authorities in the DIA and the Interior Department had serious questions about water rental payments and the regulation of the Ghost development. One reason was that the Dominion government passed the Natural Resources Transfer Agreements in May 1930, which transferred Dominion lands in Alberta, Saskatchewan, and Manitoba to the provinces.[60] As in other parts of the country, the Dominion government retained jurisdiction over Indian affairs. A further complication was that the Act of 1929 respecting Water power in the provinces of Alberta, Saskatchewan, and Manitoba clearly stipulated that the Natural Resources Transfer agreements would not apply to any water-power on Indian reserves or Dominion Parks. However, provincial authorities in Alberta immediately began claiming its rights to benefit from the Ghost development. Provincial authorities asserted authority over waterpower and regulation of waterpower companies under the Alberta Water Resources Act of 1931.[61]

On September 30, 1930, the DIA's solicitor, A.S. Williams, Director of Indian Lands, J.C. Caldwell, solicitor of the Interior Department, W.M. Cory , engineer for the Water Power and Reclamation Service, and M.F. Cochrane held a meeting in Calgary to

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[58] W.M. Graham, Indian Commissioner, to Scott, 2 February 1929; J.C. Caldwell, Director of Indian Lands and Timber, DIA, to Scott, 5 April 1929, RG 10, vol. 8057, file 772/ 32-3-3, pt. 2.

[59] Terms of the Final License, Department of the Interior (1930), RG 10, vol. 8057, file 772/ 32-3-3, pt. 3. Section 48 of the Water Power Regulations determined the annual waterpower rental rate for the Stoney Indians. Until January 17, 1932, the Company would pay 50 cents per installed horse power. After this date to January 17, 1952, the rate for the annual payment depended on annual load factor. If the Company would operate with higher percentage of load factor, it would pay less money per horse power.

[60] *Statutes of Canada*, 20-21 Geo. 5, c. 3, "An Act respecting the transfer of the Natural Resources of Alberta [Alberta Natural Resources Act]."

[61] *Statutes of Alberta*, 1931, 21 Geo. 5, c. 71, "An Act respecting Water Resources [Water Resources Act]."

discuss the three hydroelectric developments on the Stoney Reserve. They considered whether the Interior Department was still entitled to the rental payment from the Ghost development and whether the DIA should receive payments on behalf of the Stoney directly, or through the Interior Department, or via the province. The memorandum of the meeting demonstrated how confused these authorities were about the jurisdiction issue.[62]

The problem arose because the Calgary Power Company had arranged to make a rental payment at once to the Department of the Interior, which was supposed to transfer half of the amount to the DIA. However, being uncertain about whether the Company should deal with the Interior Department, or the Province of Alberta, it had held back a substantial portion of the Stoney's rental payment. While the two-year delay turned out to be a great financial relief for the Company in the middle of the Great Depression, it was a hardship for the Stoney. Understandably, they constantly demanded that their Indian agent and other DIA officials secure payments from the Company to which they were entitled. In January 1933, the agent at Morley reported: "the Indians on this Reserve are becoming very troublesome and annoying over the delay in payment of the $6.00[63] per capita due from the Calgary Power Company in connection with water rental at their Ghost River Power Plant." Two months later, Inspector Christianson wrote: "the Indians at Morley are continually after me in connection with the two payments that are due them now from the

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[62] "Memorandum first drafted at a Conference at the office of Mr. O.M. Biggar, K.C., on September 26th, 1930, at which were present Mr. A.S. Williams, Solicitor of the Department of the Indian Affairs; Mr. J.C. Caldwell, Director of Indian Lands; Mr. W.M. Cory, Solicitor to the Department of the Interior, and Mr. M.F. Cochrane, Water Power and Reclamation Engineer of the Water Power and Reclamation Service...," 30 September 1930, RG 10, vol. 8057, file 772/ 32-3-3, pt. 3.

[63] Because of the Great Depression, the monetary value decreased in the 1930s. The historical consumer price index shows that $1 in 1933 is $4.07 in 1975. Therefore, $6 is worth $24.42 in 1975. See Leacy, et al. eds., *Historical Statistics of Canada*, K8-18.

Calgary Power Company." In June, Deputy Minister of the Interior, H.H. Rowat, visited Banff and interviewed the Reverend E.J. Stanley of the Indian Residential School at Morley about the rental payment delay and the reaction of the Stoney people about it. Stanley told Rowat that it was causing increasing tension and distrust toward the federal government. He said that the Stoney did not understand why the federal government could not keep promises. This troubled them the most. This awkward situation, Rowat said, was "adding needless fuel to fire" among the Indians.[64]

As the economic situation on the reserve became increasingly serious because of the continuing Depression, the Stoney and the DIA desperately sought financial relief. In April 1933, the DIA took the very unusual step of appealing directly to R.B. Bennett, who had become Prime Minister of Canada. Officials complained to him that even the Justice Department appeared to be indifferent to the Stoney rental issue despite having made an inquiry into the matter two years ago. In July of that year, Deputy Minister of Justice, W. Stuart Edwards, finally provided opinions on the questions of payment and federal and provincial jurisdiction. Edwards stated that a "portion of the water power rental is payable to and administrable by the Dominion for the benefit of the Indians, and that the Province (although the Director of Water Resources of the Province has indicated that the Province claims the whole amount of such rental) has no well founded right or claim to receive such portion of the rental."[65]

In November 1933, the Stoney finally received their share of arrears water rental

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[64] Indian Agent Hinton to the Secretary of the DIA, 17 January 1933; Memorandum of Harold W. Mcgill to Duncan C. Scott, 27 January 1933; M. Christianson to the Secretary of the DIA, 8 March 1933; Scott to A.E. Miller, office of the Prime Minister, 7 April 1933, RG 10, vol. 8057, file 772/ 32-3-3, pt. 3.

payments for the period 1930 and 1933. However, they were only paid ten dollars per head. Yet again the Stoney people had to struggle for their rightful share. Their battle lasted until the mid-1940s.[66]

Reflections on Indian Rights to Waterpower

By the 1930s, three generations of the Stoney leaders had negotiated with the federal government and hydroelectric companies over water rights and compensation. Although they had to deal with delayed payments and the failure of the Dominion to protect their Aboriginal interests, on balance they were successful in monitoring development activities and gained the most they could out of these difficult situations. When the DIA acquired the help of John McDougall to persuade the Stoney people to surrender the Horseshoe and Kananaskis falls in 1907, it was the Stoney chiefs and councilors who established the agreement protocol by clearly demanding their rights to land and water. After obtaining the consent of the Stoney people to surrender portions of their reserve, the federal government became satisfied and basically accepted what the Stoney people proposed, including proprietary rights to water. Both the DIA and the Stoney leaders incorporated the idea of annual rental payment for waterpower, which became one of the most important components of all the three Stoney agreements. In the second agreement that arose out of negotiations for the Kananaskis Falls, the Stoney people rightly claimed their "riparian rights" to water and waterpower. Although we do not know who actually introduced the idea and the terminology of riparian rights to the Stoney

[65] W. Stuart Edwards to H.H. Rowat, 19 July 1933, RG 10, vol. 8057, file 772/ 32-3-3, pt. 3.

people, this demonstrated that they were quick to adopt appropriate legal claims to water on their reserve. Walking Buffalo and others successfully overcame R.B. Bennett's political power in obtaining a higher price for the surrendered land.

The DIA, the Department of the Interior, and the Calgary Power Company basically accepted the precedents that had been established in the Horseshoe and Kananaskis falls agreements when these three parties again became involved in negotiations for the Ghost development in the late 1920s. No questions arose within the DIA regarding Indian water rights or the Stoney people's entitlement to rental payments. Although no Dominion statute defined the extent to which the indigenous peoples could claim their water rights on their traditional territories, and no parliamentary committee investigated them, Indian rights to waterpower became *de facto* rights. In practice, these *de facto* rights were based on several sources, including Treaty 7, the Indian Act, the Dominion Lands Act (1908), the Dominion Water Power Act (1919 and 1927), and the Dominion Water Regulations (1921). The negotiating skills of the Stoney leaders, which had improved considerably since Treaty 7 negotiations, became part of the driving force to incorporate these different sets of statutes to their advantage.

As the hydroelectric development began gaining increasing National support as an important stimulus for the economy during World War I, it was almost impossible for the Stoney people to organize a successful campaign against hydroelectric developments on their reserve. As R.B. Bennett attempted to persuade Walking Buffalo, most people at the time believed that the hydroelectric development was clean, environmentally friendly,

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[66]Indian Agent to the Secretary of the DIA, 21 March 1938, RG 10, vol. 8057, file 772/ 32-3-3, pt. 2.

and the cheapest method to produce electricity.[67] Some federal authorities also argued that the introduction of hydroelectric dams would relieve people in general of the hard and hazardous labor of the coal mining and provide a considerable number of jobs.[68] The type of anti-dam campaign, which became closely associated with John Muir and his colleagues in the beginning of the twentieth century, did not become a political force on the Stoney Reserve.[69] The cooperation of environmental activists and Aboriginal peoples in resisting hydroelectric dams would not appear until the late twentieth century.[70]

Under these circumstances, what the Stoney people achieved was remarkable, especially in the matter related to Indian water rights. Today, experts in Aboriginal rights tend to emphasize court decisions and statutes, but the history of Stoney water rights highlights the need to consider the political and economic contexts of the hydroelectric developments. This approach provides us with an important new understanding of the history of Indian water rights, not to mention Indian political and economic involvement in early hydroelectric developments in Western Canada.

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[67] MacEwan, *Tatanga Mani*, 172.
[68] Challies,"Report of the Superintendent," 5.
[69] Roderick Nash, *Wilderness and the American Mind*, 3d. ed. (New Haven: Yale University Press, 1982), 161-2.
[70] John Glenn, *Once Upon an Oldman*, 199-200.

Conclusion: Reclaiming Indigenous Waters

Writing about the history of his people in *These Mountains Are Our Sacred Places* (1977), Chief John Snow of the Stoney Nation remarks on the symbolical meanings of "a circle" in understanding the Stoney traditional worldview. A circle is associated with the complete cycles of four directions, four seasons, and four winds in the universe. In this way Snow explains that all things were interconnected with the creation of the "Great Spirit."[1] In a similar vein, waters in the rivers and lakes circulated between the spiritual world, secular society, and nature without a clear beginning or end. Here in this circle, not only the Stoney, but also the Secwepemc and many other indigenous populations in Western Canada, found their value and meaning in water.

The indigenous value system regarding land and water that Snow describes faced unprecedented challenges when "Miners and Sappers", who were agents of British imperialism, entered interior British Columbia in the mid-nineteenth century with the vision of re-creating the yeoman society that Sir Edward Lytton, Governor Douglas, and Thomas Jefferson had earnestly promoted. As we have seen, the future of establishing such an agrarian society largely depended on the effective exploitation of natural resources,

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[1] John Snow, *These Mountains are Our Sacred Places: The Story of the Stoney Indians* (Toronto: Samuel Stevens, 1977), 7.

especially water, by curtailing the power of indigenous peoples over their territories. American miners and British-Canadian homesteaders came to Western Canada and facilitated the establishment of water rights legislation and a regulatory regime that was rooted in the property theory of the influential seventeenth century philosopher, John Locke, and the utilitarianism of the enlightenment period. By the mid-nineteenth century, these ideas had shaped colonial culture and deeply permeated into colonial practices in British Commonwealth countries such as Australia, Canada, New Zealand, and India. The promulgation of water law gave British-Canadian colonizing agents, such as Joseph Trutch, Edgar Dewdney, William McDougall, J.S. Dennis, and William Pearce the power to override the existing indigenous ownership of land and water and appropriate the indigenous environment to accommodate agricultural activities for incoming settlers.

The Lockean idea that North America was a *tabulae rasae* or blank space, which disregarded the various ways Native peoples had used the land, also provided agents of colonialism with a politically expedient and inexpensive means to legitimate the imposition of the specific irrigation-oriented water rights doctrine known as prior appropriation. Beginning in the late nineteenth century, British Columbia officials adopted the doctrine to establish its power over water rights administration. William Pearce and other Dominion officials also introduced to doctrine to the Treaty 7 region in the 1890s.

In the process, we have observed the creation of multiple layers of jurisdiction, or what some experts call "parallel paths," which often competitively sought to control and

manage water resources in Western Canada. Within this legal and political context, the history of the region unfolded somewhat similarly to the way it did in some states of the American West. These layers of jurisdiction included indigenous peoples, provincial governments, and the federal government. They were intertwined at the local level in ways that gave colonialism distinct regional expressions as Edward Said likely would have anticipated when he wrote *Culture and Imperialism*. My study has focused on how Native peoples, government officials, and settlers contributed to these varied formations.

My two case studies of the Secwepemc water rights struggles and the Blackfoot irrigation experiments outlined the interconnected cultures that emerged on the Kamloops and Neskonlith reserves in British Columbia and on the Blackfoot reserve in Alberta in the early twentieth century. In these places, traditional hunting and fishing activities and ceremonial life, as exemplified by the famous Sun Dance on the latter reserve, went hand in hand with the newly introduced irrigation and farming practices that the DIA promoted in the hope of converting Indians into "useful" yeoman citizens. Against the wishes of federal officials, traditional Native leaders managed to retain control over their own people and curtailed, if not eliminated, the power and influence of DIA appointed water bailiffs and non-Indian farm instructors. In so doing, as my research has demonstrated, these leaders showed their considerable determination to retain their self-governing rights by adopting Western legal and political concepts as a tool to convince the federal government of their legitimate claims to land and water. What the leaders meant to claim by using these

concepts was significantly different from what lawyers or politicians understood about Native rights at the time. For the Native leaders, the objective of obtaining legal and political recognition of their "rights" in the Dominion jurisdiction was mainly to induce the government to fulfill its fiduciary duty of solving local land and water disputes between reservation Indians and neighboring settlers. Native leaders also wanted to affirm Aboriginal jurisdiction over natural resources. What they achieved was remarkable, given that amendments made to the Indian Act in 1884 and 1927 outlawed traditional ceremonial activities such as the Potlatch and the Sun Dance, and emasculated Indian attempts to advance their land and water claims. The late Secwepemc grand chief George Manuel once called this power struggle the period of "the phoney war."[2] In this contest, during the decades of the late nineteenth century and the early twentieth century, individual Indians had to choose whether to resist as best they could, or take advantage of the increased power Indian agents wielded in their attacks on traditional authority, which often involved creating divisions in the reserve communities.

Although irrigation agriculture was new to most of the Native peoples in interior British Columbia and southern Alberta, the majority of them did not refuse to integrate it into their local economies. It took considerable time for them to successfully manage the introduction. However, this was not primarily because agriculture was new to them. Rather, as Sarah Carter cogently demonstrated in her studies of the Treaty 6 Indians, it was

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[2] George Manuel and Michael Posluns, *Fourth World: An Indian Reality* (Don Mills, Ontario:

largely because the technological and financial support that the DIA provided turned out to be woefully inadequate. This problem became even more acute when the Deputy Minister of the DIA, Duncan Campbell Scott, administered Indian affairs from 1913 to 1932. An added problem for the Secwepemc and Blackfoot was that irrigation technology was not sufficiently developed to cope with the unstable climate of their semi-arid environment.

The increasingly fractious water rights disputes that were taking place at the turn of the century between the British Columbia and Dominion governments and the arbitrary and inconsistent policies within the Dominion departments regarding Indian water rights questions exacerbated these problems. Ultimately these two obstacles prevented the Native peoples from securing and maintaining their irrigation projects. Although federal Indian commissioners entered records of water rights for Indians in British Columbia beginning in the 1870s, provincial authorities steadfastly refused to recognize their validity even though water shortage on reserves were acute. The latter problem heightened federal-provincial jurisdictional strife in the 1910s and 1920s. In 1920, for instance, the provincial Board of Investigation validated the water record that colonial gold commissioner Peter O'Reilley entered for the Kamloops Indians. This record, which had a priority date of 1869, essentially acknowledged these people's Aboriginal water rights. Although the provincial court of appeal ruled against the Board's decision the following year, nonetheless, that same year the provincial legal and regulatory regime grudgingly

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Collier-Macmillan Canada, Ltd., 1974), 46-47.

recognized the existence of Indian water rights in the provincial Indian Water Claims Act (1921). Thus, one can argue that, overall, the inter-jurisdictional conflicts ultimately entailed recognizing to a limited extent the *sui generis* nature of these rights. Unfortunately, we have seen that this limited recognition did not actually guarantee Indian farmers water supplies that were secure against the claims of neighboring settlers.

In the Treaty 7 region, Native leaders also claimed that their nations owned the rivers, creeks, or coulees on their reserves. Before the implementation of the 1930 Natural Resources Transfer Agreement, their task of advancing these claims was less daunting than it was for Indians living in British Columbia. The province of Alberta lacked the legal authority to intervene in Indian water rights questions because the federal government held title to crown lands, the Blackfoot only had to deal with one level of government. When they sought to establish irrigation works at Old Sun's Bottom, the Department of the Interior did not object and no extant federal legislation created any approval problems. The relevant Dominion legislation, such as the North-West Irrigation Act (1894), the Dominion Lands Act (1908), and the Dominion Water Power Act (1919) contained no provisions regarding Indian water rights. When Dominion authorities responded to the land and water rights issues that the Blackfoot raised, they were guided by the provisions of the Indian act, Treaty 7, and the North-West Irrigation Act. However, these acts and the treaty also did not provide a clear and cohesive guideline for water policies pertaining to Indians. In short, Indian water rights were ill-defined in the Treaty 7 region. This ambiguity and the absence

of provincial intervention often worked in the Blackfoot's favor.

On the Stoney Reserve, chiefs and councilors negotiated directly with federal government officials and hydroelectric companies about land and water rights, including those concerning waterpower. The Stoney people successfully advanced claims to local waterpower sites on the basis of riparian rights. In doing so they established the principle of paying annual water power rents to Aboriginal people. In these negotiations the federal government and waterpower companies did not contest the validity of the Stoney's claim that they held water rights to the Bow River. The practical and historical significance of these people's success was reflected in federal government policies and orders-in-council that recognized the existence of Aboriginal water and waterpower rights in the Treaty 7 area. For this reason, the early Stoney agreements stand out as the significant precedents.[3]

Significantly, these developments took place during a period when both Dominion and provincial officials sought answers in American precedents. Alberta and British Columbia water laws were largely based on American ideas. The North-West Irrigation Act, for example, incorporated the American philosophy of irrigation and water rights, and preceded the passage of the American Reclamation Act of 1902. The British Columbia Water Act also drew heavily on the ideas of American water rights experts from Colorado. By 1921, Dominion water rights experts had become very familiar with the Winters decision of 1908, and they recommended that Canadian Indian water rights be

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[3] See for example, James B. Waldram, *As Long as the Rivers Run: Hydroelectric Development and Native*

modeled after this U.S. doctrine. Partly as a result of these political circumstances, the Stoney agreements were compatible with the Winters doctrine because they recognized the riparian nature of Indian rights to waterbeds in the same way it had been acknowledged in this American precedent.

Although Dominion officials were accustomed to adopting American ideas and strategies, they did not always do so. Their approach to water rights in the Railway Belt in British Columbia was an example. As we have seen, the Judicial Committee of the Privy Council in London confirmed that the federal government held exclusive jurisdiction over this strip of land in the Burrard Power Company decision of 1910. This decision appeared very similar to the one that of the U.S. Supreme Court rendered in the Rio Grande Dam and Irrigation Company case of 1899 even though the Committee entirely relied on Canadian precedents in rendering its opinion. However, the two governments took contrasting courses after the 1899 and 1910 decisions. The federal government of the United States advanced this precedent in the Winters Indian water rights case, but DIA officials and other Canadian federal authorities did not do so when the Western Canadian Ranching or the Crosina cases arose. One explanation for the DIA's inaction was that department officials generally avoided going to court for conflict resolution. The department simply was not willing to spend its limited financial resources on litigating Native claims. This was especially so during the administration of Deputy Minister Duncan Campbell Scott

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Communities in Western Canada (Winnipeg: University of Manitoba Press, 1988).

(1913-32). As I have discussed, the department did hire a lawyer for British Columbia Indian water rights cases, but he was mainly expected to protect the interests of the Department and federal jurisdiction. Not only was the department unwilling to pursue the litigation avenue, it also did not promote amendments to the Indian Act that clarified and protected Indian water rights.

In summary, my case studies have demonstrated that Indian water rights questions became one of the most important and contested issues in the areas of southwestern Alberta and interior British Columbia during the period between the 1870s and the 1930s. Yet a fundamental question remains. Why do we know so little about the history of this controversy if Indian water rights issues were so painfully important? One explanation is the downtrend of agriculture on Indian reserves after World War II. The DIA regime persistently curtailed Native self-governing power over agricultural practices. The mounting cost for maintaining and repairing flumes, ditches, and agricultural machines also made Native farming financially difficult to sustain in these semi-arid lands. Native farmers could not obtain a loan from the bank at the time nor could they sell their products outside their reserves. This market discrimination prevented them from expanding agriculture and gaining economic independence. After many years of hardship, Native agriculture and water claims subsided, if not disappeared altogether.

More important, the increasing numbers of legal and historical studies on the Indian land question in Western Canada after the 1950s somehow left out water rights

issues. With the intensifying struggle for Aboriginal land rights beginning in the early 1970s, the roles experts played became ever more important in clarifying land rights questions. The studies that legal experts and anthropologists provided at the time largely took evidence from case laws on title questions to or about "traditional" use and occupancy of the land. Unfortunately, they failed to document how Native peoples used water and claimed their water rights. They also gave little attention to the ways First Nations valued land and water in cultural and spiritual terms. At the time, the connection of land and water resources might have sounded too obvious to merit comment by those experts. Since the 1980s, however, scholars of Aboriginal rights history have revised their focus to include various aspects of this history, particularly fisheries and water resources and rights issues related to them. My study is a first step directed toward that exploration.

Bibliography

Court Cases (Alphabetical Order)

Canada

The Burrard Power Co. v. The King, 7 E.C.R. 295 (1909); 43 S.C.R. 27 (1909); A.C. 87 (1911).

Department of Indian Affairs v. Board of Investigation under Water Act, and Crosina, 36 B.C.L.R. 62 (1925).

Pasco et al. v. Canadian National Railway Company; Canadian National Railway Company v. Pasco et al., 69 B.C.L.R. 76 (1985).

St. Catherine's Milling and Lumber Co. v. The Queen, 14 A.C. 46 (1888).

Western Canadian Ranching Co. v. Department of Indian Affairs, 60 D.L.R. 360 (1921), 2 W.W.R. 834 (1921).

U.S.

Anderson v. Spear-Morgan Livestock Co., 79 P. 2d. 667 (Montana 1938).

Arizona v. California, 373 U.S. 546 (1963).

Conrad Investment Co. v. United States, 161 Fed. 829 (C.C.A. 9, 1908).

Skeem v. United States, 273 Fed. 95 (C.C.A. 9, 1921).

United States v. McIntire, 101 Fed. 2d. 650 (C.C.A. 9, 1939).

United States v. Parkins, 18 Fed. 2d. 642 (D.C. Wyoming, 1926).

United States v. Powers, 305 U.S. 527 (1939).

United States v. Rio Grande Dam and Irrigation Company, 174 U.S. 690 (1899).

United States v. Walker River Irrigation District, 104 Fed. 2d. 321 (9th Cir., 1956).

United States v. Winans, 198 U.S. 371 (1904).

United States ex rel. Ray v. Hibner, 27 Fed. 2d. 909 (D.C. Idaho, 1928).

Winters v. United States, 207 U.S. 564 (1908).

Statutes (Chronological Order)

Ordinances and Proclamations of the Colony of British Columbia
The Proclamation having the force of Law to declare that English Law is in force in British Columbia, 1858.

Proclamation to make provision for regulating the acquisition of land in British Columbia [Gold Fields Act, 1859].

Proclamation by His Excellency James Douglas, Governor of British Columbia. Proclamation having the force of Law in Her Majesty's Colony of British Columbia. 1859, 22 Vict., c.51.

An Ordinance for regulating the Acquisition of land in B.C. [Land Ordinance, 1865]. 1865, 28 Vict.

An Ordinance to assimilate the general application of English Law [English Law Ordinance]. 1867, 30 Vict., c. 214.

An Ordinance to amend the Laws relating to Gold Mining. 1867, 30 Vict., c. 123.

An Ordinance to amend and consolidate the Laws affecting Crown Lands in B.C. [Land Ordinance]. 1870, 33 Vict., no. 144.

Statutes of British Columbia
An Act respecting the Drainage and Dyking and Irrigation of Lands in British Columbia. 1873, 36 Vict., c. 65.

An Act to amend and consolidate the Laws affecting Crown Lands in British Columbia [Land Act, 1875]. 1875, 38 Vict., c.98.

An Act to grant public lands on the Mainland to the Dominion of Canada in aid of Canadian Pacific Railway. 1880, 43 Vict., c. 11.

An Act to amend and Consolidate the Laws affecting Crown Lands [Land Act]. 1884, 47 Vict., c. 16; 1888, 51 Vict., c. 10.

An Act to confirm to the Crown all unrecorded and unappropriated water and water power in the Province, and for other purposes [Water Privileges Act]. 1892, 55 Vict., c. 47.

An Act to confirm to the Crown all unrecorded and unappropriated Water and Water-power in the Province, and to consolidate and amend the law relating to the acquiring of Water-rights and Privileges for ordinary domestic, mining and agricultural purposes, for making adequate provision for municipal water supply, and for the application of water-power to industrial and mechanical purposes [Water Clauses Consolidation Act]. 61 Vict., c. 190.

An Act to declare the Rights of the Crown in respect to Water and Water Power, and to Amend and Consolidate the Laws of the Province relating to the Diversion, Acquisition and Use of Water [Water Act, 1909]. 1909, 9 Ed. 7, c. 48.

An Act to amend the "Water Act." 1911, 1 Geo. 5, c. 59; 1912, 2 Geo. 5, c. 49.

An Act respecting Water and Water-power, declaring the Rights of the Crown therein, and relating to the Diversion, Acquisition, and Use of Water [Water Act, 1914]. 1914, 4 Geo. 5, c. 81.

An Act to amend the "Water Act, 1914." 1920, 10 Geo. 5, c. 102; 1923, 14 Geo. 5, c. 74.

An Act respecting the Sumas Drainage, Dyking, and Development District. 1920, 10 Geo. 5, c. 87.

An Act respecting certain Claims to Water for Use on Indian Reserves [Indian Water Claims Act]. 1921, 12 Geo. 5, c. 19.

An Act to amend the "Water Act." 1925, 16 Geo. 5, c. 61; 1929, 19 Geo. 5, c. 67; 1931, 21 Geo. 5, c. 68.

Statutes of Alberta
An Act respecting Provincial Lands [Provincial Lands Act]. 1931, 21 Geo. 5, c. 43.

An Act respecting Arrears of Water Right Payments in Irrigation Districts [Irrigation Water Right Payment Arrears Act]. 1931, 21 Geo. 5, c. 74.

An Act respecting Water Resources [Water Resources Act]. 1931, 21 Geo. 5, c. 7.

Statutes of Canada
British North America Act [Constitution Act, 1867]. 1867, 30 & 31 Vict., c.3.

An Act respecting the Public Lands of the Dominion [Dominion Lands Act]. 1872, 35 Vict., c. 23.

An Act to provide for the construction of the Canadian Pacific Railway [Canadian Pacific Railway Act]. 1874, 37 Vict., c. 14.

An Act to amend the Dominion Lands Act. 1874, 37 Vict., c. 19; 1876, 39 Vict., c. 19; 1880, 43 Vict., c. 26; 1881, 44 Vict., c. 16; 1894, 57-58 Vict., c. 26.

An Act to amend and consolidate the laws respecting Indians [Indian Act]. 1876, 39 Vict., c. 18.

Treaty 7 (1877).

An Act to amend and consolidate the several Acts respecting the Public Lands of the Dominion [Dominion Lands Act, 1879]. 1879, 42 Vict., c. 31; 1908, 7-8 Ed. 7, c. 20.

An Act to amend the Indian Act. 1880, 43 Vict., c. 28; 1881, 44 Vict., c. 17; 1884, 47 Vict., c. 44; 1894, 57-58 Vict., c. 32; 1898, 61 Vict., c. 34; 1910, 9-10 Ed. 7, c. 36; 1914, 4-5 Geo. 5, c. 35; 1919, 9-10 Geo. 5, c. 56; 1927, 17 Geo. 5, c. 32.

An Act to amend and consolidate the several Acts relating to the North-West Territories

[North-West Territories Act]. 1880, 43 Vict., c. 25; 1886, 49 Vict., c. 25; 1894, 57-58 Vict., c. 17.

An Act respecting the Canadian Pacific Railway. 1881. 44 Vict., c. 1.

An Act to incorporate the Calgary Irrigation Company. 1893, 56 Vict., c. 71.

An Act respecting the Calgary Irrigation Company. 1894, 57-58 Vict., c. 106.

An Act respecting the land subsidy of the Canadian Pacific Railway Company. 1894, 57-58 Vict., c. 7.

An Act to consolidate and amend the Acts respecting Land in the Territories [Land Titles Act, 1894]. 57-58 Vict., c. 28.

An Act respecting the utilization of the waters of the North-west Territories for Irrigation and other purposes [North-west Irrigation Act]. 1894, 57-58 Vict., c. 30.

An Act to amend and consolidate the North-west Irrigation Acts of 1894 and 1895. 1898, 61 Vict., c. 35.

An Act to amend the Irrigation Act. 1908, 7-8 Ed. 7, c. 38; 1910, 9-10 Ed. 7, c. 34; 1914, 4-5 Geo. 5, c. 37; 1919, 9-10 Geo. 5, c.3.

An Act to establish and provide for the Government of the Province of Alberta [Alberta Act]. 1905, 4-5 Ed. 7, c. 3.

An Act respecting the Water in the Railway Belt and Peace River block of land [Railway Belt Water Act]. 1912, 2 Geo. 5, c. 47.

An Act to amend the Railway Belt Water Act [Railway Belt Water Act, 1913]. 1913, 3-4 Geo. 5, c. 45.

An Act respecting Dominion Water Powers [Dominion Water Power Act]. 1919, 9-10 Geo. 5, c. 19.

An Act respecting Water Power in the Province of Alberta, Saskatchewan, and Manitoba. 1929, 19-20 Geo. 5, c. 61.

An Act respecting the transfer of the Natural Resources of Alberta [Alberta Natural Resources Act]. 1930, 20-21 Geo. 5, c. 3.

An Act respecting the transfer of the Railway Belt and the Peace River Block [Railway Belt and Peace River Block Act]. 1930, 20-21 Geo. 5, c. 37.

Archival and Manuscript Sources

British Columbia. "Royal Commission on Timber and Forestry, 1909." British Columbia Archives and Record Service, GR-0271, Box 1, file 3.

Canada. Department of Indian Affairs. Black Series, Western Canada, Record Group 10, MS, National Archives of Canada, volumes 1326, 3582, 3634, 3660, 3661, 3668, 3683, 3686, 3742, 3695, 3706, 3720, 3907, 3948, 3995, 4010, 4057, 4081, 6506,

6507, 6512, 6513, 6514, 6515, 6517, 6518, 6567, 6570, 6587, 6589, 6591, 6592, 6593, 6594, 6613, 6614, 6623, 6820, 7543, 7586, 7603, 7604, 7659, 7676, 7866, 8055, 8057, 8058, 8316, 10315, 10332, 10351, 11002, 11020, 11026, 11027, 11070, 11299, 11301.

Canada. Department of Justice. Record Group 13, MS, National Archives of Canada, volumes 86-87, 2277, 2336, 2346, 2350.

Canada. Department of Interior. Record Group 15, MS, National Archives of Canada, Volumes 1232 and 1258.

Canada. Department of Indian and Northern Affairs. Record Group 22, MS, National Archives of Canada, volume 42.

Canada. Department of External Affairs. Record Group 25, MS, National Archives of Canada, volumes 1102 and 1516.

Lytton, Edward Bulwar. "Speech by Edward Bulwar Lytton to a Company of Royal Engineers, Leaving London in 1858 for British Columbia." University of British Columbia Special Collection, spam 13839.

William Pearce Collection, Series 7. University of Alberta Archives.

Tod, John. *Trading Experiences on the Thompson River, 1841-1843.* (1843) In University of British Columbia Special Collection.

Government Publication

British Columbia. *Papers connected with the Indian Land Question, 1850-1875.* Victoria: Richard Wolfenden, Government Printer, 1875.

British Columbia. *Proclamations, Acts, and Ordinances, passed by Legislative Council, 1858-1871.* New Westminster and Victoria, 1871.

British Columbia. Legislative Assembly. *Journals of the Legislative Assembly of the Province of British Columbia*, 2d. Sess., 1921.

Canada. Department of Indian Affairs. *Annual Report*, 1890-1901.

Canada. House of Commons. *Debates of the House of Commons*, 1912-13. Ottawa: C.H. Parmelee, 1912-13.

Canada. Parliament. *Sessional Papers*, 1915.

Challies, J.B. "Report of the Superintendent of the Water Power Branch." July 1915. In Canada. Parliament. *Sessional Papers*, 1916.

Chapais, J.C. "Report of the Minister of Agriculture." Canada. Ministry of Agriculture. *Sessional Papers*, 1869 (No. 76).

Dennis, J.S. "A Short History of the Surveys Made Under the Dominion Lands System 1869-1889." In Canada. Dominion Water Rights Branch. *Sessional Papers*, 1892 (No. 13).

Doran, Janis. "History of Water Rights on Indian Reserves in British Columbia." Department of Indian Affairs and Northern Development, B.C. Region, 1982.

Griffith, Miranda and Daniela Mogus eds. *First Nations Water Rights in British Columbia: A Historical Summary of the Rights of the Shuswap First Nation.* Victoria: British Columbia Ministry of Environment, Lands and Parks; Water Management Branch, 1999.

Grunsky, H.W. "Water Legislation and Administration in British Columbia." In *Report of the Water Rights Branch. British Columbia Sessional Papers, 1913.* 13th Parl., 1st Sess., D 117-125.

JOL Consulting ed. *First Nations Water Rights in British Columbia: A Historical Summary of the Rights of the Adams Lake First Nation.* Victoria: British Columbia Ministry of Environment, Lands and Parks; Water Management Branch, 2001.

Jolly, Diana ed. *First Nations Water Rights in British Columbia: A Historical Summary of the Rights of the Neskonlith First Nation.* Victoria: British Columbia Ministry of Environment, Lands and Parks; Water Management Branch, 2001.

Jolly, Diana ed. *First Nations Water Rights in British Columbia: A Historical Summary of the Rights of the Kamloops First Nation.* Victoria: British Columbia Ministry of Environment, Lands and Parks; Water Management Branch, 2001.

Jolly, Diana and Miranda Griffith eds. First Nations Water Rights in British Columbia: A Historical Summary of the Rights of the Williams Lake First Nations. Victoria: British Columbia Ministry of Environment, Lands and Parks; Water Management Branch, 2001.

Pearse, P.H., F. Bartrand, and J.W. MacLaren. "Water is a Mainstream Issue." Ottawa: Inquiry of Federal Water Policy, Minister of Supply and Services Canada, 1984.

Ross, Jeffrey A. "Indian Water Rights in the Western United States: An Historical Overview and Discussion of Some Current Issues." Department of Indian Affairs and Northern Development, 1985.

Smith, Donald M. "Water Rights on Indian Reserves in British Columbia." Department of Indian Affairs and Northern Development, 1985.

U.S. Department of the Interior. Bureau of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior*, 1905, 1906, 1914, 1915, 1920, 1921, 1923.

U.S. Department of the Interior. Bureau of Indian Affairs. *Annual Report of the Board of Indian Commissioners*, 1903, 1904, 1907, 1909, 1910, 1911, 1916, 1917, 1918.

Published Primary Documents

Appleby, Joyce and Terence Ball eds. *Thomas Jefferson: Political Writings.* Cambridge: Cambridge University Press, 1999.

Blackstone, William. *Commentaries on the Laws of England*, Books 1-4. Philadelphia: Rees Welsh and Company, 1897. Originally published from 1765 to 1769.

Bouchard, Randy and Dorothy Kennedy eds. *Shuswap Stories*. Vancouver: CommCrept Publishing Ltd., 1979).

Crevecoeur, J. Hector St. John. *Letters From an American Farmer*. Oxford: Oxford University Press, 1997. Orginally published in 1782.

Hind, Henry Youle. *Narrative of the Canadian Red River Exploring Expedition of 1857 and of the Assiniboine and Saskatchewan Exploring Expedition of 1858*. Edmonton: M.G. Hurtig Ltd., 1971.

Lamb, W. Kaye ed. *The Letters and Journals of Simon Fraser, 1806-1808*. Toronto: Macmillan Company of Canada Ltd., 1960.

Locke, John. *Two Treatises of Civil Government*. London and New York: J.M. Dent & Sons, Ltd. and E.P. Dutton & Co. Inc., 1955.

Lytton, Edward Bulwar. *The Last Days of Ponpeii*. London: Everyman's Library, 1906. Originally published in 1834.

_____. *Harold: The Last of the Saxon Kings*. London: Everyman's Library, 1906. Originally published in 1848.

Pope, Joseph ed. *Correspondence of Sir John Macdonald*. Garden City, New York and Toronto: Doubleday, Page & Company, 1921.

Wakefield, Edward Gibbon. *England and America: A Comparison of the Social and Political State of Both Nations*. New York: Harper & Brothers, 1834; reprint, New York: Augustus M. Kelley, 1967.

_____. *A View of the Art of Colonization, with Present Reference to the British Empire*. London: John W. Parker, West Strand, 1849; reprint, Oxford: Claredon Press, 1914.

Newspapers and Magazines

Calgary Herald.

Daily Herald. Calgary.

National Geographic Magazine.

Vancouver Sun.

Secondary Sources

Albert, Richard C. *Damming the Delaware: The Rise and Fall of Tocks Island Dam*. University Park, Penn.: Pennsylvania University Press, 1987.

Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of*

Nationalism. London and New York: Verso, 1991.

Appleby, Joyce. *Liberalism and Republicanism in the Historical Imagination*. Cambridge, Massachusetts: Harvard University Press, 1992.

Armstrong, Christopher and H.V. Nelles. *Monopoly's Moment: The Organization and Regulation of Canadian Utilities, 1830-1930*. Philadelphia: Temple University Press, 1986.

Armstrong, William S. "The British Columbia Water Act: The End of Riparian Rights." *UBC Law Review* 1 (April 1962): 583-594.

Arneil, Barbara. *John Locke and America: The Defence of English Colonialism*. Oxford: Claredon Press, 1996.

Asch, Michael ed. *Aboriginal Land and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*. Vancouver: University of British Columbia, 1997.

Athearn, Robert G. *The Mythic West in the Twentieth-Century America*. Lawrence: University Press of Kansas, 1986.

Attwood, Bain. *The Making of the Aborigines*. Sydney: Allen & Unwin, 1989.

Axtell, James. *The Invasion Within: The Contest of Cultures in Colonial North America*. New York and Oxford: Oxford University Press, 1985.

Back, William Douglas and Jeffrey S. Taylor. "Navajo Water Rights: Pulling the Plug on the Colorado River?" *Natural Resources Journal* 20 (January 1980): 71-89.

Banks, Nigel D. "Indian Resource Rights in Western Canada, 1871-1930." In *Law and Justice in a New Land*, ed. L.A. Knafla, pp. 129-161. Toronto: Carswell, 1986.

_____. "The Board of Investigation and the Water Rights of Indian Reserves in British Columbia, 1909-1926." In *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, eds. Kerry Abel and Jean Friesen. Winnipeg: University of Manitoba Press, 1991.

Barman, Jean. *The West Beyond the West: A History of British Columbia*, revised ed. Toronto: University of Toronto Press, 1996.

Bartlett, Richard H. "Indian Water Rights on the Prairies." *Manitoba Law Journal* 11 (1980): 59-90.

_____. "Indian Act of Canada: An Unyielding Barrier." *American Indian Journal* (April 1980): 11-26.

_____. *Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian Water Rights*. Calgary: Canadian Institute of Resources Law, 1988.

_____. "Hydroelectric Power and Indian Water Rights on the Prairies." *Prairie Forum* 14: 2 (Fall 1989): 177-193.

Beck, Robert E. ed. *Waters and Water Rights*. 1991 ed. vol.2 Charlottesville, Virginia: The Miche Company, 1991.

Benedict, Murray R. *Farm Policies of the United States, 1790-1950: A Study of Their Origins and Development*. New York: Twentieth Century Fund, 1953.

Berger, Carl. *The Writing of Canadian History: Aspects of English-Canadian Historical Writing since 1900*. Toronto: University of Toronto Press, 1986.

Berkhofer, Jr., Robert. "Model Zion for the American Indian." *American Quarterly* 15 (Summer 1963): 176-190.

_____. *The White Man's Indian: Images of the American Indian from Columbus to the Present*. New York: Vintage Books, 1978.

Berman, Richard L. and W. Kip Viscusi. *Damming the West*. New York: Grossman Publishers, 1973.

Bilharz, Joy A. *The Allegany Senecas and Kinzua Dam: Forced Relocation through Two Generations*. Lincoln: University of Nebraska Press, 1998.

Bird, Elizabeth Ann R. "The Social construction of Nature: Theoretical Approaches to the History of Environmental Problems." *Environmental History* 11 (Winter 1987): 255-264.

Boomgarden, lynnette J. "Water Law--Quantification of Federal Reserved Indian Water Rights--: 'Practicably Irrigable Acreage' Under Fire: The Search for a Better Legal Standard." *Land and Water Law Review* 25 (1990): 417-424.

Breen, David H. *The Canadian Prairie West and the Ranching Frontier, 1874-1924*. Toronto: University of Toronto Press, 1983.

Brewer, John and Susan Staves. *Early Modern Conceptions of Property*. London and New York: Routledge, 1995.

Brown, F. Lee and Helen M. Ingram. *Water and Poverty in the Southwest*. Tucson: University of Arizona Press, 1987.

Burchill, C.S. "The Origins of Canadian Irrigation Law." *Canadian Historical Review* 29: 4 (December 1948): 353-362.

Burton, Lloyd. *American Indian Water Rights and the Limits of Law*. Lawrence: University Press of Kansas, 1991.

Byfield, Ted ed. *Alberta in the 20th Century: A Journalistic History of the Province in Eleven Volumes*, vol. 2: *The Birth of the Province*. Edmonton: United Western Communications Ltd., 1992.

Cail, Robert E. *Land, Man, and the Law: The Disposal of Crown Lands in British Columbia, 1871-1913*. Vancouver: University of British Columbia Press, 1974.

Campbell, Richard S, P. Pearse, and A. Scott. "Water Allocation in British Columbia: An Economic Assessment of Public Policy." *UBC Law Review* 7: 2 (1972): 247-292.

Careless, J.M.S. *Canada: A History of Challenge*. Toronto: Macmillan of Canada, 1970.

Carlson, Keith Thor, Melinda Marie Jette, and Kenichi Matsui. "An Annotated Bibliography of Major Writings in Aboriginal History, 1990-99." *Canadian Historical Review* 82: 1 (March 2001): 122-171.

Carter, Sarah. *Lost Harvest: Prairie Indian Reserve Farmers and Government Policy*. Montreal and Kingston: McGill-Queen's University Press, 1990.

Checchio, Elizabeth and Bonnie G. Glby. *Indian Water Rights: Negotiating the Future*. Tucson: Water Resources Research Center, University of Arizona, College of Agriculture, 1993.

Christiensen, Bev. *Too Good To Be True: Alcan's Kemano Completion Project*. Vancouver: Talon Books, 1995.

Claque, John Joseph. *Formation and Failure of Natural Dams in the Canadian Cordillera*. Ottawa: Geological Survey, 1994.

Coates, Ken. "Writing First Nations into Canadian History: A Review of Recent Scholarly Works." *Canadian Historical Review* 8: 1 (March 2000): 99-114.

Cohen, Felix S. *Handbook of Federal Indian Law*. Washington, D.C.: Government Printing Office, 1942.

Cole, Douglas, and Ira Chaikin. *An Iron Hand Upon the People: The Law against the Potlatch on the Northwest Coast*. Vancouver and Seattle: Douglas & McIntyre and University of Washington Press, 1990.

Cook, Ramsay. "Landscape Painting and National Sentiment in Canada." *Historical Reflections* 1: 2 (1974): 263-283.

Crevecoeur, J. Hector St John de. *Letters from an American Farmer*, ed. Susan Manning. Oxford and New York: Oxford University Press, 1997.

Cronon, William. *Nature's Metropolis: Chicago and the Great West*. New York: Norton, 1991.

Dales, John H. *Hydroelectricity and Industrial Development: Quebec, 1898-1940*. Cambridge: Harvard University Press, 1957.

Day, David. *Claiming a Continent: A New History of Australia*. Sydney: Angus & Robertson, 1997.

Dempsey, Hugh A. "The Blackfoot Indians." In *Native Peoples: The Canadian Experiences*, 2d. ed. Ed. R. Bruce Morrison and C. Roderick Wilson, pp. 381-413. Toronto: McClelland & Stewart Inc., 1995.

Den Otter, Andy Albert. *Irrigation in Southern Alberta, 1882-1901*. Lethbridge: Alberta: Historical Society of Alberta, 1975.

Dennen, R. Taylor. "Some Efficiency Effects of Nineteenth-Century Federal Land Policy: A Dynamic Analysis." *Agricultural History* 51: 4 (October 1977): 718-736.

Deverell, William F. "To Loosen the Safety Valve: Eastern Workers and Western Lands." *Western Historical Quarterly* 19: 3 (August 1988): 269-285.

Dickason, Olive Patricia. *The Myth of the Savage: And the Beginning of French Colonialism in the Americas*. Edmonton: University of Alberta, 1984.

Dippie, Brian W. *The Vanishing American: The White Attitudes and U.S. Indian Policy*. Lawrence: University of Kansas Press, 1982.

Doolittle, William E. *Cultivated Landscapes of Native North America*. Oxford and New York: Oxford University Press, 2000.

Drinnon, Richard. *Facing West: The Metaphysics of Indian Hating and Empire Building*. Minneapolis: University of Minnesota Press, 1980.

DuMars, Charles and Helen Ingram. "Congressional Quantification of Indian Reserved Water Rights: A Definitive Solution or a Mirage?" *Natural Resources Journal* 20 (January 1980): 17-43.

DuMars, Charles, Marilyn O'Leary, and Albert E. Utton. *Pueblo Indian Water Rights: Struggle for a Precious Resource*. Tucson: University of Arizona Press, 1984.

Dunn, Joyce. *A Town Called Chase*. Penticton, British Columbia: Theytus Books, 1986.

Ely, Jr., James W. *The Guardian of Every Other Right: A Constitutional History of Property Rights*. New York and Oxford: Oxford University Press, 1998.

Engelbert, Ernest and Ann Foley Scheuring eds. *Water Scarcity: Impacts on Western Agriculture*. Berkeley: University of California Press, 1984.

Escott, Thomas Hay Sweet. *Edward Bulwar, First Baron Lytton of Knebworth: A Social, Personal, and Political Monograph*. London: George Routledge and Sons, Ltd.; New York: E.P. Dutton and Co., 1910.

Faragher, John Mack ed. *The American Heritage Encyclopedia of American History*. New York: Henry Holt and Company, 1998.

Fiege, Mark. Irrigated Eden: *The Making of an Agricultural Landscape in the American West*. Seattle & London: University of Washington Press, 1999.

Fisher, Robin. *Duff Pattullo of British Columbia*. Toronto: University of Toronto Press, 1991.

_____ . *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*, 2d ed. Vancouver: University of British Columbia Press, 1992.

Foreman, Richard L. *Indian Water Rights: A Public and Administrative Mess.* Danville, Ill.: The Interstate Printers & Publishers, Inc., 1981.

Foster, Hamar. "Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849-1927." In *Essays in the History of Canadian Law, vol. 6: British Columbia and the Yukon*, eds. Hamar Foster and John McLaren, pp. 28-86. Toronto: Osgoode Society, 1995.

Fowke, Vernon C. *The National Policy and the Wheat Economy.* Toronto: University of Toronto Press, 1957.

Fradkin, Philip L. *A River No More: The Colorado River and the West.* Tucson: University of Arizona Press, 1981.

Francis, Daniel ed. *Encyclopedia of British Columbia.* Madeira Park, British Columbia: Habour Publishing Ltd., 2000.

Francis, R. Douglas, and Howard Palmer eds. *The Prairie West: Historical Readings.* Edmonton: Pical Pica Press, 1992.

Frideres, James S. "Government Policy and Indian Natural Resources Development." *Canadian Journal of Native Studies* 4: 1 (1984): 51-66.

Genini, Ronald. "The Fraser-Cariboo Gold Rushes: Comparisons and Contrasts with the California Gold Rush." *Journal of the West* 11: 3 (July 1972): 470-487.

Gibson, Dale. "The Constitutional Context of Canadian Water Planning." *Alberta Law Review* 7 (1968-69): 71-92.

Glenn, Jack. *Once Upon an Oldman: Special Interest Politics and the Oldman River Dam.* Vancouver: University of British Columbia Press, 1999.

Gormley, Daniel J. "Aboriginal Rights as Natural Rights." *Canadian Journal of Native Studies* 4: 1 (1984): 29-49.

Gross, Renie. *Groundwork: Carl Anderson, Farm Crusader.* Wardlow, Alberta: Badlands Books, 1998.

Guerrerro, Marianna. "American Indian Water Rights: The Blood of Life in Native North America." In *The State of Native America: Genocide, Colonization, and Resistance*, ed. by M. Annette Jaimes, pp. 189-216. Boston: South End Press, 1992.

Gumerman, George J. ed. *Exploring the Hohokam: Prehistoric Desert Peoples of the American Southwest.* Dragoon, Arizona, and Albuquerque: An Amerind Publication and University of New Mexico Press, 1991.

Hanks, Lucien M. and Jane Richardson Hanks. *Tribe Under Trust: A Study of the Blackfoot Reserve of Alberta.* Toronto: University of Toronto Press, 1950.

Hannum, Eric. "Administration of Reserved and Non-Reserved Water Rights on an

Indian Reservation: Post-Adjudication Question on the Big Horn River." *Natural Resources Journal* 32 (Summer 1992): 681-704.

Harmon, Alexandra. *Indians in the Making: Ethnic Relations and Indian Identities around Puget Sound*. Berkeley: University of California Press, 1998.

Harris, Cole. "The Myth of the Land in Canadian Nationalism." In Peter Russel ed. *Nationalism in Canada*. Toronto: McGraw-Hill, 1966.

_____. *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change*. Vancouver: University of British Columbia Press, 1997.

_____. *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*. Vancouver: University of British Columbia Press, 2002.

Harris, Douglas. *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia*. Toronto: University of Toronto Press, 2001.

Hawkins, W.E. *Electrifying Calgary: A Century of Public and Private Power*. Calgary: University of Calgary Press, 1987.

Hayden, Brian ed. *A Complex Culture of the British Columbia Plateau: Traditional* Stl'átl'imx *Resource Use*. Vancouver: University of British Columbia Press, 1992.

Hedges, James B. *Building the Canadian West: The Land and Colonization Policies of the Canadian Pacific Railway*. New York: Russell & Russell, 1939.

Heyck, Thomas William. *The Peoples of the British Isles: A New History From 1688 to 1870*, vol. 2. Belmont, California: Wadsworth Publishing Company, 1992.

Hill-Tout, Charles. *The Salish People: The Local Contribution of Charles Hill-Tout, Vol. 1: The Thompson and the Okanagan*., ed. by Ralph Maud. Vancouver: Talon Books, 1978.

Hoxie, Frederick E. *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920*. Lincoln: University of Nebraska Press, 1984.

Hultkrautz, Ake. "Water Spirits: The Elders of the Fish in Aboriginal North America." *American Indian Quarterly* 7: 3 (1983): 1-22.

_____. *Okanagan Indian Legends*, 2d. Annual Report of the Okanagan Historical Society, Vernon, B.C., 1978.

_____. "Indian Land Use and Occupancy in the Franklin D. Roosevelt Lake Area of Washington State." Report prepared for the Colville Confederated Tribes and the Bureau of Reclamation, 1984.

_____. "Indian History and Knowledge of the Lower Similkameen River-Palmer Lake Area, Okanagan County, Washington." Report to the U.S. Army Corps of Engineers, Seattle. Manuscript of B.C. Indian Language Project, 1984.

Hundley, Jr., Norris. "Clio Nods: Arizona v. California and the Bounder Canyon Act--A Reassessment." *Western Historical Quarterly* 3 (January 1972): 17-51.

_____. *Water and the West*. Berkeley: University of California Press, 1975.

_____. "The Dark and Bloody Ground of Indian Water Rights: Confusion Elevated to Principle." *Western Historical Quarterly* 9 (October 1978): 455-482.

_____. "The 'Winters' Decision and Indian Water Rights: A Mystery Reexamined." *Western Historical Quarterly* 13: 1 (January 1982): 17-42.

Hunter, Louis C. *A History of Industrial Power in the United States, 1780-1930, vol. 1: Water Power in the Century of the Steam Engine*. Charlottesville: University Press of Virginia, 1979.

Hurst, James Willard. *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin*. Cambridge: Belknap Press of Harvard University Press, 1964.

Ignace, Marianne Boelscher. "Shuswap." In *Handbook of North American Indians: Plateau*, vol. 12. Ed. Deward E. Walker. Washington, D.C.: Smithsonian Institution Press, 1998.

Innis, Harold A. *The Fur Trade in Canada*. New Haven: Yale University Press, 1930.

Isaac, Thomas. *Aboriginal Law: Cases, Materials, and Commentary*. Saskatoon, Sask.: Purich Publishing, 1995.

Iverson, Peter. "Hohokam, Hoover Dam, Hayden: Indians, Water and Power in the West." *American Indian Quarterly* 12 (1988): 329-332.

_____. "The Cultural Politics of Water in Arizona." In *Politics in the Postwar American West*, ed. by Richard Lowitt, pp. 22-41, 310-312. Norman: University of Oklahoma Press, 1994.

Jacobsen, Judith E. "The Navajo Indian Irrigation Project and Quantification of Navajo Winters Rights." *Natural Resources Journal* 32 (Fall 1992): 825-853.

Jackson, Donald C. *Building the Ultimate Dam: John S. Eastwood and the Control of Water in the West*. Lawrence: University Press of Kansas, 1995.

Jennings, Francis. The Invasion of America: Indians, Colonialism, and the Cant of Conquest. New York: W.W. Norton & Company, 1975.

Johnson, Herbert A. *The Chief Justiceship of John Marshall, 1801-1835*. Columbia: University of South Carolina Press, 1997.

Jones, David C. *Empire of Dust: Settling and Abandoning the Prairie Dry Belt*. Edmonton: University of Alberta Press, 1987.

Jorgensen, Joseph G. "Land is Cultural, So is a Commodity: The Locus of Differences among Indians, Cowboys, Sod-Busters, and Environmentalists." *Journal of*

Ethnic Studies 12 (Fall 1984): 1-12.

Josephy, Jr., Alvin M. *Now That the Buffalo's Gone: A Study of Today's American Indians*. Norman: University of Oklahoma Press, 1989.

Katz, Stanley N. "Thomas Jefferson and the Right to Property in Revolutionary America." *Journal of Law and Economics* 19 (October 1976): 467-488.

Kinney, Tom. "Chasing the Wind: Wyoming Supreme Court Decision in Big Horn III Denies Beneficial Use for Instream Flow Protection, but Empowers State to Administer Federal Indian Reserved Water Right Awarded to the Wind River Tribes." *Natural Resources Journal* 33 (1993): 841-871.

Kirk, Peggy Sue. "Water Law-Indian Law-Cowboys, Indians and Reserved Water Rights: May a State Court Limit How Indian Tribes Use Their Water?" *Land and Water Law Review* 28 (1993): 467-488.

Knobloch, Frieda. *The Culture of Wilderness: Agriculture as Colonization in the American West*. Chapel Hill and London: University of North Carolina Press, 1996.

Knorr, Klaus E. *British Colonial Theories, 1570-1850*. Toronto: University of Toronto Press, 1944.

Krotz, Larry. "Dammed and Diverted." *Canadian Geographic* (February/ March 1991): 36-44.

Lower, J. Arthur. *Western Canada: An Outline History*. Toronto and Vancouver: Douglas & McIntyre, 1983.

Lawson, Michael L. *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944-1980*. Norman: University of Oklahoma Press, 1982.

McCool, Daniel. *Command of the Waters: Iron Triangles, Federal Development, and Indian Water*. Tucson: University of Arizona Press, 1993.

McCully, Patrick. *Silenced Rivers: The Ecology and Politics of Large Dam*. London: Zed Books, 1996.

MacEwan, Grant. *Tatanga Mani: Walking Buffalo of the Stonies*. Edmonton: Hurtig Publishers, 1969.

McFarlane, Peter. *Brotherhood to Nationhood: George Manuel and the Making of the Modern Indian Movement*. Toronto: Between the Lines, 1993.

McGuire, Thomas R. "Indian Water Rights Settlements: A Case Study in the Rhetoric of Implementation." *American Indian Culture and Research Journal* 15: 2 (1992): 139-169.

McGuire, Thomas R., William B. Lord, and Mary G. Wallace eds. *Indian Water in the New West*. Tucson: University of Arizona Press, 1993.

McKercher, Robert B. and Bertram Wofe. *Understanding Western Canada's Dominion Land Survey System*. Saskatoon: Division of Extension and Community Relations, University of Saskatchewan, 1986.

Mackie, Richard Somerset. *Trading Beyond the Mountains: The British Fur Trade on the Pacific, 1793-1843*. Vancouver: University of British Columbia Press, 1997.

McKnight, Tom L. *Regional Geography of the United States and Canada*, 2d ed. Upper Saddle River, New Jersey: Prentice-Hall Inc., 1997.

Marsh, James H. ed. *Canadian Encyclopedia*. Edmonton: Hurtig Publishers, 1986.

Marshall, Daniel P. "No Parallel: American Miner-Soldiers at War with the Nlaka'pamux of the Canadian West." In *Parallel Destinies: Canadian-American Relations West of the Rockies,* eds. by John M. Findlay and Ken S. Coates, pp. 31-79. Seattle: Center for the Study of the Pacific Northwest in association with University of Washington Press; Montreal and Kingston: McGill-Queen's Press, 2002.

Martin, Chester. *"Dominion Lands" Policy*. Toronto: Macmillan Company of Canada Ltd., 1938.

Marx, Leo. *The Machine in the Garden: Technology and the Pastoral Ideal in America*. New York: Oxford University Press, 1964.

Massie, Michael A. "The Defeat of Assimilation and the Rise of Colonialism on the Fort Belknap Reservation, 1873-1925." *American Indian Culture and Research Journal* 7: 4 (1984): 33-49.

_____. "The Cultural Roots of Indian Water Rights." *Annals of Wyoming* 59 (Spring 1987): 15-27.

Matsui, Kenichi. "The Winters Doctrine and Federal Indian Policies." In *Law and Power in the Margins: Voices from beyond the Centres*, edited by Douglas Harris and et al., panel #1. Vancouver: Faculty of Law, University of British Columbia, 1997.

Mead, Elwood. *Irrigation Institutions*. London: Macmillan Company, 1907.

Merrill, James L. "Aboriginal Water Rights." *Natural Resources Journal* 20 (January 1980): 45-70.

Mierendorf, Robert R. et al. *A Cultural Resources Predictive Land Use Model for the Okanogan Highlands: An Impact Assessment for the Bonneville Power Administration's Chief Joseph Dam--Tonasket and Grand Coulee--Keeler transmission lines*. Cheney, Wash.: Bonneville Cultural Resources Group, 1981.

Miklas, Christine L. and Steven J. Shupe eds. *Indian Water 1985: Collected Essays*. Oakland, Calif.: AILTP/ American Indian Resources Institute, 1986.

Milner II, Clyde A., Carol A. O'Conner, and Martha A. Sandweiss eds. *The Oxford History of the American West*. New York and Oxford: Oxford University Press,

1994.

Mitchell, Joanne. "Water Resources of Canada, the Canada Water Act and Comprehensive Planning." In *Natural Resources Development in Canada*, ed. by Phillipe Crabbé and Irene Spry, pp. 157-182. Ottawa: University of Ottawa Press, 1973.

Montmarquet, James A. *The Idea of Agrarianism: From Hunter-Gatherer to Agrarian Radical in Western Culture*. Moscow: University of Idaho Press, 1989.

Morse, Bradford W. ed. *Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada*. Ottawa: Carleton University Press, 1991.

Morton, Arthur S. *History of Prairie Settlement*. Toronto: Macmillan Company of Canada Ltd., 1938.

Morton, F.L. ed. *Law, Politics and the Judicial System in Canada*. Calgary: University of Calgary Press, 1984.

Morton, W.L. *Henry Youle Hind, 1823-1908*. Toronto: University of Toronto Press, 1980.

Mouat, Jeremy. *The Business of Power: Hydro-Electricity in Southeastern British Columbia, 1897-1997*. Victoria, B.C.: Sono Nis Press, 1997.

Nash, Roderick. *Wilderness and the American Mind*, 3d. ed. New Haven: Yale University Press, 1982.

Newson, Malcom. *Land, Water and Development: River Basin Systems and their Sustainable Management*. London: Routledge, 1992.

Newell, Dianne. *Tangled Webs of History: Indians and the Law in Canada's Pacific Coast Fisheries*. Toronto: University of Toronto Press, 1993.

Nickeson, Steve. *Indian Water Rights*. Washington, D.C.: Institute for the Development of Indian Law, 1979.

Notzke, Claudia. *Indian Reserves in Canada: Development Problem of the Stoney and Peigan Reserves in Alberta*. Marburg/ Lahn: Im Selbstverlag des Geographischen Instituts der Universitat Marburg, 1985.

_____. *Aboriginal People and Natural Resources in Canada*. North York, Ontario: Campus University Publications, 1994.

Ormsby, Margaret A. *British Columbia: A History*. Toronto: Macmillan of Canada, 1958.

Palma II, Jack D. "Considerations and Conclusions Concerning the Transferability of Indian Water Rights." *Natural Resources Journal* 20 (January 1980): 91-100.

Parish, Roberta, Ray Coupé, and Dennis Lloyd eds. *Plants of Southern Interior British Columbia*. Vancouver: B.C. Ministry of Forests and Lone Pine Publishing, 1996.

Percy, David R. "Water Rights in Alberta." *Alberta Law Review* 15 (1977): 142-165.

Peregoy, Robert. "Jurisdictional Aspects of Indian Reserved Water Rights in Montana and on the Flathead Indian Reservation After Adsit." *American Indian Culture and Research Journal* 6: 4 (1982): 41-86.

Pipes, Richard. *Property and Freedom: The Story of How Through the Centuries Private Ownership Has Promoted Liberty and the Rule of Law*. New York: Alfred A. Knopf, 1999.

Pisani, Donald J. *From the Family Farm to Agribusiness: The Irrigation Crusade in California and the West, 1850-1931*. Berkeley: University of California Press, 1984.

_____. *To Reclaim a Divided West: Water, Law, and Public Policy 1848-1902*. Albuquerque: University of New Mexico Press, 1992.

_____. *Water, Land, and Law in the West: The Limits of Public Policy, 1850-1920*. Lawrence: University Press of Kansas, 1996.

Price, Monroe E. and Gary D. Weatherford. "Indian Water Rights in Theory and Practice: Navajo Experience in the Colorado River Basin." In *American Indians and the Laws*, ed. by Lawrence Rosen, pp. 97-131. New Brunswick, New Jersey: Transaction Books, 1976.

Prucha, Francis Paul ed. *Americanizing the American Indians: Writings by the "Friends of the Indian," 1880-1900*. Lincoln: University of Nebraska Press, 1973.

_____ed. *Documents of United States Indian Policy*. Lincoln: University of Nebraska Press, 1990.

_____. *American Indian Policy in Crisis, 1865-1900*. Norman: University of Oklahoma Press, 1976.

_____. *The Great Father: The United States Government and the American Indians*. Lincoln: University of Nebraska Press, 1984.

_____. *American Indian Treaties: The History of a Political Anomaly*. Berkeley: University of California Press, 1994.

Quinn, Frank. "As Long as the Rivers Run: The Impacts of Corporate Water Development on Native Communities in Canada." *Canadian Journal of Native Studies* 11: 1 (1991): 137-154.

Ray, Arthur J. *Indians in the Fur Trade: Their Role as Trappers, Hunters, and Middlemen in the Lands Southwest of Hudson Bay, 1660-1870*. Toronto: University of Toronto Press, 1998. Originally published in 1974.

_____. *I Have Lived Here Since the World Began: An Illustrated History of Canada's Native People*. Toronto: Lester Publishing Ltd. and Key Porter Books, 1996.

Ray, Arthur J. and Donald Freeman. *'Give Us Good Measure': An Economic Analysis of Relations between the Indians and the Hudson's Bay Company before 1763.* Toronto: University of Toronto Press, 1978.

Ray, Arthur J., J.R. Miller, and Frank Tough, *Bounty and Benevolence: A History of Saskatchewan Treaties*. Montreal and Kingston: McGill-Queen's Press, 2000.

Reisner, Marc. *Cadillac Desert: The American West and Its Disappearing Water*. New York: Penguin Books, 1986.

Riley, John. "The Water Wars: From the Missouri River to the Pacific Ocean, Lawyers for Indians, Industries and Inhabitants are Struggling Liquid Resources." *National Law Journal* 7 (1985): 1-.

Robinson, Harry. *Write It on Your Heart: The Epic World of an Okanagan Storyteller*, compiled by Wendy Wickwire. Vancouver: Talonbooks, 1989.

Rosier, Paul C. "Dam Building and Treaty Breaking: The Kinzua Dam Controversy, 1936-1958." *Pennsylvania Magazine History* 119: 4 (1995): 345-368.

Rotman, Leonard Ian. *Parallel Paths: Fiduciary Doctrine and the Crown-Native Relationship in Canada*. Toronto: University of Toronto Press, 1996.

Rueggeberg, Harriet, and Andrew R. Thompson. *Water Law and Policy Issues in Canada*. Vancovuer: Westwater Research Centre, University of British Columbia, 1984.

Russell, Bertrand. *History of Western Philosophy: And its Connection with Political and Social Circumstances from the Earliest Times to the Present Day*. London: Routledge, 1996.

Said, Edward. *Culture and Imperialism*. New York: Vintage Books, 1994.

Samek, Hana. *The Blackfoot Confederacy, 1880-1920: A Comparative Study of Canadian and U.S. Indian Policy*. Albuquerque: University of New Mexico Press, 1987.

Scott, Anthony. "The State and Property: Water Rights in Western Canada." In *Explorations in Canadian Economic History: Essays in Honour of Irene Spry*, ed. by Duncan Cameron, pp. 157-188. Ottawa: University of Ottawa Press, 1985.

Shannon, Fred A. *The Farmer's Frontier: Agriculture, 1860-1897*. New York: Harper & Row, Publishers, 1968.

Shurts, John. *Indian Reserved Water Rights: The Winters Doctrine in its Social and Legal Context, 1880s-1930s*. Norman: Oklahoma University Press, 2000.

Smith, Henry Nash. *Virgin Land: The American West as Symbol and Myth*. New York: Vintage Books, 1950.

Slotkin, Richard. *Regeneration Through Violence: The Mythology of the American*

Frontier, 1600-1860. Hanover, New Hampshire: Wesleyan University Press, 1973.

Sly, Peter W. *Reserved Water Rights Settlement Manual*. Washington, D.C.: Island Press, 1988.

Snow, John. *These Mountains are Our Sacred Places: The Story of the Stoney Indians*. Toronto and Sarasota: Samuel-Stevens, 1977.

Spry, Irene M. *The Palliser Expedition: The Dramatic Story of Western Canadian Exploration, 1857-1860*. Calgary: Fifth House Publishers, 1963.

Storey, Harold. "Leasing Indian Water Off the Reservation: A Use Consistent with the Reservation's Purpose." *California Law Review* 76 (1988): 179-220.

_____. "State Jurisdiction over Indian Land Use: An Interpretation of the 'Encumbrance' Savings Clause of Public Law 280." *Land and Water Law Review* 9 (1974).

Suttles, Wayne. *Coast Salish Essays*. Vancouver: Talonbooks and Seattle: University of Washington Press, 1987.

Suttle, Wayne ed. *Handbook of North American Indians*, vol. 7: *Northwest Coast*. Washington, D.C.: Smithsonian Institution, 1990.

Teit, James A. *The Shuswap*, vol. 2 of the Jesup North Pacific Expedition: Memoir of the American Museum of Natural History, New York, ed. By Franz Boas. Leiden and New York: E.J. Brill Ltd. and G.E. Stechert, 1909).

Tennant, Paul. *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*. Vancouver: University of British Columbia Press, 1990.

Thomas, Nicholas. *Entangled Objects: Exchange, Material Culture, and Colonialism in the Pacific*. Cambridge: Harvard University Press, 1991.

_____. *Colonialism's Culture: Anthropology, Travel and Government*. Princeton: Princeton University Press, 1994.

_____. *In Oceania: Visions, Artifacts, Histories*. Durham and London: Duke University Press, 1997.

Thomson, Don W. *Men and Meridians: The History of Surveying and Mapping in Canada*. Ottawa: Queen's Printer and Controller of Stationery, 1967.

Titley, Brian. *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada*. Vancouver: University of British Columbia Press, 1986.

Toller, Susan and Peter N. Nemetz. "Assessing the Impact of Hydro Development: A Case Study of the Columbia River Basin in British Columbia." *BC Studies* 114 (Summer 1997): 5-30.

Treaty 7 Elders and Tribal Council. *The True Spirit and Original Intent of Treaty 7.* Montreal and Kingston: McGill-Queen's Press, 1996.

Tyrrell, J. B. ed., *David Thompson's Narrative of his Explorations in Western America, 1784-1812* (Toronto: Champlain Society, 1916).

Umbeck, John R. *A Theory of Property Rights: With Application to the California Gold Rush.* Ames: Iowa State University Press, 1981.

Union of British Columbia Indian Chiefs. *Indian Water Rights in British Columbia: A Handbook.* Vancouver: Union of British Columbia Indian Chiefs, 1991.

Van Kirk, Sylvia. *"Many Tender Ties": Women in Fur-Trade Society, 1670-1870.* Winnipeg: Watson & Dwyerr Publishing Ltd., 1980.

Veeder, William. "Water Rights: Life or Death for the American Indian." *Indian Historian* 5 (Summer 1972): 4-21.

_____. "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development." In *The Social Reality of Ethnic America*, ed. by Rudolph Gomez et al. Lexington, Mass.: D. C. Heath and Company, 1974.

Waldram, James B. "Hydro-Electric Development and the Process of Negotiation in Northern Manitoba, 1960-1977." *Canadian Journal of Native Studies* 4: 2 (1984): 205-239.

_____. *As Long as the Rivers Run: Hydroelectric Development and Native Communities in Western Canada.* Winnipeg: University of Manitoba Press, 1988.

Wallace, Mary. "The Supreme Court and Indian Water Rights." In *American Indian Policy in the Twentieth Century*, ed. by Vine Deloria, Jr., pp. 197-220. Norman: University of Oklahoma Press, 1985.

Walker, Jr., Deward E. *Handbook of North American Indians*, vol. 12: *Plateau.* Washington, D.C.: Smithsonian Institution, 1988.

Washburn, Wilcomb E. ed. *Handbook of North American Indians,* vol. 4: *History of Indian-White Relations.* Washington, D.C.: Smithsonian Institution, 1988.

White, Richard. *The Organic Machine: The Remaking of the Columbia River.* New York: Hill and Wong, 1995.

Wilkinson, Charles F. *Crossing the Next Meridian: Land, Water, and the Future of the West.* Washington, D.C.: Island Press, 1992.

Worster, Donald. *Rivers of Empire: Water, Aridity, and the Growth of the American West.* New York and Oxford: Oxford University Press, 1985.

_____. *Nature's Economy: A History of Ecological Ideas*, 2 ed. Cambridge: Cambridge University Press, 1994.

Zeller, Suzanne. *Inventing Canada: Early Victorian Science and the Idea of a Transcontinental Nation*. Toronto: University of Toronto Press, 1987.

Theses

Beal, Carl. "Money, Markets and Economic Development in Saskatchewan Indian Reserve Communities, 1870-1930." Ph.D. diss., University of Manitoba, 1994.

Marshall, Daniel Patrick. "Claiming the Land: Indians, Goldseekers, and the Rush to British Columbia," Ph.D. Diss., University of British Columbia, 2000.

Matsui, Kenichi. "Americanizing Indian Water: Agrarianism and Irrigation Projects at Navajo, Salt River and Fort McDowell." M.A. Thesis, Arizona State University, 1996.

Mitchner, E. Alyn. "William Pearce: Father of Alberta Irrigation." M.A. Thesis, University of Alberta, 1966.

Web Sites

http://wlake.com/genweb/gang.html.

http://www.ainc-inac.gc.ca/nr/prs/j-a1997/apr21a/thml.

http://www.ammsa.com/raven/NOV99.thml#anchor3320823.

Appendix I

The Rough Chronology of Water Law Development in British Columbia with particular reference to the Native Peoples, 1858-1921

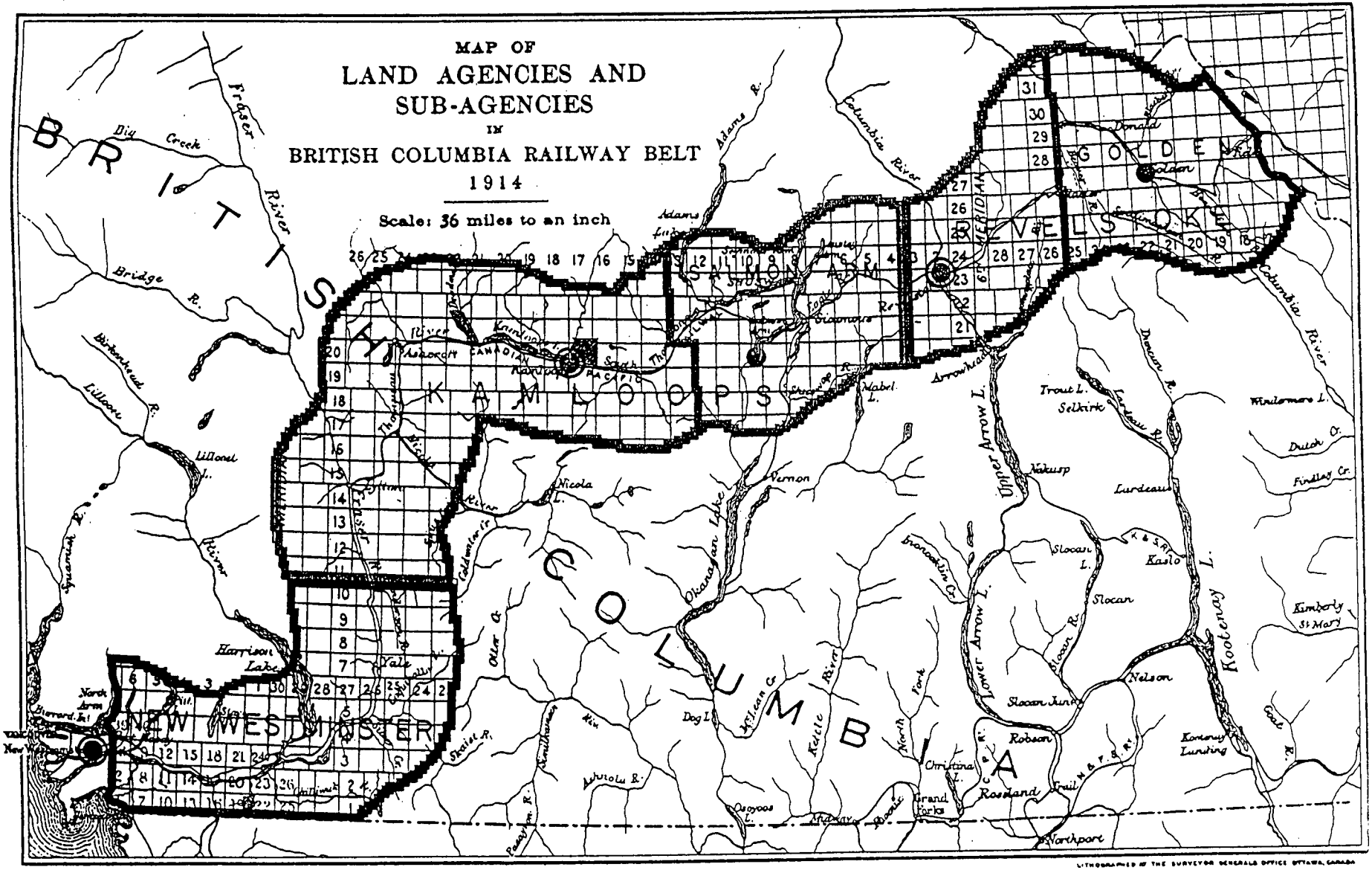
Date	Statutes	Main features related to a) agrarianism, b) water rights doctrine, c) water rights authority , d) Indian rights, e) miscellaneous
1859	**Gold Fields Act**	b) The prior appropriation doctrine is largely in force in regulating water rights (the California doctrine). -In case of any water dispute, priority of rights is recognized according to priority of registration. (s.8) -Also provides the licensing system after Australian practices. c) Governor may appoint the Chief Gold Commissioner, Gold Commissioners and Assistant Gold Commissioners either for the whole colony or any particular district(s). (s. 2) -The commissioners may issue "Free miner's Certificate" upon payment of one pound for maximum 12 months. (s. 3-4)
1860	**Rules and Regulations for the Working of Gold Mines issued in conformity with the Gold Fields Act**	b) Every ditch owner is entitled to reasonable means of taking water with full use and without waste. (ss. 10, 18) -The owner can sell water privilege; upon non-use, the owner would lose privilege. (ss. 11-12)
1867	**An Ordinance to amend the Laws relating to Gold Mining**	b) The period of water use for any owner of the ditch is extended to maximum 5 years.
1870	**Land Ordinance (33 Vict., no. 144)**	a) Any male British subject of 18 years old and over can obtain pre-emption for maximum 320 acres in the north and east of the Coast Mountain Ranges and 160 acres in the rest of the Colony. (s. 3) -Any applicant is required to occupy and improve the land for four years before obtaining the right. The Commissioner of Lands and Works will issue the "Certificate of Improvement." (s. 11) -Upon ceasing bona fide occupation and improvement of land, the pre-emption right will be cancelled (ss. 15, 16) c) The Chief Commissioner of Lands and Works will issue certificates of pre-emption. (s. 7) d) Aboriginal people must obtain special permission from the Governor to obtain the pre-emption right. (s. 3)
1875	**Land Act (S.B.C., 38 Vict., c. 98)**	a) Any British subject, not including the Chinese and the Native people, can obtain pre-emption for maximum 320 acres in the north and east of the Coast Mountain Ranges and 160 acres in the rest of the province. (ss. 3, 23-24) -The requirements for occupation, improvement, and the cancellation

		of right are the same with the 1870 Land Ordinance. (ss. 27-34) -The superior right is based on the priority of record. b) The owner of any water privilege or right acquired by record has to accompany with the construction of ditch to divert water. (s. 50) -In case of dispute, priority of right depends on priority of record. (ss. 51-53) d) The Aboriginal peoples had to obtain written permission of the Lieutenant-Governor in Council in order to obtain a special record of entering the pre-emption right. (ss. 3, 24) -No settler can claim pre-emption to Indian settlement nor can one hire a Native or Chinese person to reside as agent. (ss. 3, 11) -The Lieutenant-Governor in Council may reserve any unrecorded lands for the purpose of conveying them to the Dominion government in trust for the benefit of the Indians or railway construction in accordance with Article 11 of the Terms of Union. Upon reserving the lands, the Chief Commissioner of Lands and Works will sign the notice of reservation and published it in the *British Columbia Gazette*. (s. 60)
1888	**Land Act (S.B.C., 51 Vict., c. 10)**	a) Any person over the age of 18 is eligible to record any tract of unoccupied and unreserved Crown lands (except Indian reserves) not exceeding 320 acres east of the Cascade and 160 acres in the rest of the province. This right was not extended to the Indians. (s. 5) [1884, c. 16, s. 3] b) Priority of rights is based on priority of record. (c. 42) [1884, c. 16, s. 46] -Any lawful land-owner and bona fide cultivator can claim riparian rights for the reasonable amount of water after constructing a sufficient ditch. (ss. 39, 41) [1884, c. 16, ss. 43, 45] c) The Chief Commissioner of Lands and Works is authorized to record, alter, and cancel any water record with the approval of the Lieutenant-Governor in Council. (s. 52) d) The Chief Commissioner may appropriate water for Indians on their reserves for agricultural purposes with the approval of the Lieutenant-Governor in Council. (s. 52) e) Any assignments, transfers, or conveyances of any pre-emption rights may accompany any recorded water rights appurtenant to the land. (s. 49) [1886, c. 10, s. 1]
1892	**Water Privileges Act (S.B.C., 55 Vict., c. 47)**	b) No riparian owner cab obtain exclusive use of water in any river, water-course, lake, or stream; any riparian owner is obligated to file claims under this Act. (ss. 3, 45, 55) c) The Judges of the Supreme Court or any three of them have power to make rules and regulations to govern the practice and procedure of water rights application. (ss. 5, 7) d) No provision regarding Indian water rights. e) Any applicant can apply for waterpower rights.
1897	**Water Clauses Consolidation Act (S.B.C., 61 Vict., c. 45)**	b) No riparian privileges. (1892, c. 47, s. 3, 45, 55) -Any lawful land owner can divert reasonable amount of water necessary for domestic, agricultural, mechanical and industrial purposes. (s. 8) c) With the approval of the Lieutenant-Governor in Council, the Chief Commissioner of Lands and Works or the Gold Commissioner

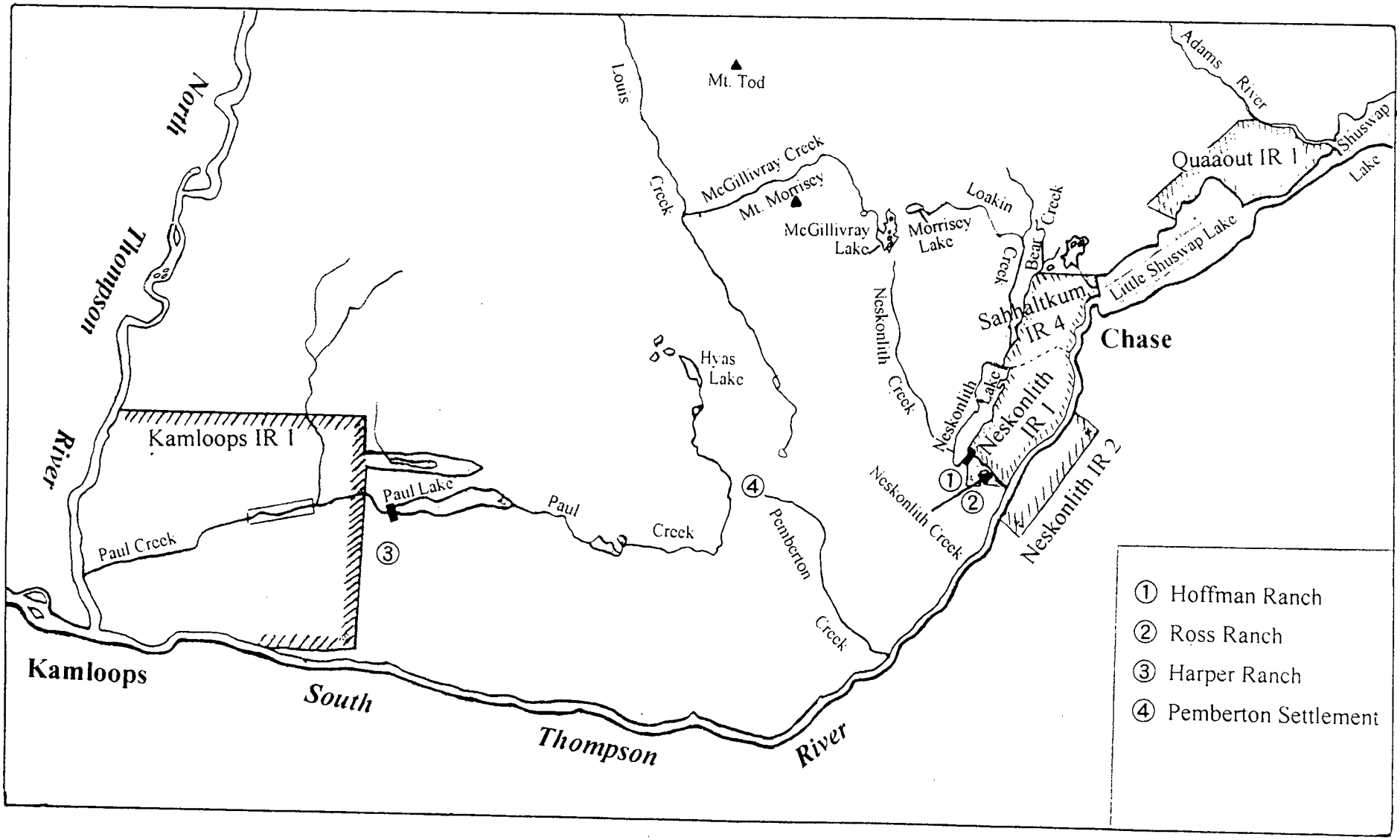
		may adjudicate on water applications and grant certified records. (ss. 13-15) d) With the approval of the Lieutenant-Governor in Council, the Chief Commissioner may authorize the water record for any Indian on reserves for domestic and agricultural purposes. (s. 35) e) Provisions include water supply and water works regulations for municipalities/ privileged companies (ss. 40-77, 127-131) and hydroelectric companies (ss. 78-126)
1909	**Water Act (S.B.C., 9 Ed. 7, c. 48)**	b) Except for domestic water uses of riparian owners, all rights to the unrecorded water are vested in the province. (ss. 4, 46) c) The Board of Investigation has power to hear all water claims, determine the priority of the claims, and issue water licenses. (ss. 7-45) -The Board will consist of the Chief Water Commissioner and two or more persons appointed by the Lieutenant-Governor in Council. (s. 10) d) No Indian provisions. e) Provisions include regulations for municipalities (ss. 97-133), waterpower companies (ss. 134-195), and storage works (ss. 196-217).
1912	**Water Act Amendment (S.B.C., 2 Geo. 5, c. 49)**	b) The Board may commercial and non-commercial licenses based on the quantity of water and purposes. (ss. 3, 74-75) c) The Board may examine all water claims, determine priorities and quantity of water entitlement, instruct water works, and issue water licenses. (s. 18) -The Chief Water Commissioner is renamed as the Comptroller of Water Rights (s. 2) d) An Indian agent may acquire licenses for Indians for domestic, irrigation, or industrial purposes. (s. 53)
1912	**Dominion Railway Belt Water Act (S.C., 2 Geo. 5, c. 47)**	c) The property in and right to water in the Railway Belt are vested in the Dominion although this will not damage any water rights granted by the province and the Dominion. (s. 3) -The Water Act of 1909 will administer all water uses in the Belt. (s. 5, 6) -The Governor in Council retains power to repeal the administrative power granted to the province under the Water Act. (s. 7) -The provincial government will pay to the Receiver General of Canada the revenue derived from administering water licenses. (s. 8)
1913	**Dominion Railway Belt Water Act (S.C., 3-4 Geo. 5, c. 47)**	c) The property in and right to water in the Railway Belt are vested in the Dominion. (s. 3) -The province has exclusive authority to administer all water rights without distinction of the Railway Belt. (s. 5) d) "All waters for irrigation allotted to Indians or Indian Reserves, whether allotted by the Indian Reserve Commissioners or recorded in Dominion or Provincial Government offices, an all applications to any provincial or local authority for the use of water within the Railway Belt in the interest of Indians or Indian Reserves, shall be deemed to be valid and effective and subject to the jurisdiction of the Board and given effect to under the provisions of the Water Acts..." (s. 5)

		-The Superintendent General of Indian Affairs shall have power to validate any provincial order, permit, license or certificate authorizing the construction and maintenance of any water works on Indian reserves. (s. 6) e) All Dominion, provincial and local water records, grants, licenses, orders in council are deemed to be valid and effective. (s. 5)
1914	**Water Act (S.B.C., 4 Geo. 5, c. 81)**	b) No riparian owner could claim exclusive rights to water without filing a claim to the provincial authority. (ss. 5, 6) -The priority of water rights is based on the time of filing the claim and the purpose. (s. 7) -If the licensee ceased exercising water rights for three years, he or she will lose it. (ss. 16, 18) c) Appointed by the Lieutenant-Governor in Council, the Board of Investigation shall have power to make rules, determine water rights, adjudicate on the rights, and to resolve disputes like a Justice of Peace under the "Summary Convictions Act." (ss.52-56) -The Lieutenant-Governor in Council may at any time, by notice signed by the Minister of Lands in the *B.C. Gazette*, reserve any unrecorded water in any stream. (s. 59) d) An Indian Agent may acquire one or more water licenses on behalf of any Indians on reserves for domestic and irrigation purposes. (s. 46) -The Comptroller may issue licenses to any Indians with the approval of the Minister of Lands. (s. 46)
1921	**Indian Water Claims Act (S.B.C., 12 Geo. 5, c. 19)**	d) Regardless of the Water Act of 1914, the Board of Investigation "may hear and determine every Indian water claim, and may disallow any Indian water claim, or may in confirmation, either wholly or in part, of any Indian water claim order the Comptroller to issue a licence in respect thereof granting rights to divert, store, and use water upon such terms and conditions in respect of the following matters as the Board may consider just and reasonable." (s. 3)

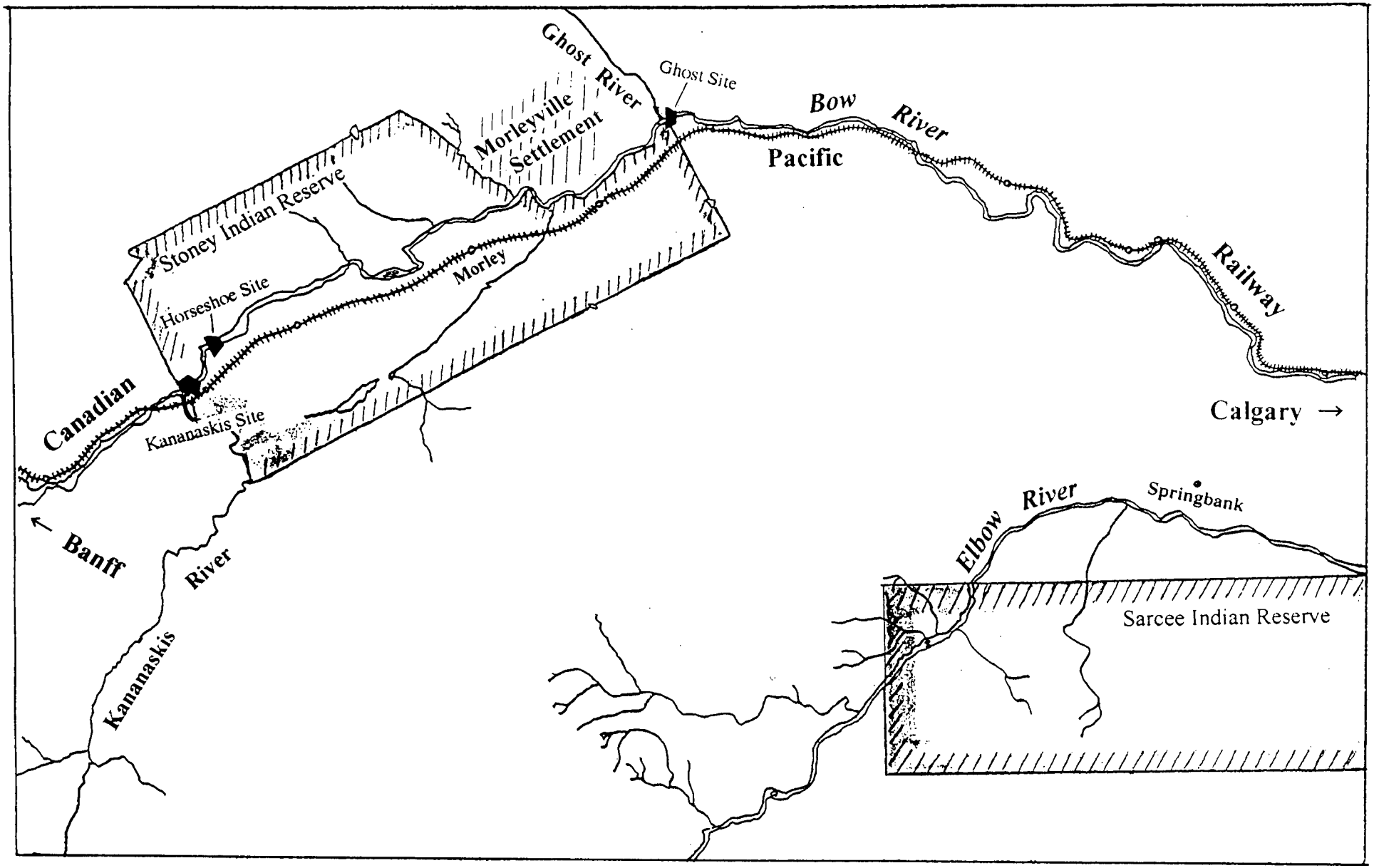
APPENDIX II
MAPS



MAP 1. British Columbia Railway Belt, 1914



MAP 2. Kamloops and Neskonlith Reserves and Major Settlements, ca. 1920



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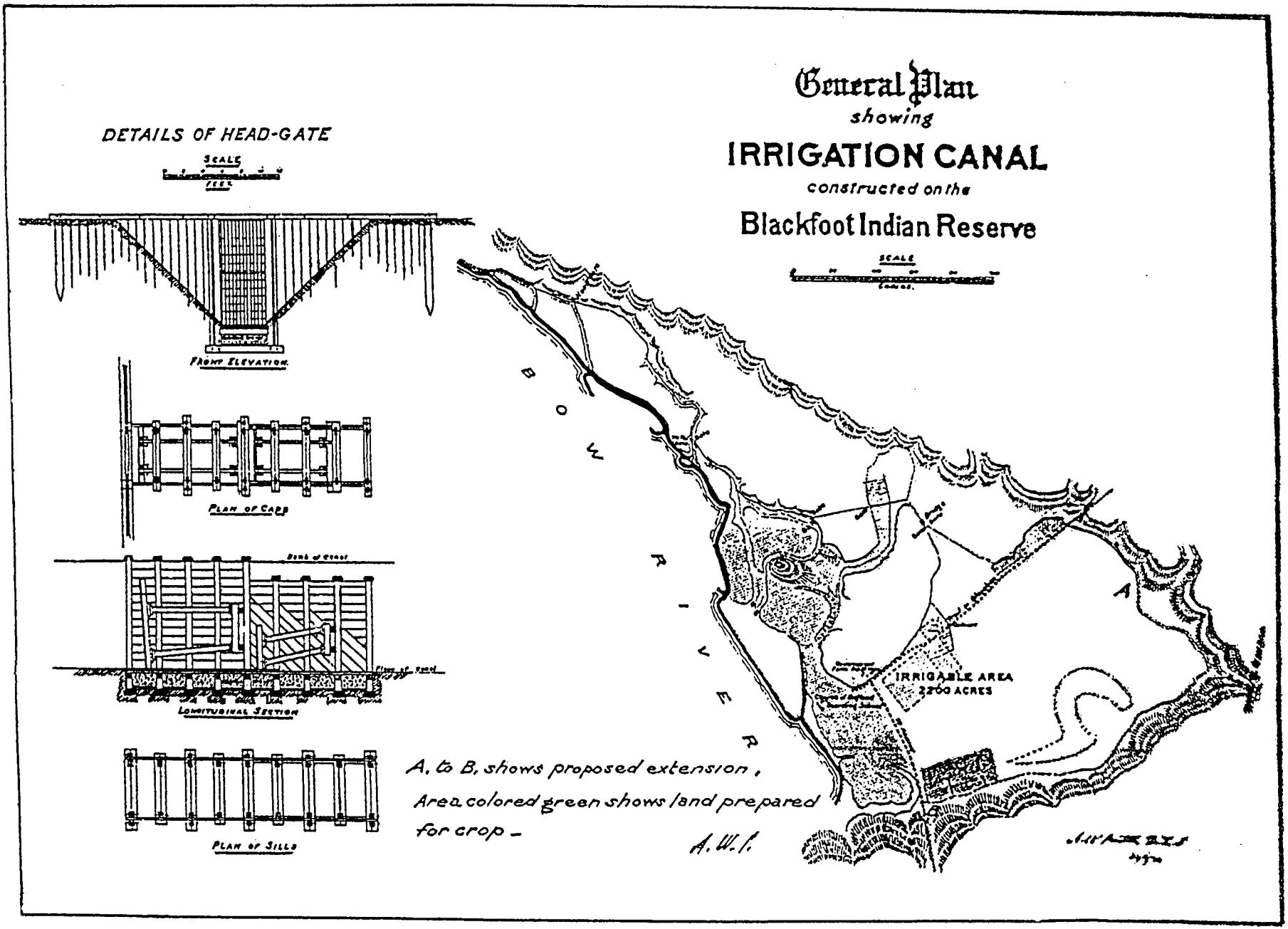
MAP 3. The Dam Sites on the Stoney Reserve and the Sarcee Reserve, ca. 1920



MAP 4. A.W. Ponton's General Plan showing the Irrigation System at Old Sun's Bottom, 1896

APPENDIX III
ILLUSTRATIONS

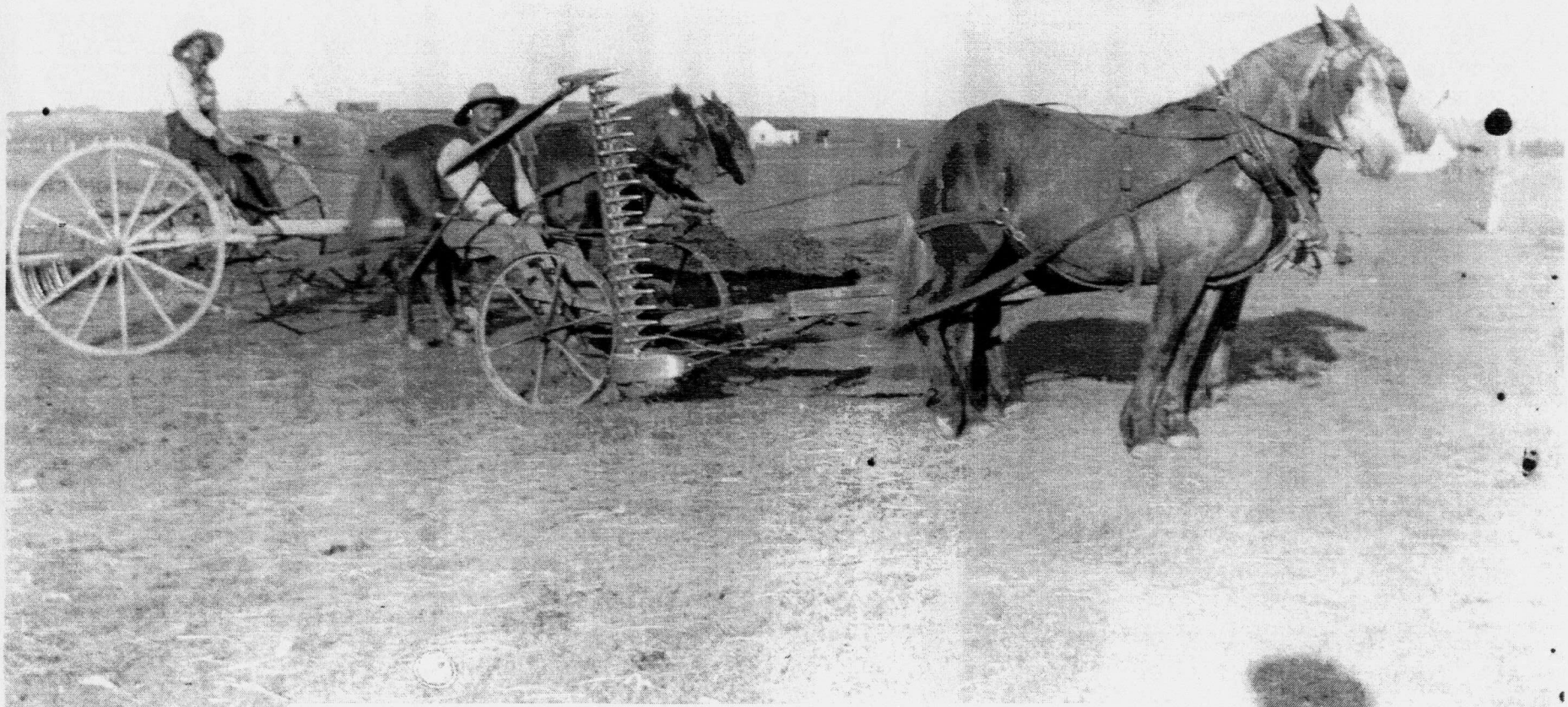


FIGURE 1. Little Axe on mower cutting hay (c. 1900). He became one of the most successful farmers on the Backfoot Reserve

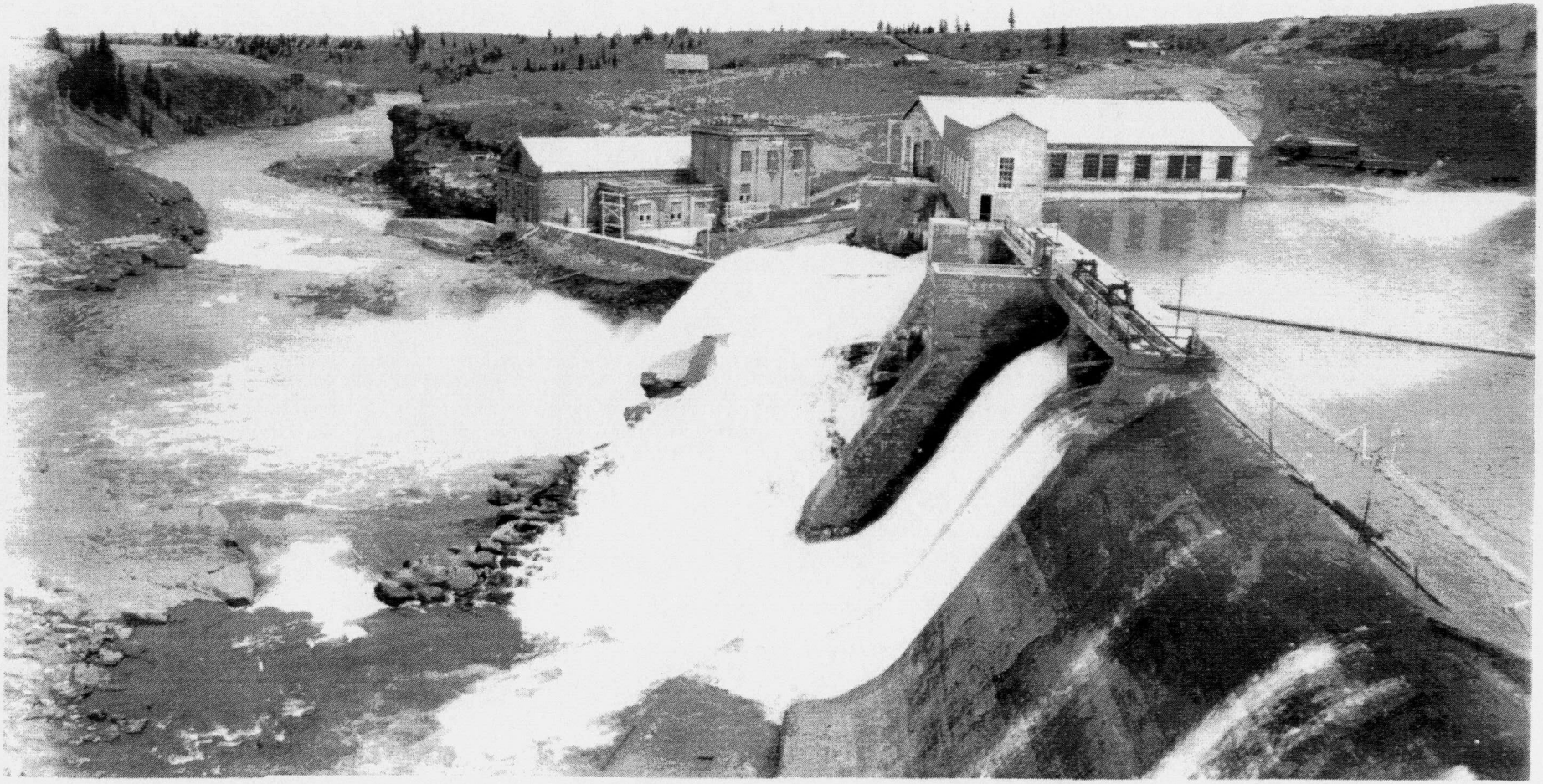


FIGURE 2. Kananaskis Dam (c. 1914) on the Soney Reserve. In 1914, the Calgary Power Company completed this solid concrete dam at the confluence of the Kananaskis and Bow rivers in order to supply power to Calgary.

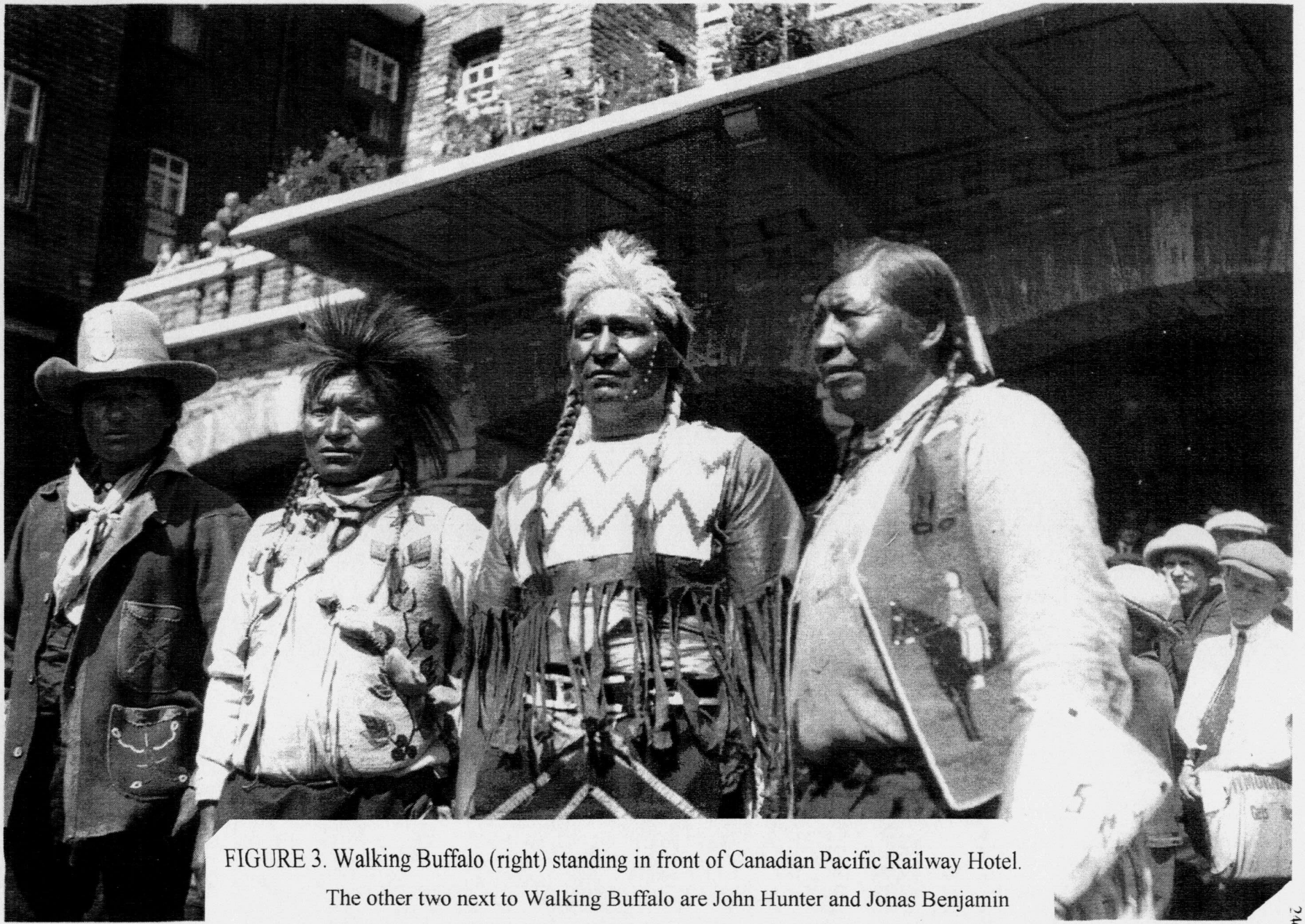


FIGURE 3. Walking Buffalo (right) standing in front of Canadian Pacific Railway Hotel. The other two next to Walking Buffalo are John Hunter and Jonas Benjamin (from right). Both Walking Buffalo and Jonas Benjamin were instrumental in negotiating with the federal government regarding Kananskis Dam.