

**BRITISH COLUMBIA PARKS AND MINES IN CONFLICT:
AN EVALUATION OF RESOLUTION PROCESSES**

by

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Abstract

The purpose of this thesis is to evaluate alternative processes for resolving conflicts between mineral development, and park preservation interests in British Columbia. The peculiarities and variation within the generic conflict illustrate the divergence between two main interest groups, and the representative provincial resource agencies. A brief examination of eight cases demonstrates the conflict is manifest with different intensities, over a wide time range, and with geographic variety. By comparing the supposed weakness of the litigation model and the claimed advantages of the bargaining model for processing of conflict to resolution, five criteria for efficiency are developed: time and delay; cost; capacity for technical issues; opportunity for participation; and flexibility of outcomes. Examples of conflict dialogue illustrate cognitive, value, interest and behavioral conflict in the parks / mines situation with the aim that the reader and the researcher can have a communality of experience and tools for understanding in assessing the detailed case evidence. Detailed examination of the Wells Gray Provincial Park case and Chilko Lake Wilderness Park Proposal illustrate strong British Columbia examples of both litigation and bargaining models under the same time and political circumstance. Not all of the allegations of strength or weakness are substantiated in either case. The promise demonstrated in the unstructured version of bargaining found in the Chilko example may be improved through innovation and commitment.

TABLE OF CONTENTS

	page
Abstract	ii
Table of Contents	iii
List of Figures	v
List of Appendices	v
Acknowledgments	vi
 CHAPTER 1	
Introduction	1
Recognition of the Problem	2
Goal	3
Objectives	3
Methods	4
Data	5
 CHAPTER 2	
The Parks / Mines Conflict in British Columbia	6
Historic Phases of Parks / Mines Decision Making Environments	7
Difficulty of Resources Inventory and Assessment	20
The Inevitable Rise of Conflict	24
Short Cases of Parks / Mines Conflict	26
Chilko Lake Park Proposal	26
South Moresby Wilderness Proposal	29
Valhalla Wilderness Park	31
Kwadacha Wilderness Park	34
Strathcona Provincial Park	35
Tweedsmuir Provincial Park	37
Wells Gray Provincial Park	39
Atlin Provincial Park	41
Summary	42
 CHAPTER 3	
Bargaining vs. Litigation	45
Concepts of Conflict	46
Conflict Resolution in Canada and the United States	48
Weakness of Litigation	49
Research Question	54
Claimed Advantages of Bargaining	55
Limitation	58
Tools for Understanding	60
Summary	74

	page
CHAPTER 4	
Two Cases of Parks / Mines Conflict: Wells Gray Provincial Park and Chilko Lake Park Proposal	75
In Depth Description of Two Cases	76
Wells Gray Provincial Park	77
Chilko Lake Wilderness Park Proposal	86
 CHAPTER 5	
Assessment of the Case Evidence	102
Time and Delay	103
Cost	106
Capacity for Technical Issues	108
Opportunity for Participation	110
Flexibility of Outcomes	113
Summary	115
 CHAPTER 6	
Conclusions	116
Conclusions	117
Recommendations	120
References Cited	124
Personal Interviews and Communications	132
Appendices	134

List of Figures

	page
Figure I Phases of Parks / Mines Decision Making Environment	9
Figure II Designation Periods, Number of Parks and Millions of Acres - Provincial Park Land in British Columbia	12
Figure III Classification of Mineral Reserves and Resources	24
Figure IV British Columbia Parks / Mines Conflict Locations	27

List of Appendices

Appendix 1 Chronological List of Newspaper Articles	132
Appendix 2 Parks / Mines Decision Making Environment Phases	138
Appendix 3 Case Selection Factors Analysis	141
Appendix 4 Chronology of Events Wells Gray Provincial Park	148
Appendix 5 Chronology of Events Chilko Lake Wilderness Proposal	151

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To those who allowed me the privilege of interviews and discussions of the parks / mines conflict I am grateful. I fully recognize my responsibility for any misinterpretation of materials, erroneous statements or omissions made in the thesis.

To the many friends and fellow students who listened to the hours of discussion of this work I thank you all for allowing my indulgence.

A number of distinctive quotations represent some of the thoughts and feelings that have been encountered in preparation of this thesis:

Misunderstandings don't exist;
only the failure to communicate exists.

Senegalese proverb.

Oh gold! gold! thou dazzling demon, what anguish thou
cost me ... Why was I not content?

Cariboo Sentinel
October 10, 1867.

...Wilderness is a relative condition. As a form of land use it cannot be a rigid entity of unchanging content, exclusive of all other forms. On the contrary, it must be a flexible thing, accommodating itself to other forms and blending with them in that highly localized give-and-take scheme of land planning which employ the concept of highest use...

Aldo Leopold
as cited by Ian McTaggart
Cowan 1968.

Mining, most colorful
most misunderstood.

A bumper sticker seen in Northwest
British Columbia.

CHAPTER 1

INTRODUCTION

Recognition of the Problem

A recent newspaper article exclaims brashly, "Law opens way for mining in park" (Bohn, 1985a). A Supreme Court of Canada decision on May 9, 1985 has forced the province of British Columbia to allow mineral claim development to be continued in Wells Gray Provincial Park. Not since 1973 had the provincial laws allowed the exploration and development of mineral resources within designated park land. The court ruling has been the result of a long and continuing divergence between parties in favour of mineral exploration and development in park and proposed park areas, and parties supporting the establishment and maintenance of park land in the province. The results of litigation model conflict resolution processes are seen as less than satisfactory by parties on both sides of the issue. Mining interests continue to be uncertain about the security with which rights to minerals are held, while park proponents maintain a skepticism that park designations will remain as areas of conservation and opportunities for outdoor recreation. Government agencies involved in the dispute are faced with a complex natural resources management situation that will cause both administrative and financial burdens.

The Wells Gray case, mentioned above, is the culmination of at least seven years of legal action and 15 years of sporadic attempts at conflict resolution. A variety of other similar and related cases form an array of parks / mines land use conflict in British Columbia. It is this continued conflict over land use alternatives that is addressed in this thesis. A variety of approaches to resolving this divergence have been put forward by

government agencies and interested parties. In addition to the Wells Gray situation, a related and somewhat intertwined example of this conflict is found in the circumstance and actions comprised in the Chilko Lake Wilderness Park Proposal. An examination of these two cases forms the empirical component for this thesis investigation.

Goal

The purpose of this thesis is to evaluate alternative processes for resolving conflicts between minerals development and park preservation interests in British Columbia.

Objectives

A number of objectives need be achieved in order to reach the goal that has been set. These objectives can be divided into three parts.

In the first part, the objectives are:

1. To introduce the parks / mines conflict.
2. To justify that there is a significant problem in British Columbia, worthy of investigation.
3. To familiarize the reader with the social, economic and political stresses within which the parks / mines conflict decision making is conducted.

In the second part, the objectives are:

4. To explain the litigation and bargaining models of conflict processing.
5. To explain a typology of conflict causes with illustrations of generalized park / mines examples, thus developing a communality of understanding between the reader and the

researcher.

In the third part, the objectives are:

6. To describe, in detail, two cases of conflict in light of the models and criteria developed in the second part.
7. To evaluate practiced conflict resolution processes.
8. To prescribe conflict resolution process improvements.

Method

Chapter 2 describes development of both the parks and mines sectors and difficulties of resources management and conflict situations as exemplified in the British Columbia situation. In particular through the examination of eight separate parks / mines conflict examples, the reader will become familiar with the general concept involved in the generic conflict. Chapter 3 examines and clarifies the alleged weaknesses of the litigation model in processing conflict and the claimed advantages of the bargaining model for conflict resolution. Additionally, a conflict cause typology is illustrated with examples such that the researcher and the reader will develop some understanding of the tool and directions that have been taken in this research. Chapter 4 gives an in depth description of two cases of parks / mines conflict and resolution approaches, thus providing a basis for analysis of the litigation and bargaining models as used in British Columbia. Chapter 5 is an evaluation of each example using the claimed advantages and disadvantages as a framework for analysis. In conclusion, Chapter 6 brings forward a summary of findings and proposes innovations to existing conflict processing

practices that might result in improved efficiency and satisfaction for all participants.

Data

Information that has been used in the preparation of this thesis has been gathered from the following sources:

1. Relevant literature on conflict, natural resources management, litigation, negotiation and mediation.
2. Extensive newspaper coverage of parks / mines conflict, as well as background literature on park and mining activities and significance in British Columbia. A list of the newspaper articles is included in Appendix 1 reflecting the valuable information gained in developing a chronological understanding of the parks / mines conflict in British Columbia;
3. Case specific public documents pertaining to various parks / mines conflicts;
4. Court and legal documents particular to the Wells Gray Provincial Park case;
5. Personal interviews with government officials, mineral industry representatives, park and wilderness proponents conducted in the main during April and May 1985, these are augmented by prior and subsequent communications.

CHAPTER 2

THE PARKS / MINES CONFLICT IN BRITISH COLUMBIA

The parks / mines conflict in British Columbia is worthy of investigation. Both the mining sector and the parks related sector play important roles in the history and economic development of British Columbia. When involved in land use conflict, the progress and contribution of each is impeded. Four phases of the decision making environment within which the history of the parks / mines conflict has transpired will form a basis for the reader's understanding of the actions taken by parties involved. The conflict can be shown to be both geographically diverse and varied in political intensity. The brief case examples that follow will illustrate two parks / mines conflict categories: first, a situation where park land is the prior or existing use designation and mineral interests are seeking access, and second, where mineral land use designations are established prior to park interests pursuit of conservation land designation.

Historic Phases of Parks / Mines Decision Making Environments

Before examining cases of parks / mines conflict in British Columbia, we will need an understanding of the four phases of the decision making environment as they form the context within which the specific actions of resource managers, lobbyists and politicians have taken place. This description is made with the assumption that to some extent, the province wide, national and international political and economic trends have an effect on the decision making environment in which the parks / mines conflict occurs. The four general eras or phases can be identified in the

following way. First, the period prior to 1972, can be thought of as relatively stable in the dynamics of the conflict. Second, the period of 1972 to 1975 is dominated by the polar shift in policies and administration as the result of the New Democratic Party's election. Third, a period of prosperity and activity accompanied by a return of the Social Credit Party from 1976 through 1980. Fourth and finally, from 1981 onward, the phase that has been dominated by the stresses of economic recession and a rise in right of center policies. Figure I outlines the chronology and major characteristics of each of the decision making environment phases that have been experienced in resolution of the British Columbia parks / mines conflict. A more detailed examination of the development and characteristics of each of these decision environment phases follows.

FIGURE I PHASES OF PARKS / MINES DECISION MAKING ENVIRONMENT

NOTE: a detailed chronology of events is found in Appendix 2.

FOUNDATION PHASE	1930 - 1971	<ul style="list-style-type: none">-exploration and claims allowed in parks-rise in environmentalism-strong economic conditions-stable pro mineral development government
REVOLUTION PHASE	1972 - 1975	<ul style="list-style-type: none">-new government with conservation stance-planning of resource management adopted-mineral exploration banned in all parks-claims in parks are considered for purchase
PROSPERITY PHASE	1976 - 1980	<ul style="list-style-type: none">-pro mining and development government returned-policy on mineral activity reconsidered-park planning continues-economic growth and mineral industry prosper
RECESSION PHASE	1981 - PRESENT	<ul style="list-style-type: none">-sharp economic down turn-re-election of pro business government-restraint in government agencies and planning-political demands for parks justification

Foundation Phase

In the Foundation Phase of the parks / mines conflict resolution environment both minerals and park resources were first recognized and developed. Though coal was the first mineral of significance to be mined , major development began with the lower Fraser River gold rush of 1858. Subsequent gold rushes through the Cariboo area, the Stikine and Peace rivers, then on to the Kootenays by 1865, saw much of the province infiltrated by "freeminers" in search of resources. A result of this influx, combined with settlement and demands for forest

resources and agriculture, saw a quick development of transport routes and trading arrangements. In addition, a quick assessment of the vast resources and potential to be realized in the province was stimulated. (Ramsey, 1957; Ramsey, 1969; Gunn, 1978)

Following the placer gold miners and leading through the turn of the century and on to World War I, lead, gold, and subsequently silver, lead and zinc, became important minerals produced in British Columbia. World War I brought an intense search in the province for 'war metals' - chromium, molybdenum, mercury and tungsten. These same minerals were sought and produced again during World War II.

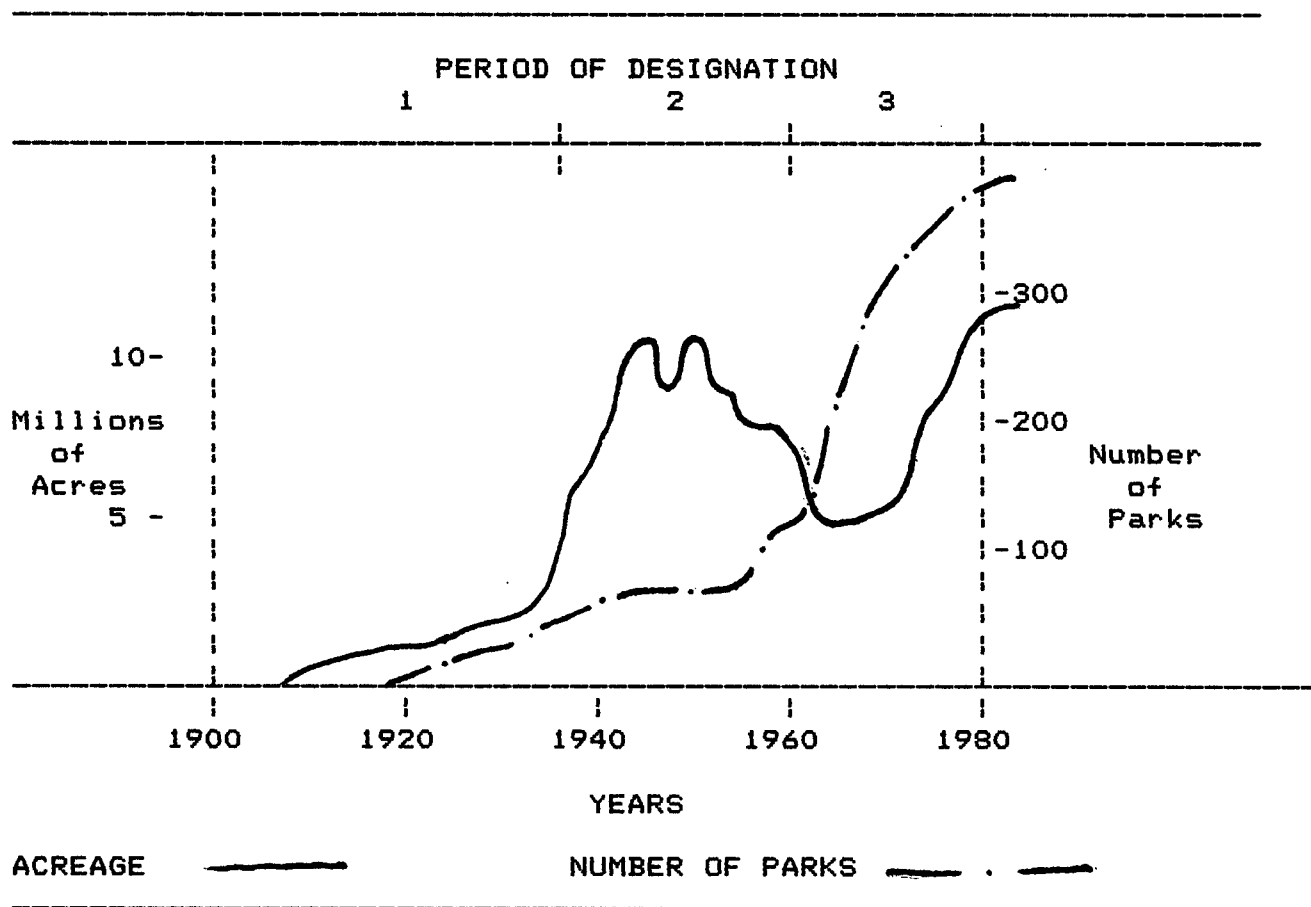
The passage of time has brought a major shift in the technology used for mining particularly a move toward the capitalization of the mining industry. The labor intensive mine of early times was replaced by the use of bulldozers, power shovels, and large trucks. The key to this change was the increased use of petroleum fuels. Throughout this time period the mineral industry in British Columbia was but marginally surpassed by the forest sector in the dollar value of resources produced. (Fry, 1966)

Parks in British Columbia were first created in response to the conservation movement conceived in the United States and reflected in Canada by the Commission of Conservation through the beginning of the 1900's. During the early part of the province's history it was the government's policy to gradually establish a park system throughout the province. (Thompson, pers. comm., March 11, 1983) The period 1939 to 1945 was a time of continued gradual growth in both the number and area included in provincial

parks.(British Columbia, 1980) A rapid period of park development came after World War II in response to an increased mobility and demand for leisure and recreation.(Youds, 1978) The large provincial parks of the wilderness type are unevenly distributed in relation to the population centers of the province. At the same time, not all landscapes and ecosystems found in the province have been represented. (Nelson, 1974) The first parks to be created were later under heavy pressure for forestry, mining, power and in the case of a park in the Liard basin, elimination. (Olcay, 1980) These actions resulted in a steady reduction in the area, though not the number of parks designated in British Columbia.(Youds 1978, British Columbia, 1980) (See Figure II.)

FIGURE II DESIGNATION PERIODS, NUMBER OF PARKS AND MILLIONS OF ACRES - PROVINCIAL PARK LAND IN BRITISH COLUMBIA.

(adapted and modified from Youds 1978).
updated data from B. C. Provincial Parks Data Handbooks.



During the formative years of the parks / mines conflict in British Columbia, government longevity, through coalitions from 1941 to 1953 followed by a 20 year reign of the Social Credit Party, resulted in an economically and politically stable period allowing the development of government policies in response to lobby interests on both sides of the parks / mines issue. Stable and pro-development government was a factor in maintaining mineral industry interests in a traditionally unencumbered state. Through this phase, mineral exploration and claim staking was

allowed in provincial parks. Relatively low metal prices in the 1950's and 1960's kept the level of mineral exploration activity correspondingly low. Growing strength in the environmental movement led to questioning of the existing park land use policies. The first exception to the dominance of mineral interests was the 1964 elimination of mineral industry activity in parks of less than 5,000 acres. This action was the first impingement on an open door policy that had been established in 1919. The tightening of regulations covering the actions of the mineral industry responded to the growing environmental movement and the demand for conservation that accompanied it during the 1960's. However, the traditional lobby strength of the mining industry in company with other pro business and mining interests prevented wholesale changes in the regulation of mineral industry activity on crown lands including parks.(Anon. 1965,) Changes in the Park Act of 1965 limited the staking of mineral claims in parks by requiring the approval of the minister. This approval was granted frequently and with leniency through the 1960's.(Anon 1967b, Anon 1968) Mineral land use regulations at this time were also poorly developed. The effect of any actions with potential to alienate park lands from mineral industry activities was minimal. This impotence, however, was cause for a considerable storm of political controversy between 1968 and 1972, which formed the basis on which much of the interest and momentum for political and regulatory change in the following phase was based. Though some concessions to the pressure from the conservationists' lobby were made, including mineral land reclamation regulations, the government maintained a resources

development posture toward park land. (Olcay, 1980) Youds (1977) suggests that the development of park and recreation resources reflects a maturation of British Columbia after the mineral resources formed part of the early basis for development.

Revolution Phase

I will call the second conflict resolution environment the Revolution Phase. The second phase builds on the rise in environmentalism and outdoor recreation that was begun and accelerated toward the latter part of the first phase. Beginning with the election of the New Democratic Party in the fall of 1972, a short period of three years followed in which significant changes occurred in the administration of natural resources and, in particular, in the processes of management and conflict resolution. The election of the New Democratic Party was the key event which facilitated swift changes in the long established parks / mines decision making schema. These actions were taken in an era of strong economic conditions, especially in the mining sector, with the opening and profitable operation of many mines, producing copper and molybdenum. The growth rates of 5-7 %, or greater, experienced in western economies during the 1950's - 1970's had given rise to great expectations. There was a perception among the newly formed government that the strength of the mining sector could withstand considerable taxation and regulation.

Elected on a platform that encompassed many strong pro-environmental and conservation planks, the New Democratic Party were obliged to make significant changes. First, no further

mineral claims were granted in provincial parks. This was accompanied by changes in both the Park Act and the Mineral Act. These actions can be seen to be the end result of significant pressure in the parks / mines decision making environment that was translated into the political arena as changes in government and legislation. In addition to elimination of exploration and mineral claim staking in parks, there would be a strengthening of the existing park designations by changing them from orders in council to being incorporated into the new Parks Act legislation. To strengthen and rationalize the resources management decision making process, the Environment and Land Use Committee of cabinet was augmented by a research Secretariate. This multi disciplinary group reflected the strong planning orientation that was a part of the New Democratic Party's philosophical underpinnings. In fact, this phase of the parks / mines conflict resolution environment could be called the era of planning. Public lobby interests were incorporated into the decision making process through public participation programs as an integral part of the planning process. The Secretariate initiated and directed many of the planning activities that were needed for the accumulation and dissemination of information associated with the parks / mines conflict as it developed through the 1970's. The effect of the emphasis on planning continued after the New Democratic Party was defeated and after the Environment and Land Use Committee had been disbanded. Though the New Democratic Party imposed sharp tax measures on the mining industry, in combination with more restrictive land use regulations, value of mineral production would not decline. (British Columbia, 1979)

The economy in general would continue to be productive and enjoy growth.

Prosperity Phase

The third decision making era can be described as the Prosperity Phase. The underlying factor that most contributed to the nature of the decision making environment between the re-election of the Social Credit government in 1975 and the onset of a recessionary trend in both the provincial and world economies in 1981, was the strength and growth of the economy. Rising metal prices in the latter half of the 1970's caused a resurgence of exploration activity throughout British Columbia as formerly uneconomic mineral deposits became more viable. Advances in the economy were accompanied by increasing leisure activity and the rising demand for aesthetic and outdoor resources. Of particular interest in British Columbia has been the promotion of the "Super Natural" features of the province as a destination for tourists and residents seeking an outdoor recreational experience. (Dorcey, 1984a) Consequently, provincial tourism, as partially supported by the attractions in parks, has become an increasingly important component of the economy. Over the past decade the tourism sector has seen a near doubling of revenues. (Stubbs, 1984) During this period world metal prices were very high, with new records being set in precious metals the most notable of which was gold. The strength of demand for resources resulted in the operation of a large number of mines throughout the province and a strong interest in mineral deposits that had, before the advance in prices, been sub-economic. As a large number of mineral deposits can, under strong economic conditions, be

exploited profitably, the pressure for access to park lands for mineral exploration was slight. High metal prices would stimulate mineral exploration activity, but the uncertainties of exploring in park lands or proposed park lands would be enough of an encumbrance that it would largely be avoided. Enough mineral resources outside of park areas would show promise under these conditions that pressure for access would be diminished. The mining industries' perception during periods of strong metal prices would be that little or nothing is potentially lost by existing park designations. However, new park designations would not be viewed any less critically. There is little demand for new resource lands as the known mineral deposits are able to fill market demand. This situation may seem to be contrary to what one might expect, however, the long lead time for mineral production to begin on any single project restricts the supply of a growing market to resources that have been known and developing for many years. This economic situation contributed extensively to a low level of political stress in the decision making environment and little incentive or activity toward resolution of the parks /mines conflict.

Recession Phase

The current decision making environment, dominated by economic concerns, is labeled as the Recession Phase. The antithesis of the prosperity phase characterizes the current resources decision making environment. As demand for British Columbia's natural resources has diminished in response to world supply gluts resulting in lower prices, increased costs of

production have caused many mines to become uneconomic. The drop in metal prices, as is usual, signaled a reduction in the level of mineral exploration activity throughout British Columbia. (Rose, 1985) However, the mineral industry has been forced to search for richer deposits and more cost effective methods of production, to compensate for characteristic variations in earnings, as a result of fluctuation in international metal and money markets. (Mining Association of B.C., 1983) Mineral resource generated government revenues have fallen (Joyce 1984). Government has been under pressure to reduce encumbrances on all industries including the mineral industry in an attempt to revive the economy. Among the measures that have been taken include a further examination of mineral industry access to park land for exploration and development. Tourism during this phase became the third largest industry, rivaling the mining and forestry sectors. (Farrow, 1983) However, the economic emphasis of government forced the Ministry of Lands, Parks and Housing to adapt its decision making process and park designation criteria to incorporate the associated opportunity costs. The result of both mineral industry lobby for access to parks, and directives from the parks ministry for more politically acceptable resource land allocation, has been a rise in stress in the parks / mines conflict resolution environment.

Re-election of the Social Credit Party, brought a new order to the political reality of the parks / mines conflict. An increased importance was placed on the economic impact of all resources management decisions, including the designation of parks. The 1983 provincial budget, and the events that followed,

caused an intensification of the stresses in the parks / mines conflict resolution decision making environment. As reduced funding and staffing increased stress, so also did the urgency of actions designed to relieve it. Institutionalized planning and decision making processes such as the Regional Resource Management committees were abolished. Changes were made in the park land designations that simplified the choices that are available for conservation of recreation lands. Only Class "A" and Recreation Area designations are now available. (British Columbia, 1984b) The consequence of budget constraints and policy changes has been a situation in which the resolution of conflict serves to alleviate stress for politicians and provincial natural resources line agencies as well as the parties lobbying for park creation and mineral industry access to existing park land. Questions of priority between mineral development and other economic activities, especially tourism, continue to surface. (Stubbs, 1984) It is when parties wishing different land uses converge on the same land that the difficulties occur.

We might summarize the development of each phase of the parks / mines conflict resolution environment by projecting possible futures. First, metal prices will continue to fluctuate causing fluctuation in the demand for mineral resources and exploration lands. Accompanying these fluctuations will be recessionary periods in the world and provincial economies. Finally, the demand for outdoor recreation and aesthetic resources, rising through each of the phases, shows no indication of abating.

Difficulty of Resources Inventory and Assessment

The difficulties of defining and valuing resources associated with parks as well as minerals contribute further to the parks / mines conflict. Two quotations can be used to highlight these problems:

"Do Economists know about lupines?"

Aldo Leopold (1925)

"Subsurface mineral possibilities are enigmatic to the planners. Until they are discovered they cannot be anticipated."

E. Fred Birdall and

Jay Mitchell (1984)

Both Leopold and Birdall and Mitchell recognize the difficulty of inventory and evaluating natural resources involved in the parks / mines conflict. Whereas recreation and aesthetic features associated with parks are difficult to quantify and value, minerals are difficult to find and compare within a changing economic environment. It is to this problem that we now turn.

There are three primary ways of inventorying attributes of park land. A recreation resource inventory can count the biophysical features that will contribute to the suitability of lands for park use. A use inventory will provide information about the extent to which the land is used by those who visit it. Finally, a user inventory will gather data on the needs and desires of potential land users. Detailed discussion of these processes can be found in chapters 4, 6 and 7 of Brockman and Merriam(1979). As with any scientific survey, each of these processes brings its own difficulties and degree of reliability.

These measures can provide information on the supply, quality, accessibility, and perception of opportunity to use park land. However, measures of the option and existence values of park land are not addressed. These non-price parameters of park land make inventory and evaluation a difficult problem. In addition, the uniqueness of each park land resource makes comparisons and prioritization difficult, if not impossible. However, some economists have made attempts at valuing the non-price nature of recreation and park resources through measurement of the willingness to pay, consumer surplus, and travel cost expenditure by users who participate in specific activities. (Pearse, 1968; Krutilla and Fisher, 1975; Sinden and Worrel, 1979; and King and Davis, 1980) These measures are again difficult to judge relative to other resources or to other measures, as the factors examined are those of associated costs. Evaluation of the actual resource worth has not been achieved.

A detailed examination of the economic impact of parks was prepared by the Canadian Outdoor Recreation Research Committee (1975). After summarizing general points made by many researchers, the advantages of a number of economic benefits are extolled. Furthermore, conclusions are advanced concerning the secondary and local benefits through multipliers associated with park land use.

As with park resources, mineral resources too present difficulties for natural resources managers and planners. In a similar way problems arise with uniqueness, randomness and physical accessibility. Concentrations of minerals such that their extraction is feasible are rare. (Cloud, 1968) In fact, of

the few concentrations of minerals that have been discovered many have become as famous as have distinctive park lands. Gold in South Africa, Yukon and Hemlo, Copper in Zambia, Chili, Montana and Highland Valley exhibit the character of these distinctive concentrations of minerals and mining activity. However, the random distribution of minerals in combination with their hidden nature make inventory even more uncertain. The true extent of minerals contained in the earth's crust is not known until they have been extracted. Finding the location of concentrations of minerals is increasingly a risky proposition as many of the best and easiest to find deposits are already known and established. This brings us to the final component of inventorying mineral resources, that of changing accessibility or technology. As geological theories are developed, different areas of the earth's crust become desirable locations for mineral exploration. As the technology for extracting minerals from the earth's crust improves, different mineral deposits will become economically viable. Similarly, as changing economic conditions dictate, different minerals are in lesser or greater demand, thus bringing different lands into greater demand for mineral land use.

The uncertainty of the situation that we have described here can be summarized in Figure III (Smith, 1979; Steinhart, 1980). Of all the mineral resources in the earth's crust, only a small portion are identified, technically recoverable, and economically feasible to extract. Consequently, the few mineral occurrences that have been discovered to have economic potential are very much more valuable relative to the surrounding lands and are therefore eagerly sought by mineral industry interests. Similar

discussions in a concise form regarding mineral resource potential, information and misunderstanding can be found in Zwartendyk (1972). More specific frameworks of analysis for the British Columbia case are developed by Northcote (1981) and the South Moresby Planning Team (1983).

The difficulty of inventorying each resource in the parks / mines conflict is quickly evident in the situation that is described above. Furthermore, the nature of one as a non-price good and the other as an economic good make comparison extremely difficult. As we have seen, attempts have been made to price recreation and aesthetic goods by Pearse and others. Further, the evaluation of mineral resources is wrought with unusually high uncertainties, compared to other resources. It has been the experience of at least one conflict resolution planning process where parks and mineral concerns were divergent that the applicability and practicality of such methods was brought into question. (South Moresby Resource Planning Team, 1983)

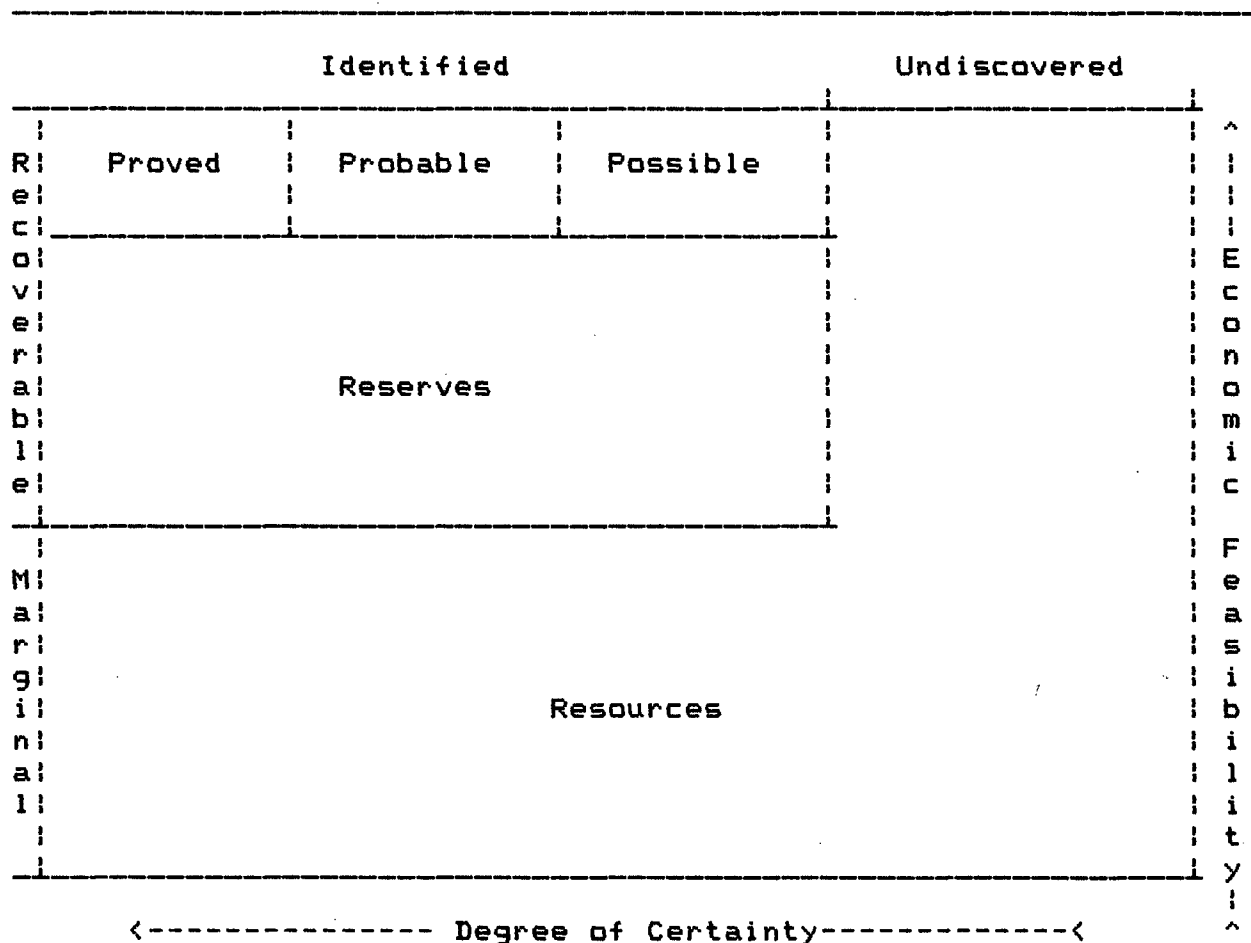


FIGURE III Classification of Mineral Reserves and Resources
After Steinhart (1980)

The Inevitable Rise of Conflict

We can summarize that the situation as has been described above has led inevitably to a land use conflict.

The long standing history and the tradition of the free miner in the mineral exploration and development industry has instilled in the minds of many the right of access and of winning resources from the land. In the same historical sense, the parks interests have been fostered and developed through a growth in acceptance of conservation and an acculturation of recreation and

outdoor activity. As the demand has grown for both of these land uses it has been inevitable that there would be a rise of conflict as the available land base has been diminished.

The recent trends in both the mining sector and the parks sector have also contributed to the conflict situation. On the one hand, the dominance of the mining industry's relative position in the economy has been challenged, thus forcing a defensive position to which the parties are unaccustomed. The rapid rise of the parks related sectors has raised an expectation of gains that may or may not be realistic. A situation has been created where the mining industry may be forced to defend a traditionally held position, while parks proponents may pursue dedication of park land while the economic strength of tourism and recreation may support such decisions by government. Both this unfamiliarity with the situation as it is presented and the increasing pressure of the lobbying by both sides has tended to accentuate the impassive nature of the conflict and resulted in some measure of escalation.

Finally, the difficulties of natural resources definition on both sides of the conflict have led to its continued rise. Decisions based on fragmentary data present a significant dilemma. If an area were recommended for wilderness or park, significant mineral potential might never be recognized; equally, mineral extraction projects could destroy the very features that provide park potential. At the same time, the difficulty of inventory procedures for both minerals and park land has been shown. Not only are the data unavailable or unreliable, but the valuation of either resource base may be unachievable. The

optimal situation of being able to compare like units of value or worth can not be enjoyed.

Short Cases of Parks / Mines Conflict

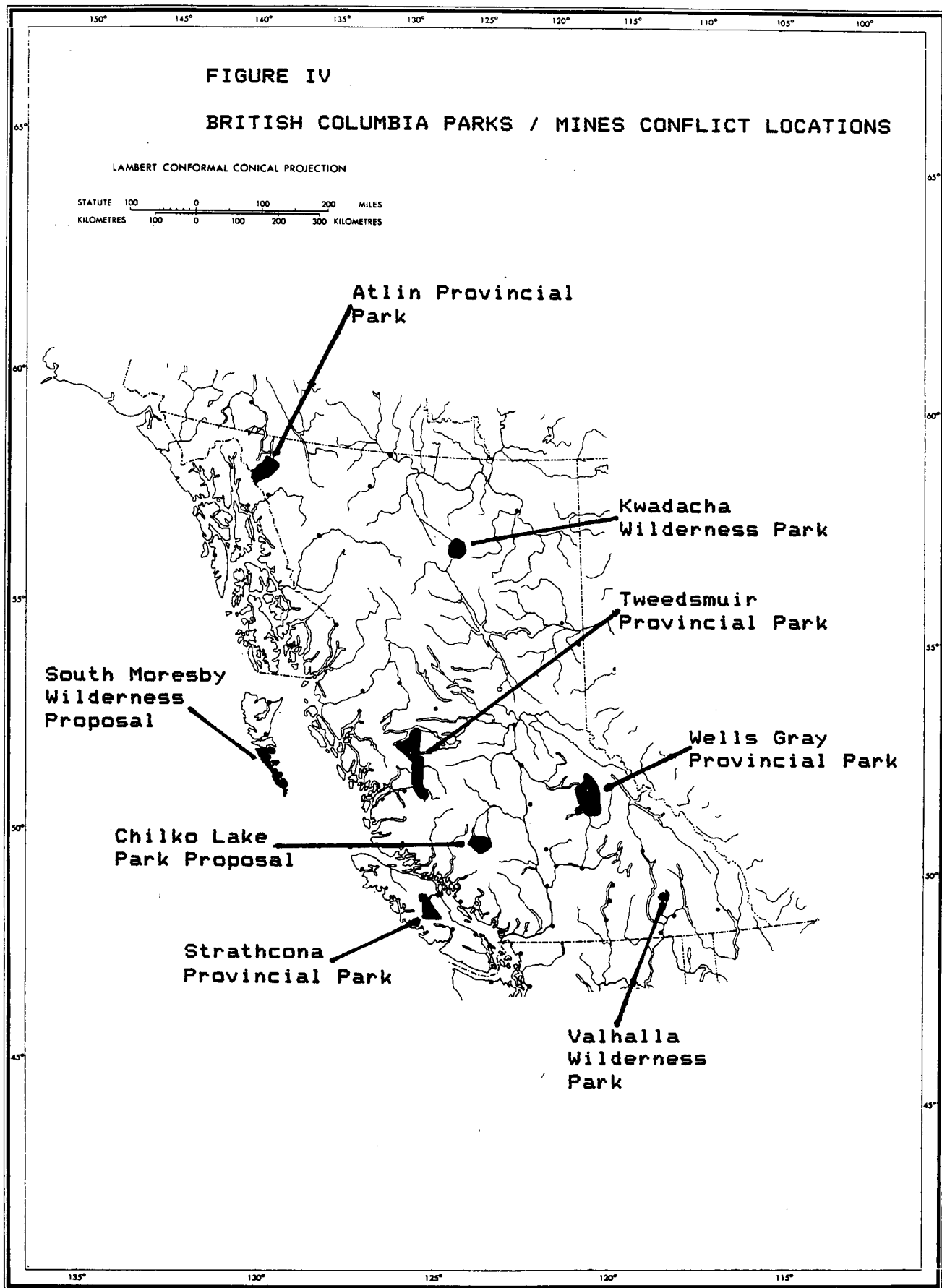
This section will show that the conflict examined in this thesis is one of wide ranging distribution and variation throughout the province of British Columbia. Furthermore, relative stages of development and concern expressed in each conflict will be illustrated. Some conflicts will be shown as current and active while others are dormant or lay unapproached and unresolved.

Each case in this section will be comprised of three components. First a reference to Figure IV, showing the relative case locations of selected parks / mines conflicts in British Columbia. The second component is a brief description of the case particulars, including: the parties involved, and the timing of their involvement. The current status of the conflict will be established in the final component.

Chilko Lake Park Proposal

Chilko Lake and its environs is located in the southern Coast and Chilcotin Mountains at the headwaters of the Chilcotin River system. Access is gained by 200 kms. of road southwest of Williams Lake. The area under consideration for park includes much of Chilko Lake, Nemaia Valley, Tchaikazan Valley and adjacent Taseko Lakes. (See Figure IV.) This land is now held under a deferred planning area status by the Ministry of Forests.

The Chilko Lake Park Proposal grew out of public concern during the mid-1970's over the future of the southern Chilcotin



Mountains. In 1976, the Chilcotin Parks Study was prepared by the Ministry of Lands, Parks and Housing (Outdoor Recreation Council of British Columbia, 1976). A coalition of environmental concerns was formed briefly to encourage the preservation of this area but was disbanded in 1981. The Ministry of Forests has adopted a management plan for the area. The Ministry of Lands, Parks and Housing has conducted a park potential study. Beginning in 1981, the Federated Mountain Clubs of British Columbia took up the cause of this park proposal through the auspices of the Outdoor Recreation Council of British Columbia. (Federated Mountain Clubs of British Columbia, undated) This park proposal has also been of interest at the national level through Parks Canada. (Dearden, pers. comm., September 26, 1985)

There are at least three major mineral prospects located within the Chilko Lake Park Proposal. However, the overall mineral production potential as developed by the Ministry of Energy, Mines and Petroleum Resources is largely class 3 and 4, indicating that the geological environment is favourable though no significant deposits are known and that further exploration is possible. Of note here is that the mineral potential mapping is conducted on a five class scale that is highly subjective. Classification is based on the existing data available to the Ministry of Energy, Mines and Petroleum Resources, and an intuitive judgment is made by a geologist with considerable knowledge and experience. Judgements as to the effectiveness of this process is difficult as the combination of metal price changes and advances in technological capability are constantly altering the criteria upon which the mineral potential

classifications are made. Mining claims have been established in the Chilko area since at least 1935 when prospectors recovered some gold from the Lord River area. During the 1940's mineral development activity increased significantly. At least one prospect was extensively explored by diamond drill and tunneling (Farrow, 1978). Through the 1950's and 1960's relatively low metal prices kept mineral development activity to a minimum. However, many mineral claims have been maintained on the best prospects. Rising metal prices in the 1970's caused a resurgence of activity in the area as formerly uneconomic deposits became more promising.

The current status of the Chilko Lake Park Proposal might be categorized as one of a holding pattern. The park proponents are unable to muster an accelerated lobby effort, and the mining industry is faced with a downturn in the economic prospects for unextraordinary deposits.

South Moresby Wilderness Proposal

The South Moresby area is located in the southern portion of the Queen Charlotte Islands. The area includes a large portion of Moresby Island and numerous adjacent islands. Comprising about 145,000 hectares of upland, the proposal also includes shore lands and marine components. (See Figure IV.)

General public concern for preservation of the South Moresby area grew throughout the 1960's and 1970's. In 1971 the Provincial Parks Branch identified a core portion of the island as a prime candidate for a class A provincial park, and indicated this interest by establishing a mineral reserve. Shortly

thereafter, the whole of South Moresby became the subject of a much broader land allocation controversy, and no park status was implemented (South Moresby Resource Planning Team, 1983).

Further conflict began in October 1974 with the permission to log portions of the area. The Skidegate Band Council objected to this plan with the position that all of the Queen Charlotte Islands are Haida land. At the same time, an environmentalist group which was to become known as the Islands Protection Society was formed. These two groups would draft what was to become the South Moresby Wilderness Proposal.

The Environment and Land Use Committee Secretariat, through 1975 and 1976, conducted an overview study of South Moresby. Information and submissions were invited from the public and the various line agencies, including an assessment of mineral potential by the Ministry of Energy, Mines and Petroleum Resources. Parks Canada also commissioned a study of the area's natural history as it felt that South Moresby was a Natural Area of Canadian Significance.

Through 1977 and 1978 concern for the area grew, but was concentrated around the forest industry / wilderness proposal conflict. The situation was further complicated by the introduction of an ecological reserve proposal to encompass a portion of lands already contested.

The Environment and Land Use Committee Secretariat's study resulted in recommendation of a further five year multiple land use planning program to resolve the conflict and a two year study of the ecological reserve proposal. The Ministry of Forests was selected to lead the planning program that resulted in the South

Moresby Resource Planning Team and its report of 1983. However, a decision on the future of the South Moresby has not yet been reached. Though specific reports and research were prepared (Northcote, 1981) and participation by a variety of government and private industry representatives was assured throughout, the Ministry of Energy, Mines and Petroleum Resources presented a minority opinion in the planning team's report. It was felt that none of the options presented by the team members met mineral policy objectives of evaluation and determination of mineral resources before any alienation of the land base. (Ratel, 1985) Existing mineral claims on the east side of Moresby Island have been shown to be good prospects for gold production. At the height of the gold price surge of the late 1970's, Consolidated Sinola Syndicate created a considerable stir in the financial community of Vancouver with strong results in an extended exploration and development program.

The comments of some participants in the South Moresby Resource Planning Team point directly to the difficulty of resolving the conflict between wilderness conservation resource users and mining interests. The difficulty of dealing with the Ministry of Energy, Mines and Petroleum Resources' concerns and the mineral claims within the wilderness proposal may be a key stumbling block in the resolution of this planning process. (Dow, pers. comm., December 1984; Lang, 1984).

Valhalla Wilderness Park

The most recent major provincial park in British Columbia was designated on February 16, 1983. Valhalla Provincial Park is located on the east side of Slocan Lake, 100 kms. north of Nelson

on the western edge of the Kootenays. (See Figure IV.)

The Valhalla park proposal originated with the Kootenay Mountaineering Club in 1970. The original concept was to encompass a small portion of what was to eventually become the park. Following the 1974 Slocan Valley Forest Management Study, the original proposal was expanded by Ave Eweson, a local biologist, to include much of the west side of Slocan Lake. In the same year, the Valhalla Wilderness Society was formed and key members of the organization were identified, including the chairman Colleen McCrory. The objective of this organization was to promote the expanded proposal and pursue its designation as a park. In 1975, with increased concern over the decision to be made on the Valhalla's case, a moratorium was placed on all logging activity and mineral rights were reserved from further staking. At the time there were a number of mineral claims over two or three known mineral deposits within the proposed park area. Furthermore, we should note the significant historical importance of the Slocan Valley as an area of silver, lead and zinc production. Throughout this first phase of the conflict, the Environment and Land Use Committee Secretariat had played an important role in facilitating discussion and coordinating studies pertaining to the Valhalla problem; however, it was disbanded in 1980.

The Slocan Valley Planning Study was initiated in 1980, with a broad mandate to investigate the interrelated issues of the park proposal, mining and forestry land use, and settlement of the entire valley. Representatives of the Ministry of Municipal Affairs, the Ministry of Environment and the Regional District of

Central Kootenay , as well as residents, were to participate. At the second set of hearings held at the end of 1981, the issue of mining was formally recognized. However, the issue of sub-surface versus surface rights was identified as a legal problem of Provincial scope that could not be solved through the local planning process. Though mineral potential and development opportunities would be recognized in the planning process, the perceived shortcomings of the fundamental framework would have to be addressed by the Province. (Regional District of Central Kootenay, 1982) Through the third set of hearings in May 1982, four options had been identified as alternatives in the Valhalla allocation decision making process. These options consisted of two variations on each of the dominant preservation and dominant resource extraction themes. (Kootenay Resource Management Committee and Regional District of Central Kooteney, 1982)

Finally, on February 16, 1983 the Environment and Land Use Committee of the provincial government reached a decision that the Valhalla Wilderness Park would be created. However, what is surely a victory for the Valhalla Wilderness Society has been met with continued mixed feelings by some residents and concerned interests of the community. Most notable of the dissentors are the mining and forestry concerns represented by the Chamber of Mines of Eastern British Columbia and the local forest products' manufacturers. (Sherrod et. al., 1984)

The 1983 park designation was the culmination of a long crusade led by a group of Kootenay residents to have the 49,600 hectare site declared a park, preserving it from forestry and mining interests. However, it must be noted that the decision to

create the park was one taken after a planning process that addressed a variety of issues besides that of parks / mines conflict. In fact, as noted, the key issue in the parks / mines conflict was deferred to the provincial government as a legal matter.

Kwadacha Wildernes Park

Kwadacha is one of the lesser known provincial parks. Created in 1973, Kwadacha is located in the north east sector of the province in the Rocky Mountains. It is on the east side of the Rocky Mountain trench, north of the Williston Lake Hydro Power Reservoir, and approximately 170 kms. southwest of Fort Nelson. The park straddles the Rocky Mountain Divide between the Kwadacha and Muskwa Rivers. The park encompasses approximately 165,600 hectares. (Statutes of British Columbia, 1973) (See Figure IV.)

At the time that a park was proposed for the Kwadacha area and a study completed in 1972, there were no mineral claims within the proposed boundaries. A reserve against the location of mineral claims had been approved under the Mineral and Placer Mining Acts by Order-in-Council, October 21, 1971 (British Columbia, 1972). However, since that time mineral explorationists have shown considerable interest in the contact zone between the interior plateau and the metamorphosed sedimentaries of the eastern cordilleran. A series of mineral deposits have been discovered along the Rocky Mountain Trench, perhaps the most notable of which is the Circue deposit south of Kwadacha held by Cordilleran Engineering.

In conducting a search for minerals in the mid 1970's,

explorationsists traced what appears to be a significant barite deposit to the border of Kwadacha Park. Upon further investigation it appears that the deposit straddles the park boundary. Barite is an industrial mineral used for the preparation of drilling additives for petroleum and mineral exploration. Relatively rare and presently without a producing Canadian source, the potential significance of such a deposit was clear. Contributing to the mineral interests' concerns is the fact that the nature of such barite deposits make them very easily identifiable. However, the presence of the park prevents the staking of claims and continuation of the development process.

Strathcona Provincial Park

The parks / mines conflict in Strathcona Provincial Park is perhaps the most advanced and complex of all the cases examined in this section. Certainly the mineral development process is the most advanced with the current operation of a copper mine within the boundaries of the park.

Strathcona Provincial Park is located in the Vancouver Island mountains and it encompasses the highest points of the mountain range. (See Figure IV.)

Established in 1911, Strathcona Provincial Park is the oldest of the provincial parks. It has frequently been the focus of conflict between conservationists and natural resources development interests. The most notable of these conflicts was the flooding of Buttle Lake for hydro electric generation in 1952. (Tatreaux and Tatreaux, 1973)

By 1965, the conflict between mineral and park concerns over

Strathcona Park was receiving increased public attention. (James, 1965) At this time, staking of mineral claims was allowed in provincial parks larger than 2,000 hectares. In 1960 Western Mines had purchased claims in the park over land that had originally been staked in the 1920's. Further staking was also completed. Permission to proceed with mine development was given with little debate and the construction of the mine was fully underway by 1965. Included in the original plan was the construction of a townsite within the park to service the mine site. However, after significant study (Williams, 1966), this component of the development was abandoned in favour of a commuting option. With construction continuing in 1967, the public awareness of the Strathcona Park development, the proposed development of other claims within the park (Anon, 1967b) and the staking of further claims in other parks, created a major political issue. This issue was to continue as a major focus of public concern throughout the 1960's and into the 1970's riding on a wave of the environmental movement. The catalyst provided by the Strathcona parks / mining conflict would contribute significantly to the subsequent change in government and legislation pertaining to park land use.

In 1974, after considerable study, the provincial government decided to alter the park boundaries, effectively removing park designation from the mine site to allow continued development. It was decided that where lands were taken away, they would be augmented by the addition of alternate lands to the park. After another change of government in 1976, newspaper reports continue to raise there was some further discussion of the Strathcona

conflict, but no changes were made in the existing regulatory regime.

The latest development in the history of parks / mines conflict in British Columbia also concerns mineral claims in Strathcona Provincial Park. The holders of mineral claims staked in 1964, 1965, and 1966, who were granted a park use permit in 1967, have now initiated a law suit against the provincial government for the right to develop those claims. (Bohn, 1985b) Such a suit, if successful, will establish a precedent for many of the 700 other cases of claims to minerals in provincial parks.

Tweedsmuir Provincial Park

Tweedsmuir Provincial Park now extends from Ootsa Lake south along the Coast mountains, including an area straddling Highway 20 between Williams Lake and Bella Coola. (See Figure IV.)

Tweedsmuir Provincial Park has had a long and arguably unstable history. Designated in 1936 , and named after Lady Tweedsmuir of Elsfield (Tweedsmuir, 1938) the original park boundaries encompassed a series of natural lakes that formed a route suitable for canoe and small boat travel. Then, in 1950 the provincial government, under the Industrial Development Act, allowed the Aluminium Company of Canada to develop hydro electric power supplies using the valleys of Tweedsmuir Park as the reservoir (Anon., 1950). This necessitated a change in the configuration of the park. Now, rather than a circuitous pattern, the park was extended southward along the mountains to compensate for the loss. However, the substitution of mountains for a lake system was seen as questionable in terms of equity.

Mineral claims existed in Tweedsmuir Park before its inception. Initially crown granted claims and then regular mineral claims were located before the park was designated. The remote nature of the claims and their relative lack of richness in comparison to others did not lead to further development though. This was to remain as a relatively static situation until 1967, at which time the member of the legislature for the area became involved in lobbying for the renewed mineral exploration of park land. To some extent the lobbying of the government must have been successful as permission for the staking of mineral claims in the park was granted sometime in 1967. Two hundred and fifty claims had been staked and the designation of a northern portion of the park had been changed to create a nature conservancy area thereby defining the portion of the park that was definitely off limits to the mineral explorationists, and thus providing some security of tenure to those claims. It was alleged at the time that these actions amounted to boundary changes to allow for the development of the mineral claims (Anon., 1968).

This case has involved a limited number of actors. The government of the day and its ministers, including the member of the legislature for Omenica, can be identified with the mineral claim holders, originally Phelps Dodge and subsequently Meteor Mining. The third group of actors in the conflict, as it transpired in 1968, was the official opposition of the provincial legislature.

The events of 1968 have not been followed by any significant moves by any party with specific intentions toward the Tweedsmuir

Park case. Some mineral occurrences are still known within the boundaries of the park, however, and are occasionally discussed by mineral industry representatives when parks / mines conflict is discussed. We can state that the Tweedsmuir Park conflict has assumed a dormant status, but is one that has the potential of further development.

Wells Gray Provincial Park

Wells Gray Provincial Park is a 521,200 hectare park located in east central British Columbia encompassing a large part of the headwaters of the Thompson River. (Statutes of British Columbia, 1973) The park includes many large lakes, is quite mountainous, and has many volcanic formations. (Tatreau and Tatreau, 1973). (See Figure IV.)

In 1939 Wells Gray Park was designated in the British Columbia Gazette. During this era of the history of British Columbia, it was government policy to move slowly toward establishing a park system (Thompson, pers. comm., March 11, 1983). As a consequence, the park and the legal title to the land was not established definitively, nor were existing rights within the area expropriated or otherwise acquired by the crown. In 1937, a consortium of investors, including the father of Mr. David Tener, received indefeasible title to 16 Crown granted mineral claims on lands that are now included in the northwest portion of Wells Gray Park. Under the Mineral and Park Acts the holder of these claims was entitled to use the surface of the claims to work and win the minerals contained in the subsurface. The younger Tener inherited these rights from his father's estate. However, under the amended Mineral Act of 1960, claims

such as Tener's could not be developed except as authorized by the Lieutenant Governor in Council. In 1973, with further amendments to the Park Act, Wells Gray Park was changed from a class B to a class A park. This new designation placed further restrictions on Tener's ability to develop his claims. Under this new designation a park use permit could only be issued if it was necessary for the preservation or maintenance of the recreation values of the park. The 1973 amendment in effect removed the right of development from Tener.

Following attempts in 1973 and 1974 by Tener to obtain a park use permit, Tener exchanged a series of letters and communications with the parks branch. The New Democratic Party Government's pro parks policy stance ran against allowing Tener's request. Tener persisted with requests in 1975, 1976, and 1977. A change of government in 1976 did not lessen the conflict nor bring a change of policy. In a 1978 letter to Tener from the Director of the Parks Branch, it was clear that any further attempts to exploit mineral claims in the park would be denied.

With this knowledge a writ was filed by Tener seeking compensation for costs, expenditures and lost opportunity. After losing the first case, an appeal was made to the British Columbia Court of Appeal. This higher court found that the existing legislation to deal with expropriation did not apply to this case where there was an injury to Tener's right to land. The government could not take the rights to the physical land away but could make it impossible for the holder to exercise those rights. The refusal of the Parks Branch to grant a park use permit after repeated efforts created a right to compensation

(Tener v. R., 1982). If the conflicting parties, the government and Tener, could not agree on the amount of compensation, the decision would be referred to binding arbitration (Anon., 1982a). However, no compensation has been paid and an arbitration process has not been pursued. Rather, the provincial government made an appeal to the Supreme Court of Canada. With the reasons for the courts ruling being handed down in May 1985, in Tener's favour, the provincial government has been forced to ammend existing legislation to allow mining access to the crown granted mineral claims(Bohn, 1985a) or pay compensation for loss of rights.

The parks / mines conflict as exemplified by this case is one of long standing and one where attempts to resolve it have led to litigation in the provincial and federal courts. The Tener case as it has become known is one watched with interest by the mining fraternity for its potential as a precedent in settling similar conflicts that occur throughout the province. Of note is the similarity between the Tener case and the situation encountered in the Tweedsmuir Provincial Park case.

Atlin Provincial Park

Atlin Provincial Park is located on the southern end of Atlin Lake on the eastern slopes of the Coast Mountains. The park encompasses some 230,000 hectares. This park was designated in 1973. (Statutes of British Columbia, 1973) (See Figure IV.)

At the beginning of the 1970's, the Parks Branch of the provincial government undertook studies of the Atlin area with designs to create a new park. Included in the study was a statement of the geology of the area, including the mineral

potential and existing mineral claims (British Columbia, 1973). Studies conducted by the Ministry of Energy, Mines and Petroleum Resources indicated a moderately high mineral potential for a variety of elements. Thorough exploration of the area was made difficult by the significant glacial covering of much of the park.

A number of mining claims were located within the park boundaries holding legal rights over at least 11 mineral deposits. Drilling on some of the properties had indicated significant deposits of copper and low grade molybdenum. Today the park is in place and the similarity with the situation found in Wells Gray Park is evident. The mineral claims are held in limbo and the conflict remains dormant. This situation may have been different if the minerals located in the park were more desirable and commanding a higher price as a result of their rarity, however the current abundance of these minerals and the low demand as a result of technological shifts away from copper result in less pressure being developed in this conflict situation.

Summary

The listing of conflicts presented here is in no way exhaustive, but is illustrative of the variety within the generic parks / mines conflict. Cases of parks / mines conflict are not uncommon or geographically isolated incidents. The degree of public involvement or media exposure vary in both number and intensity. The timing of events in the conflicts varies greatly. Approaches to resolution of the conflicts range from non existent to complex. However, these cases can be divided between two kinds of parks / mines conflict. The

distinction can be made using the land use strategy of the proponent as the decision factor. The first grouping of conflicts is defined as those park proposals where minerals are suspected. The second group is characterized by assertions of mineral development access where park land is already designated. Each individual case will have special considerations for the resources planner and the land use environmental decision maker involved in the resolution process. In a subsequent chapter we will examine in further detail a case from each category in an attempt to evaluate the existing conflict resolution processes used and allow the prescription of appropriate alternate or modified approaches.

Throughout this chapter I have endeavored to answer the question: What is the significance of studying the conflict between park and mining land use proponents? I have shown that both mining and park activities have contributed to the historic and economic development of British Columbia. Though recent trends do not bode well for mining in the immediate future, its significance can not be overlooked. The difficulty of cataloguing resources for land use decision making contributes to conflict of a particularly difficult nature. As evidence of the wide ranging nature of the parks / mines conflict, a number of cases have been described.

The history and case descriptions in this chapter recount a conflict that has been developing and continuing in the public sphere of attention for three decades. The difficulties expressed by parties on both sides of the conflict are no less diminished now than they ever were. The approaches for resolving conflict

of this nature appear, after a preliminary review, not to have been successful. The concerns of parties to the conflict appear to recur through each of the conflicts.

CHAPTER 3

BARGAINING versus LITIGATION

Concepts of Conflict

In this chapter I will develop the concepts of conflict that will be used in the thesis. Throughout, the discussion, the assumption is made that effective, efficient conflict resolution is desirable. In Canada and the United States different conflict resolution approaches have come to be prominent. In Canada, unstructured bargaining is conducted within the framework and procedures of the bureaucratic and political systems. The American experience is dominated by the use of litigation in resolution of conflict. There are advantages to both the bargaining model and the litigation model. Five factors in which these advantages and disadvantages have been claimed, will be examine more closely. The discussion will provide the basis for examination of detailed empirical evidence of both the bargaining and litigation models as they are manifest in the parks / mines conflict in British Columbia. To further aid the reader in understanding the complexities of the socio-economic and political regimes that influence the events of the detailed case studies, a typology of conflict causes is discussed.

In the previous chapter we have shown that conflict is inevitable in the parks / mines situation in British Columbia. In the same way, conflict is an inevitable and integral part of decision making throughout society. (Coser, 1967; Deutsh, 1973) Conflict is a reflection of differences between individuals and groups as part of different social classes and / or different economic goals and desires. (Felstiner, 1983; Bercovitch, 1984) Simmel (1955) wrote: "(c)onflict is designed to resolve

divergent dualisms; it is a way of achieving some kind of unity...". Conflict then is an important catalyst for change in society. Conflict may contribute to change in any number of areas: change in a presently accepted paradigm or scientific theory; change in the current distribution of power or money; change in the existing distribution of land or resources.

Conflict can be manifest in combat, politics, bargaining and arguments, each one a possible approach to resolution. Each of these conflicts has its associated costs and benefits. Injury and death, loss of power, prestige, opportunity and financial losses are among the costs. Benefits of conflict may accrue in the achievement of decisions that are just and reflect the desires of as many of the parties in competition for resources as possible. Benefits are reflected through the saving of life, time and financial wealth, gain of prestige, and development of opportunities.

The resolution of conflict is desirable. Wehr (1979b) states "(i)n limited amounts and by regulated modes, it provides for societal self correction...". Resolution of conflict can be expressed as the movement of a chord from dissonant to consonant. As in music, a variety of processes or actions can be taken to achieve this. Conflict is resolved when divergent parties are willing to accept some position as status quo. (Boulding, 1962) Conflict, when it is resolved, allows society to function with a heightened efficiency. However, the resolution that is less costly provides a greater degree of efficiency than the conflict resolution that is extended in either time or resources. (Susskind and Weinstein, 1980) Clearly, an efficient resolution of

conflict is desirable. (Schuck, 1979) If we can learn or devise ways in which the empirical cases can be dealt with more efficiently, improvements are possible in the processing of conflict resolution.

As stated in chapter 1, the purpose of this thesis is to evaluate alternative strategies for resolving conflicts between mineral resources development interests and park preservation interests in British Columbia. It is time now to describe the models of conflict resolution.

Conflict Resolution in Canada and the United States:

Litigation versus Bargaining

There are, in the North American experience, two main approaches to conflict resolution. One can think of a spectrum running from pure adjudication by an independent tribunal, to pure bargaining between opposing interests. (Fuller, 1978; Schuck 1979) In the United States, conflict resolution is dominated by use of the courts. (Cormick, 1982) The litigation model as Schuck (1979) describes it is a group of adversarial approaches clustered near the adjudication end of the conflict resolution spectrum. Many names and nomenclatures have been developed by various authors to describe and discuss the litigation model. For each set of socio-political circumstances the precise options under the model will change. However, the following are some that will be encountered: arbitration; administration; judging; courts; adjudication. The use of litigation to determine which of the divergent parties is right has a wide acceptance and appeal. (Eckhoff, 1967) With a long history, litigation has developed a strength of moral legitimacy relying

on precedent, deduction from principles, and rational decision criteria. (Schuck, 1979)

The Canadian conflict resolution experience relies less on the courts and more on informal and unstructured bargaining associated with lobbying and political activity. (Dorcey and Thompson, 1983) Though more structured and deliberate bargaining is found at the extreme of the spectrum, I will denote as the bargaining model the practiced Canadian equivalent rather than that ideal. The bargaining model includes consensual approaches of mutual accommodation and relies on the conflicting parties' voluntary control of the processes. (Susskind 1981; Schuck 1979; Cormick 1982; Susskind and Weinstein, 1981) Once again a number of names have been used to describe a range of conflict resolution processes at the bargaining end of the spectrum. The following are a sampling: environmental mediation; negotiation; conciliation; conflict avoidance.

Weakness of Litigation

Researchers, primarily in the United States, have highlighted the inadequacies of court processes that are used for conflict resolution. Questions about the proper limits of the litigation model, in its various forms, have long been asked as new problems and alternatives are posed (Fuller, 1978). "The growing use of court remedies for personal as well as business or governmental conflict is part of the quarrelsome nature of American society" (Cormick, 1982). As litigation is used in attempts to resolve a wider variety of conflicts new questions are asked about its appropriateness for the task. The following

are five categories in which deficiencies of the litigation model have been recognized: delay and time; costs; capacity for technical issues; opportunities for participation; and flexibility of outcomes.

Delay and Time

"American courts are doing too much," (Cavanagh and Sarat, 1980), with the result of backlogs and delays. As one criteria for judging conflict resolution processes, Susskind and McCreary (1985) state that "a good outcome should be reached quickly." The litigation of conflicts is time consuming. (Ognibene, 1983) As the courts are called upon to process a greater number of cases in addition to criminal cases, the resources available for the administration of all justice are stressed. (Sarat and Grossman, 1978) A broader "... scope of judicial responsibility accounts for some of the growing pressure on the judiciary and the increased work load of the courts (Ford Foundation, 1978b)." Furthermore, the built-in delays of the litigation model have been exaggerated by the increasingly crowded nature of the court calendar, especially in the United States. (Cormick, 1982) Among the areas of greatest growth are public law cases that include the most complex type of social policy litigation. (Cavanagh and Sarat, 1980) "(L)itigation - particularly the public law variety - can pose awesome problems of implementation, in part from the continued intransigence of a losing party (Schuck, 1978)." Administrative and regulative adjustments compelled as a result of litigation require additional time for implementation after the decision has been made. "Pressure (on the courts) arises from the growth in population and transactions, and from changes

in technology, the economy, and in social patterns(Ford Foundation, 1978b)." Among the changes are the growth of the environmental movement and the increases in outdoor recreation demands for wilderness.

Costs

The obvious corollary of time efficiency, is that of cost. Comparisons are difficult and proof of efficiency is unlikely. "Adjudication may be too costly for some kinds of cases(Ford Foundation, 1978b)." Any processes that will reduce the cost of litigation would be welcomed by the participants. Reduction of the time and resources taken up in preparation and presentation of cases is a move to reduction of costs. The adversarial component of the litigation model enforces added costs of the delays and evasive tactics that are employed by diverging parties. Appeals of earlier decisions, calls for new arguments to be brought forward, and adjournments for any number of reasons increase the costs that are born first by the parties to the conflict, and second by the public in maintaining the system and in enforcing its decisions. Further costs are generated when the first decision results in long term increases in litigation or the need for additional government regulation and administration of circumstances that resulted in the conflict. In periods of poor economic performance, the costs of conflict become an especially unwanted burden to all protagonists. Costs of the litigation process may become a factor in decision making processes of the individual parties who initiate projects or pursue resolution of conflict.(Susskind and Weinstein, 1980)

There must be some accounting of the degree to which the projected legal costs will affect the overall desirability of the proposal.

Capacity for Technical Issues

The capability of the courts to deal with complex and technical issues is suspect. "(T)he adversarial tactics, in conjunction with technical rules for admission of evidence and testimony at trial, assure that potentially useful information will be eliminated from consideration(Susskind and Weinstein, 1980)." There is a trend in litigation for the courts to narrow the focus of the issues to be judged, to an extent that they are manageable, rather than to necessarily address the issues that forms the basis for the litigants' actions. "Sound decision-making requires access to highly specialized bodies of scientific or technical data(Ford Foundation, 1978b). If the parties to the conflict are able to bring technical and complex issues before the court, there is a question as to the ability of the adjudicator to understand the significance of the material before him. This deficiency is especially important in "(e)nvironmental disputes, ...(that)... are characterized by their scientific and technical content(Susskind and Weinstein, 1980)."

Opportunity for Participation

The bilateral character of the litigation model restricts the pluralistic will of society by including only two parties in any one conflict resolution process. The litigation model has difficulty addressing "polycentric" conflicts entailing a variety of interrelationships between a number of concerned

parties.(Fuller, 1978) "Not only are the issues involved in such (public) litigation often polycentric; they are also problems for which no satisfactory solutions may be at hand (within the legal structure)(Schuck, 1978)." Though conceptually every conflict is polycentric, the practical ties through legislation, partnerships and associations of similarly interested parties may not always be obvious or of concern to the adjudicator. Consequently, resolution of conflict in this way may set precedents for decision making on other points of concern to parties that may not be direct participants in the litigation. Solutions handed down by the courts in this way are criticized by a wider constituency than was represented in the system. Thus, related parties are critical of the apparent injustice that has been done and critical of the litigation model for conflict resolution.

Flexibility of Outcomes

"The adjudicative technique tends to isolate a specific incident leading to dispute, thus making it difficult to take into account all the dimensions of the controversy. (T)he adversary nature of the proceedings and its winner-take-all aspect can exacerbate tension between the parties and leave the underlying problems to fester(Ford Foundation, 1978b)." The litigation model, through its traditional, structured and antagonistic approach, does not provide a forum in which the disparities between parties can be overcome. With only two parties involved in the divergent litigation system of conflict resolution, each with an adversarial view of the desirable resolution, the job of the judge is one of choosing between the alternatives presented. There is no room in the course of

litigation to invent new options for conflict resolution. In fact, if the questions to be judged are broad and of a more general nature, the adjudicator will often limit the discussion and finding of the court to a limited point of divergence. In this way the tasks undertaken in the litigation model are simplified and restricted such that they conform to the mechanics of the judiciary and the principles of law and precedent. (Amy, 1983b) Once again dissatisfaction is generated among the litigants as the conflict that has been brought before the courts has been manipulated to fit the process being used for resolution.

Research Question

Given the purpose of this thesis, questions arise about the suitability of the Canadian courts for resolving conflicts. Does the Canadian experience reflect the same weaknesses that have been identified in the American litigation model? The companion question remains, how well does the unstructured bargaining practiced in Canada redress these issues? The parks / mines conflict will provide a pair of British Columbian cases that employ the respective conflict resolution models, and share the same socio-economic and political conditions for decision making. In the past, some commentators have compared the best examples of environmental conflict resolution under the bargaining model with the worst attributes under the litigation model. I am fortunate in this study to have two cases that provide arguably good examples, in the Canadian context, of each model. In the following chapter, will describe in detail the cases in question.

Chapter 5 will examine the evidence in each case in light of the five issues discussed here.

Claimed Advantages of Bargaining

We will examine the advantages of bargaining as they have been proposed by a selection of commentators, through the same five categories as were used in describing the weakness of the litigation model for conflict resolution.

Delay and Time

The bargaining model will often be more time efficient in the resolution of conflict. The delays that are found integral in the litigation model are not present. The parties, being voluntary participants, are thought to be more inclined to strive positively toward resolution. The bargaining model, having adequate representation, should be able to provide a resolution that will not require further clarification as various constituencies in the polycentric web of decision making adjust to the new administrative environment that results. Time delays will often be found when changes in regulation, inspection and other procedures are required at the completion of a court proceedings. Consensual approaches, should decrease delay in the implementation phase by allowing the parties involved to anticipate the requirements of a forthcoming resolution of conflict.

Costs

"Most ... resource management conflicts either end up in court or persist until one of the parties gives up. Obviously it would be desirable (and less costly) to avoid litigation if

equally satisfactory (or better) outcomes could be reached without it (Susskind and McCreary, 1985)." It is "... costs that encourage the parties involved to negotiate in good faith and reach a fair agreement (Amy, 1983b)." Three areas of cost reduction are identified in the bargaining model. First, the costs to the participants directly will be reduced by a savings in legal costs. This may be especially the case for participants who from a legal standpoint are in a weaker position. Parties that perceive some strength in their participation in bargaining will also identify the potential savings over equivalent court proceedings. (Amy, 1983a) Second, at the conclusion of bargaining processes, the cost of further appeal proceedings is an unlikely consideration. Penalizing costs to the losing participant of the court decisions are also avoided. Third, the costs of providing court facilities and other services provided by government through taxation and rents can be avoided to a greater extent. Though there are several difficulties in calculating the actual costs of the bargaining model, (Susskind and Weinstein, 1980) the relative perceived costs in comparison to the litigation model over the long term are the important criteria for judgement. The reduced costs of bargaining are "... based on the realization that there is more to making policy efficiently than simply making decisions expeditiously... (Amy, 1983b)."

Capacity for Technical Issues

The mediation model, through its reliance on the direct and sometimes mediated processes of conflict resolution, has the capability to deal strongly with the technical issues of concern

in many environmental and resources conflicts. "Because most environmental disputes involve complex legal, economic and scientific issues, effective negotiating usually requires access to expertise in those areas(Amy, 1983a)." With direct negotiation, the parties can each educate each other in ways that produce joint understanding of the complexities of the conflict. The conflict that is resolved with the assistance of a third party in the bargaining model will require the services of an individual or team of mediators that are knowledgeable and able to facilitate rational discussion in an effort to reach consensus. "Bargaining stimulates the flow of information between parties (information relevant to their preferences, even if not to the applicable legal rules (Schuck, 1978))."

Opportunity for Participation

The bargaining model "... advances participation by those the decisions affect(Schuck, 1978)." There are numerous advantages to full participation of all affected parties in the conflict. The polycentric nature of most conflicts enforces the assertion that all parties wishing to participate should be represented.(Fuller, 1978) (B)argaining can help participants to develop a better appreciation of the perspectives of their adversaries ... (and) may reduce hostility, soften positions previously taken, and ... tends to expose the true intensities of the participants preferences,...(Schuck, 1978)." Without opportunities for such completeness, any conflict resolution process will be open to criticism from excluded parties. "Agreement ... minimizes the risks of extended conflict (and) potentially adverse publicity ...(Susskind and Weinstein, 1980)."

Additional gains from full and voluntary participation in bargaining are gained through the creation of a "strong impression of competency and capable leadership (Susskind and Weinstein, 1980)."

Flexibility of Outcomes

The bargaining model is capable of producing an open agenda on which all parties to the conflict are able to bring possible solutions and to develop innovations. "...Opponents in mediation attempts often bring to the bargaining table a whole history of antagonistic relationships, misperceptions, and miscommunications that must be dealt with if serious and straightforward negotiations over the substantive issues are to take place (Amy, 1983a)." "(T)he directness and informality of the discussions involved in environmental mediation (bargaining) leave the participants free to address the central issues of the controversy and perhaps resolve them (Amy, 1983b)." An array of arrangements are open for development and consideration within the bargaining model. "The bargaining exemplifies the virtues of all adversary processes: it encourages diversity, stimulates the parties to develop relevant information about facts and values, extreme positions that would be asserted in litigation (Schuck, 1979)."

Limitation

Before continuing, several qualifications must be placed on the distinctions in the preceding argument. The literature cited here in criticism of the litigation model is based on the

extremes of the United States experience. Likewise, many of the claimed advantages of the bargaining model are predicated on examples of structured and deliberate bargaining. Use of courts for conflict resolution, though growing in Canada, is not pursued with the same enthusiasm. The bargaining undertaken in Canada, though unstructured, is conducted within existing administrative forms and conventions, and does not emulate the extreme at the conciliatory end of the spectrum. There are strengths to be found in each model that should be retained for use in particular conflict situations. The highly structured, time tested and decisive qualities of litigation (Kriesberg, 1979) give "... active voice to extraordinary diversity of political, economic, social and other interests...(Schuck, 1979)" ; it demands a finding of facts and assertion of values, and can work to the advantage of the weaker party in conflict by reducing established power relationships. (Schuck, 1979; Susskind and Weinstein, 1980) "Actual or threatened litigation is often a necessary prerequisite to the willingness of a party ... to negotiate; it is the source of power and influence that brings the parties to the table... (Cormick, 1982)" and to bargaining.

There are variations on each model of conflict resolution. Practitioners of each strive to develop the perceived strengths and to reduce the instances that show weakness. Though there are weaknesses in the litigation process, it is not closed to modification and innovation that will accomodate a variety of circumstance. (Cavanagh and Sarat, 1980) Informal rule-making and fact finding processes prescribed by some courts, though still exhibiting some of the weaknesses that are found in the basic

litigation model, are attempts at improvement (Schuck, 1979). Other possible adaptations of the litigation model include ideas such as the science court (Kantrowitz, 1977) and masters of the topic appointed by a judge to provide advice and technical expertise. Each modification to litigation or adaptation of bargaining to further accommodate the resolution of conflict recognizes the diversity of conflict and the variety of processes that need be considered.

Tools for Understanding

In researching and developing the information necessary for this thesis, a typology of conflict causes has been used and found to be helpful for understanding some of the motivations and peculiarities of conflict as it occurs in the British Columbia parks / mines conflict situation. With the colorful and often misunderstood character of mining, and as few examinations of the parks / mines conflict have been undertaken, the following discussion is included in the thesis for clarification.

If conflict is defined as:

the incompatibility between parties whose behavior and / or cognitions, interests, values diverge;

then, each conflict component in the definition can be viewed as a cause of conflict. Together, these causes can be taken as a typology. This typology of conflict has been proposed by Wehr (1979a) and Lord *et al.* (1979). Wehr and Lord both discuss the 'non-realistic' nature of some conflict. However, Dorsey (1984b) carries forward the notion of behavior and explicitly includes it as a cause of conflict in natural resources management issues. In the following section I will describe each type of conflict

and develop examples, within the thesis context, as a means of clarification of the concepts set forth by these authors.

Scenarios will be invented that reflect each conflict cause as an aid to developing the framework of understanding. The key purpose of these scenarios is to illustrate the meaning of each of the types of conflict with examples that might occur in the parks / mines conflict case. Resolution of each successive type of conflict cause will be, for illustrative purposes, a step toward the next type. In empirical cases there may be some mix of the four conflict types. It will be possible to distinguish actual causes of conflict using the four part typology. With these distinctions, the reader can appreciate the process of development that the researcher has undertaken in preparation of the thesis as a whole. To bring clarity to the situations, I will use fictitious dialogues.

The situation common to all dialogues will be a personal meeting where two individuals represent parties in a parks / mines conflict. It is thought that by keeping with the same scenario, the 'pure' conflict types will be more easily recognized. The parks proponent may represent a single group or a coalition concerned with advancing a park land use designation on the land in question. The mining advocate may represent a single enterprise or an association of mineral interests, with a goal of forwarding exploration and development options. Either party could represent a government line agency. As observer, I will be the third party in the dialogue. My comments will be in explanation and will facilitate transition from one conflict scene to another.

We should note that this 'conversation' need not , in real life, take place in a person to person manner but may transpire through various media including: radio, video, press, or through third party information. The conflict dialogue may be comprised of a variety of media messages.

I will write the dialogues for this illustration in the style of a theatrical play. Each actor's statement will be labelled in turn:

P - Park Proponent

M - Mining Proponent

The two participants have come to discuss the mineral deposit exploration and mine development processes set forth in M's documents. Each has had an opportunity to read and study the proposal. In brief, the mining concern wants to continue with exploration, drilling, sampling, development construction, operation, and reclamation. Each successive activity would be conducted as investment, market conditions and mineralization of the deposit dictate. The park interest wants a park designation to include the same lands proposed for mineral industry activity, thereby assuring use of the land for conservation and recreation purposes.

Cognitive Conflict Dialogue

Cognitive conflict is based on different understandings and perceptions of fact involved in the conflict. The parties are both making an appeal to the facts to support their case, in this instance for a particular land use. However, the parties disagree because of the way that they perceive the facts. A characteristic dialogue might transpire as follows:

- M Do you understand that our proposal is a six phase program leading from exploration through development to production of minerals?
- P Yes, I understand that there are six phases to your proposed mining activities.
- M It is correct that there are six phases, but I must correct your assumption that all six phases are mining.
- P Certainly all the phases are mining! Is it not true that you will be using diamond drills and even bulldozers to complete most phases of the proposal.
- M Our program is to carefully explore and develop this mineral property during the first four phases, as outlined in the proposal. Not until the fifth phase, closely followed by reclamation, does mining take place.
- P If you are allowed to continue, your crews will be disturbing many tens of hectares, moving tonnes of rocks and processing them to extract the minerals they contain. Is that not true?
- M Yes we will be taking rock from the property. However, we are only sampling small amounts of rock from a wide variety of locations, distributed over the entire site. Disturbance will be limited to only a hectare or two. Samples will be analyzed to assess the amount of mineral that it may produce. This is not mining.
- P What may appear to be small amounts to you will severely impair the entire core lands proposed for park. The valley in which your claims are situated, will be changed beyond repair or usefulness.
- M Certainly within a year or two one would hardly notice that we had been doing work in the valley. Very little disturbance will be created.
- P All of these proposals will change the land, making it unsuitable for park. The damage will not be diminished over time to allow the features of the park land to be fully represented.

The two parties appear to agree on some of the facts but perceive different outcomes or results from the proposal.

Whereas the mining proponent envisages a series of development phases, the park lobbyist perceives six phases of negative

environmental impact. There appear to be three main areas of contention regarding facts as set forth in M's proposals. First, a definition of what mining really is. The actors do not have the same activities in mind when mineral industry activities are discussed. Secondly, the area and tonnage of materials to be moved in exploring for minerals has not been agreed upon. Whereas the park proponent may count all potential movement of surface soils and subsurface materials, the mineral interest may only perceive the rock that is important for analysis as that which will be disturbed and removed. Consequently, the number of hectares that will be sustain impact by the proposal may be significantly different in the minds of each actor. The third issue in this cognitive conflict dialogue is that of time, specifically the time it will take for any disturbances to the landscape to recover to the former state. The perception of future state by each of the actors is the key to conflict. Where one might envisage a total devastation of the landscape, the other party has perceptions of mild and acceptable disturbance. The park proponent may view changes as totally unacceptable while the mineral developer accepts wilderness as lands that may have felt some influence of human activity.

This kind of situation can be found in parks / mines conflicts in British Columbia such as that of Kwadacha Provincial Park. The essential component contributing to conflict is that the information, or lack of it, in the decision making process has led to major differences in the perceptions of the actors. In this case a park has been established without a survey of mineral occurrences. Subsequently, mineral explorationists have

traced a promising mineral deposit to the boundary and into the park. The conflict then arises as to what would be the impact of changing the park limits to allow further exploration of the deposit. Could the initial boundaries have been established to avoid a deposit of high economic potential? Would doing so then or now compromise the features of the park that are designated for conservation? This conflict continues unresolved because of a lack of agreement on the facts of the matter.

Our dialogue case above illustrates a variety of possible manifestations of cognitive conflict between park and mineral proponents. What is needed for resolution of this type of case is a process for clarifying or contributing to the facts so that the parties to the conflict can reach some level of agreement. Perhaps some form of study or conferencing could be used to establish the facts. However, once this is done there may be some residual conflict. Failure to resolve the greater portion of the conflict may indicate the presence of a value conflict.

Value Conflict Dialogue

Value conflict stems from differing assessments of the desirability or acceptability of actions and results.

"Value conflict is almost always present, not only because differing socialization creates differing values between people, but because we so readily rationalize our immediate interests by creating and adapting a value structure which supports and legitimizes those interests (Lord, et.al. 1979)."

Value type conflict is a disagreement over evaluations of alternatives. Conflicting parties can disagree over the relative importance of developing mineral occurrences or designating park

land. This then is a dialogue concerned with differing opinions of what actions are worth taking.

P The damage to this potential park land would surely be enormous if you were to continue. It would certainly not be as worthy of park status.

M If we don't continue with our assessment of this mineral deposit then we will not be able to get the geological information that we need. These lands have to be held open for mineral exploration.

P We would like to see these lands held undisturbed so that they may be enjoyed for the conservation of natural features that they encompass.

M Minerals are where you find them, and only rarely are the concentrations of minerals adequate such that the cost of recovery and the proximity to markets make a project economically viable.

P Park land too is rare and unique. Each landscape has its own climate, flora and fauna to be conserved for education and for recreation.

M Surely there is enough park land in British Columbia without adding this particular area. Five percent is a considerable designation to be withheld from mineral exploration and other activities.

P The present park system is but a portion of what is needed to represent the natural features of the province and provide opportunities for recreation.

M I don't care if we haven't enough park land for conserving wild flowers and black bears. Just go out in the bush and you will find more than anyone needs.

This dialogue is an example of how a value conflict can often seem to be about or concerned with the facts the way that a cognitive conflict might be. The way that this dialogue has transpired is typical of many arguments between park proponents and the mineral industry in British Columbia. Though much is made of the information and facts of the case, the underpinnings of the conflict are the divergent value structures inherent in the parties' views. The debate here illustrates the great

difference in values attached to the land in question by the conflicting parties. Amidst the cognitive components of the argument concerned with the amount of recreation land that is actually needed, the basic value positions of the actors surfaces. Each holds the value of land use for their purpose as more desirable to society than the other. In fact, the comments of the mineral proponent belittle the importance of his rival's values. Values in this sense are not monetary values but the values of the parties as they reflect any particular world view.

It must be noted that value in this instance is not monetary values, rather more prominent is the societal value positions of the conflicting parties. Some value conflicts will be commensurable in monetary form and others will not. Sometimes the non-monetary values can be translated through some estimation of surrogates. Those values that will not by their nature be given a monetary equivalent will require the use of more innovative conflict resolution processes.

It is often assumed that in situations of value conflict, an impasse is inevitable and that some arbitration need be imposed. In fact, trade-offs might be possible when both sides are unsure of gaining their objectives. When one side or the other perceives that they may be in a win / lose situation, it may be advantageous to them to negotiate the best alternative, thereby minimizing losses. It is possible that a win / win situation might be created. It is likely that the wider the disparity between the parties in the value conflict, the greater the desirability of striking some compromise point in valuation alternatives. This will especially be the case when the parties

to the conflict appear to be quite evenly matched in the power that they command in the decision making process.

Though the monetary element is evident in the short case examples that we have examined to this point, the value cause for conflict is also an integral part. The Valhalla Wilderness Park, having considerable cause for conflict in the relative economic merit of park or forest land uses may be a case where the proponents of mineral values have a lesser impact. In such a situation, the value nature of the parks / mines conflict may be more apparent. Many local residents value the Valhalla area for its characteristics as wilderness and for the tranquil nature that it contributes to living in the community. At the same time residents who have mineral claims in the area argue that those same values touted by park proponents will not be disturbed by mineral development activities. The parties diverge as to the extent that the Valhalla area must remain pristine to provide the wilderness qualities that each value highly.

Value conflict resolution requires measures to facilitate an appreciation of alternative values by both parties. Through such action, an understanding of the opposing value position may lead to some form of unity. Though values may not converge, the divergence along a spectrum may be considerably narrowed such that appropriate trade-offs are possible.

Interest Conflict Dialogue

Interest conflict describes disagreement over the distribution of costs and benefits associated with the use of scarce resources. In short, the conflict is over who should pay.

An interest conflict pits the interests of one party against those of another. Such a conflict is characterized when the interests of one party, if advanced, will have a negative impact on those of another party. The interest conflict does not have a potential Pareto optimal option. In the case of land use the interest type conflict is one of a zero-sum concept, where the advances of one side in the resolution will be equally matched by the losses of the other. However, in many cases of interest conflict, one party's gain is not equal to the other party's loss. The situation is summarized by Raiffa (1982) as one where there are no net gains to be found. Interest type conflict is usually and most easily reflected in a monetary form. The decision to be made in resolving an interest conflict is who will pay the costs and who will reap the benefits of any action. A dialogue exemplifying this type of conflict could proceed thus:

- M We have established and registered a claim to the minerals held under these lands.
- P Your continuing with this project will jeopardize the natural features we want to preserve.
- M Our financial backers have invested a considerable amount of money and our geologists have toiled long hours toward advancing this project.
- P We believe this potential park land is of great recreational value.
- M We can not afford to abandon this project without some return.
- P The great economic effects, through the investment multiplier, of recreation land and associated facilities must be recognized, preserved and developed.
- M Not only have we spent a considerable sum on the development of this property already, but the minerals in the ground will contribute greatly to the investors return if they are recovered.

This dialogue illustrates the distributional nature of the interest type conflict. The regional interests promoted by the park proponent are decidedly in conflict with the private and industrial interests of the mineral development proponent. The gain of either party in this situation will be decidedly at the expense of the other's loss. The mineral development proponent continues to stress that his interests and those of his financial backers must be met. Resolution of such a conflict will turn on which party is willing to offer or accept some compensation in monetary or other terms for the loss of opportunity associated with the land under any preferred use option. Once one party or the other has decided to offer some compensation and the other has agreed to this form of resolution, the negotiations or bargaining can be concentrated on the amount of money or land or resources that will be necessary for interests to be relinquished. Though this appears to be simple, many interest conflicts are not resolved. The required trade off is never made. A key to this lack of success is often that there is no market or other forum in which the interests of the divergent parties can be expressed.

Precisely this situation has occurred in British Columbia already. In the Tener case, as the Wells Gray Provincial Park situation has come to be known, both the mineral claim holder and the parks ministry are committed to retaining their interest in land. Legal arguments on both sides in the courts of both the province and the Supreme Court of Canada over a number of years focus on the compensation issue. The question asked the court is

whether the government must compensate Tener's loss of interest in land and minerals. After an prolonged hearing, a ruling in Tener's favour has forced the government to compensate, or allow the further development of the mineral claims in question. The difficulty of determining an appropriate amount and perceived high costs of compensation have forced an exception to be made in the legislation prohibiting mineral exploration in Class A parks.

Behavioral Conflict Dialogue

There are a multiplicity of ways in which conflict can become a behavioral type. Behavioral conflict goes beyond divergent cognitions, values or interests of the parties, to some non-rational or non-substantive starting point. A breakdown in the objectivity and clarity of discussions may occur. Chief factors in the conflict might include the personalities, physical circumstances, or quality of communications. Incompatible individual personalities may stymie conflict resolution when other types of conflict have not yet been addressed, or seem to have been overcome. The conflict confrontation may occur (as is this writer's experience) when each is trying to cope with difficult physical conditions, such as inclement weather while meeting on the actual land in question. This may lead to irrational comments or behavior. In the same manner, moving final approval of a resolution to an unfamiliar setting may spark anxieties for those in conflict. Communications, especially through media or second hand (perhaps unreliable) sources may further contribute to a non-rational exchange by causing intended messages to be misunderstood. The following dialogue embodies some of the parameters that could typify a behavioral conflict:

- M I am certainly pleased that we have come to a reasonable arrangement over our first points of conflict and that we can close our resolve here at the legislature with the ministers' approval.
- P Yes, finally park land is getting the recognition it has long deserved.
- M Well, would you like the whole province to be a park?
- P You know the more you say things like that, the more uneasy I become with this agreement.
- M The feeling is mutual, believe me.
- P I knew from the start that we couldn't trust you miners to negotiate in good faith. You have probably been cooking up some hidden agenda all along.
- M So now you are lumping me in with all miners as untrustworthy and devious. Perhaps your own motivations should be examined.
- P The mere thought of a devoted environmentalist compromising his values to accommodate an industrial development is preposterous. I will not stand here and listen to these personal affronts.
- M I can assume then that we do not have an agreement after all this. It certainly seemed too good to last.

Wehr (1979a) would describe this conflict dialogue as non-realistic. We can see that each proponent is reacting to the concerns or allegations of the other in a stereotypical manner. Rather than the individual merits of arguments and concerns being addressed by the actors in the dialogue, the notions and fears and long established stereotypes of both miner and environmentalist have been adopted by the actors in the conflict. Perhaps the individuals are reacting to the underlying stress of the conflicts that they have already agreed to resolve. Perhaps the unfamiliar situation of being in the political spotlight of the government ministers is contributing to the stress. A

scenario such as this may occur where there has been little previous contact or where the conflict resolution process has been protracted or frustrating, leading to a loss of rationality in the exchange.

Though in our explanation of the previous three types of conflict an example from the short case examinations has been highlighted, I have not in the eight parks / mines conflicts, identified behavioral conflict. This deficiency may be due in part to the surficial extent that the cases have been investigated to this point. More in depth research and discussion in the next chapter may reveal more indications of behavioral, non-rational conflict.

Resolution of behavioral conflict may best be conducted through activities in the processes that avoid the stumbling blocks that have been suggested. By breaking down the stereotypes and potential personality differences to allow a clear understanding of the issues and the views of the parties behavioral conflict may be avoided. Further, careful planning to establish situations, conditions and meeting places that are conducive to productive discussion is important. Activities that will modify the factors that contribute to behavior conflict include measures such as understanding emotions or using symbolic gestures, suggested by Fisher and Ury (1981), that address the people problems apart from the other problems in the conflict.

Summary

An appreciation of the identified weaknesses of the litigation model and claimed advantages of the bargaining model of conflict resolution, contributes to our understanding of the theoretical concepts that underpin this thesis. Both litigation and bargaining are resolution processes that are basics upon which innovation and adaptation can be established. The four part typology of conflict establishes a communality of understanding between the reader and the researcher in preparation for the detailed description of the Wells Gray Provincial Park litigation model experience and the Chilko Lake Wilderness Proposal bargaining model experience to follow.

CHAPTER 4

TWO CASES OF PARKS / MINES CONFLICT: WELLS GRAY PROVINCIAL PARK AND CHILKO LAKE PARK PROPOSAL

In Depth Description of Cases

This chapter will examine more closely two cases of parks / mines conflict. This component of the thesis is designed to accomplish two goals. First, I am endeavoring to establish the chronology of significant events in the two cases chosen. Second, in so describing the cases, learn the manifestations of the litigation and bargaining processes of decision making that have been used in attempts to resolve the parks / mines conflict in British Columbia. This will allow us, in Chapter 5, to use the criteria for evaluation that have been established in Chapter 3 in analysis and preparation of recommendations. The framework provided by phases of the decision making environment, established in Chapter 2, will lead to an understanding of the varieties of organizational and individual actor roles, and conflict resolution processes. This information is required to evaluate the existing conflict resolution processes.

In choosing the cases of Wells Gray Park and the Chilko Lake Proposal, I have unknowingly made a choice of what appears to be becoming an intertwined story of conflict resolution processes as they develop. (Further rationale for the selection of the Wells Gray and Chilko cases from those that have been described in Chapter 2 is presented in Appendix 3.) Phases of the decision making environment will form the framework for analysis. It has been revealed that the Wells Gray situation is now one to be learned from and avoided. With at least 650 valid mineral claims within provincial parks of British Columbia, the ramifications of a positive result for the claim holder are many for the existing

administration of the parks / mines conflict. (Heycek, 1985)

Similarly, the early components of the Chilko Lake case are looked at as obsolete, and a new order model for parks / mines conflict resolution is now in evolution. (Collins, pers. comm., April 28, 1985) The current decision making environment and conflict resolution processes have grown from each of the phases that precedes it. Further evidence of this phasing of the parks / mines conflict resolution environment will be evident as the following case studies are examined within the four phase framework. It is to this task that we now turn. Thus the order of the case descriptions presented below.

Wells Gray Provincial Park Case

Though the number of actors in this case are few, the number of processes and actions taken by the parties and the protracted nature of the conflict resolution process are quite complex. A digest of the case is presented in Appendix 4 as a chronology of events.

Foundation Phase

Between 1934 and 1937, a consortium of investors, including the predecessor in title of Mr. David Tener, received indefeasible title to 16 Crown granted mineral claims on the lands that are now included in the northeast portion of Wells Gray Provincial Park. In 1939, the park was designated by the provincial government. The period 1938 to 1945 was a time of continued gradual growth in both the number of, and area included in, provincial parks (British Columbia, 1980). Under the Mineral and Park Acts of the day, the holders of these mineral claims

were entitled to use the surface of the claims to work and win the minerals contained in the subsurface. In addition, entitlement was given to take and use a right of way to the claims to extract the minerals they may contain.

As we have seen, during this phase of the parks / mines decision making environment, there was virtually no conflict. However, as the environmental movement became stronger, restrictions would begin to appear. The Park Act, 1965 (B.C.), c. 31 now R.S.B.C. 1979 c. 309 section 9, as amended, prohibited the development of any mineral claims except under a park use permit. At this time Wells Gray Provincial Park was a class B park, therefore a permit to allow development could be granted if it was not detrimental to the recreation values of the park. Tener had applied for such permits as required before further exploration and development work could take place, however, these were never granted. As time passed, the restrictions on development of mineral claims within parks became more constraining. Under the Mineral Act, R.S.B.C. 1960, c. 244 now R.S.B.C. 1979, c. 259 section 7, as amended, claims such as Tener's could not be developed except as authorized by the Lieutenant Governor in Council.

Revolution Phase

In 1973, in conformity with environmental and conservation platforms of the newly elected government, the Park Act was amended. The policy of the New Democratic Party to ban mineral exploration from parks, reflected a change in the value structure of the government toward the values of parks proponents and toward strengthening the power of the Parks Branch. (McNelly,

1983) Exerpts from the statements of the then Minister of Resources, Bob Williams read as follows:

"The government also intends to bring in legislation this session bringing all provincial parks under statute. ...

...the former Social Credit government was responsible for the greatest retardation of park preservation anywhere in the world over the past 20 years. ...

... exploitation of natural resources in parks is almost always detrimental to recreational values." (McNelly, 1983)

Wells Gray Park was changed from a class B to a class A Park. This higher designation placed further restrictions on Tener's ability to develop his claims. A use permit can only be issued in a class A park, if it was necessary for the preservation or maintenance of the recreational values of the park. Upon reflection, the 1973 action of the provincial government in effect removed the right of development from Tener, even though he still held the mineral rights.

In 1973 Tener once again sought a park use permit. Written permission was given by the Parks Branch for helicopter flights into and out of the claims for the purpose of that work. However, no park use permit was granted. Tener engaged in a plethora of letters, phone calls and personal meetings with the director of the Parks Branch. Excerpts from two letters in 1974 from the Parks Branch to Tener read in part as follows:

June, 1974.

... As you know, the construction of nine miles of industrial road access across Park land to the Summit Claims is in conflict with Section 9 (b) of the Park Act. We have sought instructions from the Government as to whether, in view of this conflict, we should proceed with valuation appraisals through the Department of Mines with the intention of negotiation the purchase of these claims, or issue the necessary authorizations for you to conduct your operations in

view of the fact that the mineral claims predate the Class "A" Park.

September, 1974.

Action towards resolving the question of permitting you to proceed with the operation of Mineral Claims (L5001 - L5016) in Wells Gray Park should be concluded by the third week in October if not sooner. (Tener and Tener v. R., 1982)

A park use permit was not issued in 1974. It appeared that the Parks Branch was stalling. The rise in environmentalism and the demand for outdoor recreation was reflected in considerable controversy over mining in provincial parks. The New Democratic Party could not part from policies of park preservation developed while in opposition. Though some mineral rights within provincial parks were purchased from claim holders, by the government, Tener's case did not attract sufficient political attention to resolve the conflict. Annually requested, park use permits were not granted in 1975, 1976 or 1977. Mining in parks continued to be a difficult political issue. Mr. Justice J.D. Lambert stated in 1982 of the situation, "... the government procrastinated because mining in parks was a difficult political issue(Anon, 1982)."

Prosperity Phase

A return of a pro-development government in 1976 did not lessen the conflict or change the policies regarding mineral claims in parks or the issue of mineral industry access to park land for exploration purposes. Economic growth in all sectors of the economy was enjoyed by government, the mining industry and conservation and outdoor recreation interests. Prosperous times tended to reduce the intensity of conflict as satisfaction with

existing resource allocations, especially on the mining side of the conflict, was the norm. Such comfort and complacency in government would not provide the flux needed for initiation of definitive conflict resolution actions.

In 1978 a letter, of which the following is a portion, was sent to Tener by the Parks Branch Director:

...the whole subject of mineral claims in Provincial Parks is very complex and has been under investigation for a considerable time. Under the present Parks Branch policy respecting mineral claims, we regret to advise that no new exploration or development work may be authorized within a Provincial Park.

Notwithstanding the above, would you kindly quote us an itemized quit claim price, showing a comprehensive breakdown of expenditures incurred respecting the Summit Group of claims for our records and consideration. (Tener and Tener v. B., 1982)

This letter was taken by Tener as the denial of any further opportunity to exploit the mineral claims. This letter also signals the end of unstructured negotiation conflict resolution process within which Tener is attempting to gain access to park land for mineral exploration through government administrative processes. In this communication, is also the first action of the government toward compensation of the loss of ability to access the park land for mineral exploration. It is at this point that direct and specific negotiation between the parties could have been begun. However, on advice from his lawyer, Tener initiated a court action against the Crown. It now seems that the crown, at this point still enjoying the prosperity phase decision making environment, was not willing to proceed substantively toward resolution of the Tener conflict. The writ filed by Tener outlining a claim for compensation, stated the following costs and expenditures:

- initial acquisition cost \$100,000 plus interest;
- present values of the historical expenditures approximately \$ 1.5 million;
- present value of loss of opportunity approximately \$ 3 million.

Though the loss of opportunity value may vary greatly with fluctuations in gold and silver metal prices the figures indicated in the writ were never challenged. The engineering report by W.T Irvine (1978) was never brought into question. It was estimated in 1978 that the total value, or quit claim price of the claim could be \$ 5.2 million. Current estimates could fluctuate depending on the metal prices used to upwards of \$ 12 million. The Minister of Mines during this same time period offered a compensation of \$100,000 (Tener, pers. comm., April 26, 1985). It appears that the wide discrepancy between the government offer and the expectations forwarded in the court documents may be the main reason why direct negotiation was never undertaken.

The second stage of the conflict resolution process was that of adjudication in the litigation model. It is the example of the litigation model that is most important in demonstrating the weaknesses and possible strengths for conflict resolution. Pitted in an antagonistic framework, the two parties to the conflict were now asking an adjudicator to rule on the right of Tener to compensation in lieu of access to the mineral claims that were held in the Wells Gray Provincial Park.

A digest of the case arguments appears in Tener and Tener v. R. (B.C.C.A.) March 2, 1982. Further complete Supreme Court of Canada documentation from both the appellants and respondents

has been made available to this researcher by David Tener and his lawyer. What is important to this discussion are the sequence of events that have been completed in this conflict resolution process. Both the importance of the issue to each of the parties and the prolonging nature of litigation are clearly demonstrated.

Recession Phase

The Tener case was first heard before the British Columbia Supreme Court in 1980, two years after the legal action was initiated. In this action the justice rejected Tener's claim for compensation. Tener was not satisfied. In times of economic stress, both Tener and the government were willing to pursue this issue beyond the original court action. With the considerable lead time required for development of mineral resources, and the cost of conflict resolution, potential parks / mines conflicts were avoided during the prosperity phase of the decision making environment in favour of known and less encumbered deposits. It was the opinion of Tener's lawyer that the justice had not understood the arguments of the plaintiff and therefore recommended appealing the ruling to the British Columbia Court of Appeals. (Martin, 1983) This action was started immediately. The Court of Appeals decision in favour of Tener was brought down on March 2, 1982. Following the ruling, Tener was to meet with the government to discuss the amount of compensation due. If the two parties could not agree on the amount, the decision would go before binding arbitration (Anon., 1982).

No meeting took place however. The Crown rejected the decision of the British Columbia Court of Appeal and raised the

case before the Supreme Court of Canada. At the end of December 1982 the documents of the conflicting parties were filed in the highest court. (R. in Right of British Columbia a; R. in Right of British Columbia b) The case was not heard to completion in May 1983 as Tener had expected at that time. Due to the withdrawal of one of the Supreme Court Justices because of illness, the case was delayed and had to be heard again before a new assembly. This odd turn of events further contributed to the delay and also increased the cost of legal fees to both of the conflicting parties. One more delay befell the passage of this case throughout the legal system. Once the court had heard the first arguments of the parties, they requested further submissions based on the legal arguments that had been brought forward in the lower court. These were finally presented in November 1984. (R. in Right of British Columbia c; (R. in Right of British Columbia d; (R. in Right of British Columbia e)

Until November 1984, four years had passed in the judicial attempt at resolving the case between Tener and the Crown. Reasons of the Supreme Court of Canada, in Tener's favour, were handed down May 9, 1985. (Supreme Court of Canada, 1985) At least 15 years had passed since the conflict had become active. It has been 45 years since the potential land use conflict was created by the designation of Wells Gray Provincial Park without the removal of individual rights to minerals within its boundaries.

Each of the parties to the conflict has had to shoulder a considerable financial burden to mount his case in the courts. David Tener alone has spent some \$ 300,000 in legal fees and other expenses (Tener, pers.comm., April 1985). Such a financial

burden has caused considerable losses for both he and his business. Added costs have been born for legal fees by the provincial government. Further, losses of taxation revenue and costs of judicial administration combined with those of legislative review, contribute to a significant expense incurred in the Wells Gray Provincial Park litigation.

Further action toward the alleviation of this case has been a choice between two options. Either the provincial government can compensate Tener as is set by the court, or the group of mineral claims can be declared a recreation area within the provincial park, therefore allowing for mineral exploration and development to continue. The second option, which allows Tener access to the park for the purpose of mineral exploration, has been chosen. Amendments to existing legislation have been passed that downgrade the area of the mineral claims to a recreation area. The province can now allow development. As the current recessionary phase of the province's economy continues it is unlikely that the compensation option will be exercised. Though maintaining the park in an unfettered state would be desirable, planners recognize that the lower cost option is the likely choice (Thompson, pers. comm., June 18 1985). However, the question of administrative costs to be born by the Ministry of Lands, Parks and Housing and the Ministry of Energy, Mines and Petroleum Resources for maintaining this resolution of the conflict have not been addressed. In the opinion of many advocates, the issue of mineral claims in provincial parks has not, in this case, been resolved in a desirable fashion. (Bohn, 1985b; Bohn, 1985c; Collins, pers. comm., April 28, 1985;

McArthur, pers. comm., May 1, 1985) The litigation process found in this case has been judged by many not to be a desirable alternative in the precedent it sets for other similar cases. (Tenner, pers. comm., April 26, 1985; Ratel, pers. comm., May 1, 1985; Heyck, 1985)

Chilko Lake Wilderness Park Proposal

As with the previous case, a digest of the chronology of events in the Chilko Lake case is given in Appendix 5. Both the long standing status of the mining industry in the Chilko area and the transformation of unstructured bargaining conflict resolution processes applied to the situation will be observed. The case illustrates the use of the bargaining model in a situation where park interests are attempting to have park land use designated in an area where mineral interests are of long standing.

Foundation Phase

The lands surrounding Chilko and Taseko Lake, of the Chilcotin region of British Columbia, have long been known as areas of mineral activity. Prospectors first explored the Chilko area during the early 1900's with the first mineral discoveries in 1910. In the 1930's, mineral deposits had been identified that held substantial gold values. Some limited development work produced samples enough to maintain interest in the area for some time. During the 1940's mineral development activity increased considerably as extensive exploration was conducted by drilling and tunneling of at least one prospect. (Farrow, 1978) The recognized potential of the area was reflected in the maintenance

of the mineral claims staked in more prosperous times. Although the mineral exploration in this area is of long standing, only modest levels of interest and importance have been recognized. The conflict between mineral interests and outdoor recreation interests in the Chilko area has not been recognized during the first decision making environment phase. The foundation is now set to introduce the elements of land use conflict that will become the focus of the subsequent analysis.

Revolution Phase

Beginning in 1973 the Parks Branch of the Department of Recreation and Conservation conducted studies with a view to identifying landscapes and environments suitable for a provincial park designation in the area known as the Chilcotin. These studies were in response to a proposal by the Vancouver Natural History Society for a large wilderness park in the Tchaikazan Valley area. However, the Parks Branch studies were designed to give a broader framework for a survey of areas for park establishment. Studies conducted in 1974 flagged the high quality of the Chilcotin for wilderness recreation. (Chilcotin Wilderness Park Study Committee, 1976) A Chilcotin park is of interest to the Parks Branch as there is no land designated for conservation between Tweedsmuir Park in the north and Garibaldi Park in the south along the Coast mountains representing the transition between the moist Coastal climate and the dry Interior Plateau.

With an objective of representing all natural physiographic regions of the province in the parks system, further studies of three areas in the Chilcotin were made for comparative purposes

in 1975. It was at the end of these Parks Branch studies, carried on in a decision making environment encouraging planning, that the first preliminary perspective of possible resource use conflicts was sought. To achieve this, an inter-agency analysis of resource values was conducted, but again on a preliminary basis. It was evident that the Parks branch and public interest groups had developed considerable momentum in proposing the establishment of a park, however, little consultation had been undertaken with the other resource users having an interest in the area. Initial reaction to the Parks Branch studies of 1975 by the Geological Branch of the Department of Mines was one of considerable concern for the the size of the proposed withdrawal of land from mineral exploration and development and the impact that park designation would have on the existing and future investment of the mining industry in the Chilcotin area (McArthur, pers. comm., May 1 1985). Other competing resource users had some reservations, though these were seen to be minimal in comparison.

In 1975, with a mandate to supply research and information services to the Environment and Land Use Committee of the Provincial Cabinet, the Environment and Land Use Committee Secretariate initiated an inter-agency Chilcotin Wilderness Park Study in response to the formal request of the Squamish - Lillooet Regional District for establishment of a wilderness park in the southern Chilcotin (Chilcotin Wilderness Park Committee, 1976). Representatives on the inter-agency committee included all natural resource and land use agencies of the provincial government. In addition, representations were received from the

Western Guides and Outfitters, Williams Lake Indian Council, the B.C. and Yukon Chamber of Mines and the Outdoor Recreation Council of British Columbia. These non-governmental groups acted in an advisory role rather than as direct participants. The major goal of the 1975 - 76 study was to conduct a resource inventory. All of the areas being considered for park exhibited high values of outdoor recreation. Similarly, mineral resource values were recognized in all three areas considered.

The localized pattern of mineral claims within the Chilko Lake component of the Chilcotin Park Study area, in combination with the spectacular scenic and boating attractions indicated that the Chilko Lake component would be the most likely candidate for a Class A Park. However, the mining values, hydroelectrical interests and concerns of the native Indians posed problems in defining the park proposal boundaries.

The Revolution Phase of the decision making environment in which the Chilko Lake case developed was one of considerable activity. The agitation of the Foundation Phase, with the rise of environmental issues, was dramatically transformed to the decision making arena by the change in government. This phase of activity toward the resolution of the Chilko Lake parks / mines conflict would not be sustained however.

Prosperity Phase

At least three major mineral exploration projects were to receive attention during this time. With industrial prosperity ran a trend toward reduced stress in the parks / mines conflict. Mineral industry interests were in a sufficiently prosperous

position that flexibility in decision investment making could be afforded. This security also led to little resistance toward proposals for park land designation. There was little pressure for park land designation though, while all sectors of the economy were able to prosper under the existing allocation regimen. Only with the coming downturn in the economy would stress be placed on the government to make decisions that would assure the allocation of lands to all industries and interests that depended on the land for maintenance. Only one Prosperity Phase initiative would have bearing on the decision making process used in the Chilko case. The Deferred Area Plan was initiated by the Ministry of Forests and was in 1981 used to continue discussions of Ministry of Lands, Parks and Housing proposals.

Recession Phase

Following the 1978 reorganization of the forests administration of the British Columbia government, the Ministry of Forests set about a consolidation of its forest land management plans in the province. A part of this process was the identification of divergent and incompatible resource land uses. Approximately 30 of these areas were recognized and designated as Deferred Planning Areas. Deferred Area Planning was conducted by the regional offices of the line agencies. Though generally led by the Ministry of Forests, where recreation resources were of prime concern it was led by the Parks and Outdoor Recreation Branch of the Ministry of Lands, Parks and Housing (Thompson, pers. comm., June 18, 1985). The Chilko case is the most prominent among them. (Federation of Mountain Clubs of British

Columbia, undated) The structure of these committees was based on the organization of the Regional Resource Management Committees. These committees were designed as a forum for the regional managers of the agencies to regularize direct communications concerning resource allocation and management disputes.

In February 1981, the Chilko Lake Deferred Planning Area was recognized. The initial conflicts that were recognized involved the allocation of forest, agricultural, and grazing rights and the designation of wildlife management areas. The criteria for the planning program did not include any mention of the significant mines / parks conflict that had been identified in the Chilcotin Wilderness Study (British Columbia, 1982). Options for the resolution of the parks / forestry conflict in the Chilko case were quickly outlined as the process began. By excluding a northern portion of the deferred area from park designation and including it in provincial forest, the administration of rangeland grazing could be continued by the Ministry of Forests. Likewise, the management of lands for wildlife could be accommodated by the establishment of a special wildlife management area in the area that had been excluded.

In combination with the downturn in the economic conditions has been the continued uncertainty over the rights of the mineral industry to work mineral claims that are held within a proposed wilderness park. At least one of the three major exploration efforts in the Chilko area was halted as a result of this unsettled decision making and risk taking environment (Stevenson, pers. comm., May 8, 1985). All of this activity served to heighten the sensitivity of the mineral industry toward

alienations of lands available for mineral development. As a consequence, the proposals by the Ministry of Lands, Parks and Housing for a wilderness park in the Chilcotin region were met with considerable resistance from the mining industry and the Ministry of Energy, Mines and Mineral Resources acting both as resource steward and advocate.

The Recession Phase decision making environment caused a major change in the reaction of the mineral industry and park proponents toward land use decisions. Each of the provincial line agencies moved to consolidate their respective holds on crown lands. Similarly, as valuable resources were perceived to become scarce, the mineral industry and the park proponents each became more active.

The Geological Branch of the Ministry of Energy, Mines and Petroleum Resources had done little study toward developing inventories or estimates of mineral resources potential in the Chilko area. To this end, a study was prepared in July 1982 to help formulate the mineral resources portion of the Deferred Planning resources inventory. (Northcote, 1982) This study also contributed to the specific information necessary for the identification of issues for the Chilko Area.

Realizing that it had not developed a level of understanding with other resource line agencies, the Resource Data and Analysis section of the Geological Branch at the Ministry of Energy, Mines and Petroleum Resources conducted a Land Use Review Seminar November 5 - 7, 1982. These meetings were attended by all ministries concerned with land use in the province. During the discussions, the issue of communication between the parties

involved was raised in a number of contexts. Comparison of data on various resource interests with the view to improving the inter ministerial referral of project plans and to better coordinate the existing planning processes, was identified as a goal. Of highest priority during the seminar was the relationship of mineral interests to the advocates of parks and recreation areas. (Farrow, 1982) Each of these conflict areas was addressed specifically with an understanding that an agreement had to be achieved between the Ministry of Lands, Parks and Housing and the Ministry of Energy, Mines and Petroleum Resources. (Bain, pers. comm., Nov. 8, 1982)

After the Land Use Seminar, the Geological Branch was able to prepare a policy paper outlining a mineral resources management perspective for wilderness legislation and wilderness management. (British Columbia, 1983; Schmit, pers. comm., March 13, 1984)

Public meetings were held in conjunction with the Deferred Area Planning Process. Each of these was held at Alexis Creek, the closest settlement to the proposed park. Meetings were held in October 1981 and March 1982. The purpose of the public participation program was threefold. First the Deferred Area Planning process and its implications were explained. Second, the public's knowledge was sought as a contribution to the planning. Finally, after draft alternatives for management of the Deferred Planning Area had been formulated, a request was made for reactions and preferences to be expressed. The conduct of these meetings was well organized and the reaction of the participants in contributing information was helpful in the

reported outcome. However, as with many public participation processes, the rate of participation dissipated significantly at each stage of the program as parties with lesser concerns fell by the wayside leaving the primary resource users and lobby groups to contend the future of the Chilko Lake Wilderness Park Proposal.

The participants in the Deferred Area Planning program for Chilko Lake represented all those interests that had participated in the Chilcotin Wilderness Park Study seven years before. Though specific alternative land use plans had been developed, and a much more narrowly defined proposal had been addressed in the second process, very similar issues had been brought forward at that time. The parties representing mining interests in the Chilko area remained in a significant divergence with the remainder of the participants in the public involvement component of the planning process. Of the land use management alternatives that had been proposed, the first entailed administration of the Chilko Lakes Area as a Provincial Forest thus allowing mineral exploration and development to continue unimpeded. This management option was supported by the mining interests and half of the area residents that participated. The second alternative would prescribe the management of Chilko Lake resources under a Park or Recreation Area designation. The remaining majority of participants in the process supported the park option. It was clear however, that the Chilko Lake Park management alternative would meet major dissent from the mining industry and the Ministry of Energy, Mines and Petroleum Resources. (British Columbia, 1983) However successful the process of conflict

resolution had been, it was not able to generate satisfactory alternative solutions. The mines / parks conflict had now begun to achieve the recognition that would push this case from the regional resources management level to discussions centered in the headquarters of the Ministry of Lands, Parks and Housing and the Ministry of Energy, Mines and Petroleum Resources.

During 1983, there would be considerable change in the approach taken to resolution of natural resources management conflicts in British Columbia. After the Mineral Resources Division position paper, the Deferred Planning Area process was completed with the writing of the Chilko Lake Deferred Area Plan. However, the planning process had not resulted in resolution of the conflict at Chilko Lake. The uncertainty of the situation would continue as the Cariboo Regional Resource Management Committee was hesitant to develop a recommendation to the Environment and Land Use Technical Committee. However, the issue would be forced by the introduction of the July 7, 1983 provincial budget. In the budget, the provincial government outlined the removal or lessening of planning functions from a variety of government agencies at each of the provincial and regional levels. A part of this announcement was the intention of disbanding the Regional Resource Management Committees. As a consequence, the Cariboo Regional Resource Management Committee was faced with a January 1984 deadline for submission of a recommendation. A Provincial Recreation Area was recommended to the Environment and Land Use Technical Committee, as a best alternative to total achievement of either of the divergent resource values. The consequence of the elimination of the

Regional Resource Management Committees was to weaken the strength of any recommendations that were made. As there was no political will to continue with the recommendations, the proposal was stalled at the Environment and Land Use Technical Committee.

The provincial budget would also affect changes in the levels of staffing in all of the line agencies that were dealing with the Chilko Lake case. With staff cuts and reorganization at the Parks and Outdoor Recreation Division of the Ministry of Lands, Parks and Housing, the entire conflict resolution process was informally placed on hold. However, the principal actor in the Ministry of Lands, Parks and Housing, Derek Thompson, would continue to advocate the continuance of the conflict resolution and park creation process. (McArthur, pers. comm., May 1, 1985) In fact, Thompson had made the creation of a provincial park in the Chilcotin region a major goal of his career as parks planner (Thompson, pers. comm., June 18, 1985).

As the line agencies adapted to the reorganization and budget cuts, the restructured political reality of the parks / mines conflict was evident. The business approach of the provincial government, especially ministers of the Environment and Land Use Committee, demanded information about the economic costs of resource allocation decisions. (Stevenson, pers. comm., May 8, 1985) The political climate became such that pressure was put on all resource management planning staff to justify existing land use designations (Downie, pers. comm., June 18, 1985). Furthermore, there was an explicit recognition that the confrontational nature of the parks / mines conflict was promoting uncertainties for each of the Ministry of Energy, Mines

and Petroleum Resources, the mining industry, the Ministry of Lands, Parks and Housing and the wilderness park lobby groups (Collins, pers. comm., April 28, 1985; Ratel, 1985). Added stresses for decision making on the parks / mines issue within the parks ministry may have come through assignment of a new and politically motivated deputy minister. In any case, it was recognized that more political support was necessary before a conflict resolution proposal was brought forward in the Chilko case. It was the desire of the Parks and Outdoor Recreation Division to minimize media controversy and political embarrassment for the government. The need for support from all sides for park and recreation area proposals was evident if existing and future park land use allocations were to be successful.

Further complicating the political nature of the parks / mines conflict and the urgency of the need for a resolution has been the impending decision of the Tener case of mineral claims within Wells Gray Park. With a decision in favour of Tener in the Supreme Court of Canada, a significant corner stone in arguments of current holders of approximately 700 mineral claims within provincial parks was established. (Bohn, 1985e) The prospect of large compensation payments to Tener and others, or the administration of park land for mineral land use access and activities, through creation of recreation areas within provincial parks, have added extra impetus and urgency to the need for a satisfactory resolution of the parks / mines conflict in British Columbia.

In 1984 the Ministry of Lands, Parks and Housing, set out to

win the support required for the Chilko Lake proposal and for other like projects under its mandate. In order to facilitate an understanding of the parks / mines conflict by both sides in the conflict, meetings between the parks and mines line agencies were conducted as proposals for new land use designation conflict resolving policies approaches were formulated. These meetings were conducted at the headquarters level, as developments required, to respond to proposals and counter proposals. Each alternative was couched in an overall framework for resolving the generic parks / mines conflict with the Chilko Lake case being used as the model on which the prototype resolution was assessed.

Each of the ministries acted as advocates for the positions of the public interests that they represent, and each negotiated the issues inherent in those interests. The Ministry of Lands, Parks and Housing also acted as a facilitator between the interests of the park proponents and the mining industry. As possible policies developed to address the parks / mines conflict, meetings were held with representatives of each to outline the details of the current thinking and to register any concerns and difficulties that might be encountered if the current proposal were implemented. Meetings between the Executive Director of Parks and Outdoor Recreation and parks proponents, including the Outdoor Recreation Council of British Columbia and the Federation of Mountain Clubs of British Columbia have dealt with two issues: first, in October 1984, the achievement of the Parks and Outdoor Recreation Branch's goal of ecological unit representation through park and recreation area designation; second, in February 1985, a plan for British

Columbia parks development that was tied to the development of the tourism sector. (Fuller, pers. comm., May 13, 1985) It appears that explicit discussions concerning the conflict were down played at these meetings. (Dearden, pers. comm., September 26, 1985) Only one meeting has been held with representatives of the mining industry. In April 1985, the Deputy Minister of Lands, Parks and Housing, Mr. Bob Fliton, met with members of the British Columbia and Yukon Chamber of Mines and the British Columbia Mining Association to outline a proposal for the designation of Recreation Areas such that the recreation and mineral resources could be co-managed (Collins, pers. comm., April 28, 1985). These meetings were largely confidential in nature and the specifics of any of them have not been revealed to this researcher. The spirit of the meetings was one of a consultative nature with each party achieving a better understanding of the proposals and being able respond constructively before any official public statements were made. In this way the reactionary nature of the conflict has been largely eliminated from the public realm. This privacy of the negotiations however, has resulted in a reduction in the open and public nature of the conflict resolution process in comparison to the Chilcotin Wilderness Park Study and the Chilko Lake Deferred Area Planning. Such closed sessions have in some ways served to heighten suspicions among some members of the public. At the same time the Ministry of Lands, Parks and Housing may be usurping some of the lobbying power of the individual participants in the parks / mines conflict by acting as a mediator through which reactions to, and changes, in proposals

for resolution have been conducted.

Through 1984, each of the Ministries spent considerable time and effort in consolidating their policies toward the designation of lands for recreation and conservation purposes. The Ministry of Energy, Mines and Petroleum Resources formalized its policy statement of May 1983 on wilderness legislation and management with a land use policy information paper in May 1984. This policy states the agencies intent to "ensure that the maximum amount of land is available for mineral exploration"(British Columbia, 1984a). The Parks and Outdoor Recreation Division policy of August in the same year was designed to clarify and simplify the land use designation for areas under its jurisdiction. It was the intent of the policy to give the parks agency the simplicity of full protection from alienation to resource uses of park land within Class A designations and alternately to manage and protect values, with recreation area status, while allowing resource use in a controlled manner. (British Columbia, 1984b)

In the Chilko Lake Case the bargaining model of conflict resolution processes has been applied and adapted in response to varying stresses in the decision making environment. Phases of activity are countered by slowly developing components of the generic parks / mines conflict during the Foundation Phase and little or no progress toward conflict resolution during the Prosperity Phase of the decision making environment. A conflict that was first addressed in an era of public participation and explicit natural resources planning, the case is now being addressed behind closed door meetings with individual interest

groups. This case is now being dealt with at the headquarters of the line agencies as a policy issue rather than at the regional level as a land use management issue. The Chilko Lake case has been abandoned as a specific instance of conflict in favour of pursuing a prototype problem resolution.

CHAPTER 5

ASSESSMENT OF THE CASE EVIDENCE

Assessment of the Case Evidence

In this chapter, the detailed cases of chapter 4 will provide evidence to consider the asserted disadvantages of the litigation model and the claimed advantages of the bargaining model for conflict resolution in the British Columbia parks / mines situation. The Wells Gray Provincial Park case provides evidence to show many of the weaknesses in the litigation model. The Chilko Lake Wilderness Proposal case shows us evidence that there are shortcomings in the unstructured bargaining associated with conflict resolution within the bargaining model as currently practiced. For each of the five categories of evaluation, evidence will be drawn from each case to answer the research questions: does the British Columbian experience reflect the same weaknesses identified in the American litigation model?; and how well does the unstructured bargaining practiced in British Columbia redress these issues?

Delay and Time

To reiterate, the courts are often thought to be inefficient in the time that it takes for conflicts to be resolved as a result of increased demands for adjudication and as a result of the delays inherent in the litigation model. It is claimed that the bargaining model is less time consuming as the processes of appeal, and delays of implementation and administrative adjustment, will be incorporated and anticipated by the participants during the process rather than in the reactionary way found in the litigation model.

By the summer of 1985, nine years had passed in the

judicial attempt to resolve the case of Tener and the Crown on the Wells Gray Provincial Park issue. Reasons of the Supreme Court of Canada, in Tener's favour, were handed down on May 9, 1985. At least 15 years had passed since the conflict had become active. Delays have been true to the litigation model. After the initial stalling of the government administrative agencies in not providing Tener appropriate permits, the legal delays began. Tener's dissatisfaction with the Supreme Court of British Columbia's ruling led to the case being heard in the British Columbia Court of Appeals. The appeal resulted in a nearly four year delay. The subsequent positive result for Tener spawned the taking, by the Crown, of the case to the Supreme Court of Canada. Beginning with an eight month delay for the filing of initial documents, added complications of the case before the highest court resulted in more than one hearing being convened, and finally the request for additional documentation and arguments by the Supreme Court Justices resulted in the process taking two years and five months. With the litigation result the conflict was still not definitively resolved. With completion of the litigation portion of the case, the provincial government of British Columbia has been forced to write new legislation. This has extended the time necessary for the conflict to be resolved by adding an implementation phase that is as yet not complete.

The claimed time efficiency of the bargaining model as exemplified in the Chilko Lake Wilderness Proposal case is doubtful. The park values associated with the Chilko Lake situation were first identified and formally made part of a decision making process in 1973. Formal recognition of the

potential conflicts associated with the proposal were recognized in 1975 - 1978 period. Extensive attempts to resolve the parks / mines conflict were initiated with the Deferred Area Planning Process in 1981. Continued, though sporadic, action through the bargaining model has not resulted in resolution of the Chilko conflict or established a prototype solution for the resolution of similar parks / mines conflicts. The mediated negotiations are continuing as parties are able to respond to proposals and developments. However, there has been no justified or arbitrary limit set with which to frame the discussions. During the past four and one half years bargaining has been most active. The relative advantage of the bargaining model has not been strongly demonstrated in this case.

The built in delays of the courts in the Wells Gray Provincial Park case have been a major contributor to the extended nature of the conflict resolution process. The unstructured, and at times uncommitted, bargaining that has been undertaken in the Chilko Lake Wilderness Proposal example of parks / mines conflict has not shown the claimed advantages of savings in time and reduction in delay relative to the litigation model. Each case has been active for some fifteen years, and the conclusion or resolution of the conflict has not come to pass. Each of the cases that has been examined both briefly and in detail in this thesis has shown that there is no quick process for resolution that has been used to address the divergence between parks and mines in British Columbia.

Costs

It has been held that the litigation model is too costly, and that reductions in costs of conflict resolution can be achieved if the bargaining model is adopted. The adversarial component of the litigation model serves to inflate the costs that are incurred with repeated appeals, legal fees and court and administrative costs. It is alleged that the voluntary and conciliatory aspects emphasized in the bargaining model can result in reduced end costs for resolution by internalizing the divergent effects that would be found in the litigation model. With an effort made to bargain until an acceptable solution is reached, the costs may be less than if repeated solutions are arbitrated by successively higher courts until the persistence or bank balance of one or other party is eroded.

In the Wells Gray Provincial Park case I was fortunate enough to have privileged information to the costs to one of the parties. David Tener has stated that his legal costs have totaled approximately \$ 300,000 . This figure has little meaning for comparative purposes as additional data for similar cases are not available. However, we can assess the significance of this amount in comparison to the potential costs that might be expected if development were permitted within Wells Gray Park. An economic geological assessment of the mineral resources held by Tener projects a capital cost before production of \$30 million. (Irvine, 1978) Tener's expenditure in legal fees is 1% of possible total pre production costs if the development was undertaken. Taken together with costs that accrue to the provincial government for legal services, drafting and

administration of enabling legislation, as well as federal costs of adjudication and loss of potential tax revenues, the Wells Gray litigation experience can be deemed very costly.

There can only be speculation about the actual costs incurred through the bargaining model in the Chilko Lake Wilderness Proposal case. Each of the parties has participated over time in varying intensities and in varying roles. The provincial resource line agencies have been the most consistent participants, though the effort has not been ongoing. The Environment and Land Use Committee Secretariat's participation until its disbandment was considerable. Groups in favour of both park and mining interests have contributed considerable effort, much of it voluntary work of individuals. Notable among these parties are the Federation of Mountain Clubs of British Columbia, and the British Columbia and Yukon Chamber of Mines. Additional contributions have been made by less involved participants at various stages of the bargaining process. The task of establishing the costs to each of these groups, if not impossible, is beyond the resources and information available to this researcher. However, if only one-half man year combined labor was expended on behalf of those parties in favour of mining and those in favour of parks, for only 10 of the past 15 years, and if an average annual salary was assigned of \$35,000, the conservative cost of the bargaining model as manifest in this case would be \$ 350,000. Though there has been considerable expenditure on exploration and development of minerals in the Chilko area, (\$500,000 in one year by one company alone) complete information and indications of resource values are unavailable

for meaningful comparisons.

Comparison of the costs between the litigation model and the bargaining model in these cases is inconclusive. Without identical situations true comparative comments can not be made. The similarities here include that neither of the cases is fully resolved, and both are of similar age and stage of development. The Wells Gray situation is an attempt to resolve a specific conflict while the task being undertaken in the Chilko example is now one intended to develop a prototype solution. The Chilko Lake bargaining has addressed a more complex situation. Overall costs, though similar, seem to favour bargaining. Even if the cost of implementing the unstructured bargaining was twice what we have suggested, the comparison would still be reasonable. Given the ad hoc characteristic of the bargaining model implementation in the Chilko Lake case there is room for further improvement in cost savings over litigation.

Capacity for Technical Issues

The capacity of the courts to understand and to incorporate technical material into the decision making process has been questioned by the critics of the litigation model. By narrowing the terms of reference and questions to be asked before adjudication, the parties are not as able to bring forward related but perhaps not direct evidence. By employing the bargaining model, it is alleged that advantages of shared expertise will allow each party in the negotiations an opportunity to be educated by those more knowledgeable on a specific topic. In addition, mediators or other third party facilitators in the

bargaining model may be chosen specifically for their understanding of the technical aspects of the conflict rather than their understanding of the rules of standing and evidence as they apply to any particular conflict resolution process.

In the early stages of the litigation process examined in the Wells Gray Provincial Park case, the Supreme Court of British Columbia finding in favour of the Crown resulted in an appeal by Tener. Of major concern in the decision to appeal was the fear of Tener's lawyer that the court did not understand the argument presented. Though little in the way of difficult technical information was presented, the alleged failure of the court was enforced by the lack of opportunity in the legal system to educate the participants. Subsequent technical and cognitive issues in the litigation toward the resolution of the Wells Gray case have been processed well and to the satisfaction of the participants. Both Tener and provincial parks representatives have expressed no reservations about the decorum and capability of the courts. However, the narrow scope of the litigation process restricted the courts in such a way that ability to contend with technical issues was not clearly observed.

Indications are that the courts, having not dealt with technical issues, have had no major effect on the resolution of the case on point of law. In this case the claims made about the inadequacy of the courts may not be wrong but rather not relevant. It is however, Tener's opinion that direct negotiation on many of these issues raised could have been more constructive than litigation.

The interaction that has taken place in the Chilko Lake example has allowed the parties to understand and develop an

appreciation of the difficulties that are faced by competing resource users. Comments of Vince Collins in particular are evidence that the understanding of the park's ministry has matured in light of the bargaining process and the changed political climate in which it has taken place. The line agencies have developed each other's needs, characteristics of the resources, and an understanding of the needs of the constituencies that they represent in an advocacy manner.

There is evidence that the litigation process has shortcomings in its capacity to constructively address issues of technical concern or issues where misunderstanding might be alleviated through the education of the participants. With the parks / mines conflict, the need for enlightenment is considerable as the peculiarities of resources inventory and evaluation are problematic on both sides. Without the knowledge gained through extensive consultation, the casual observer or the uninitiated judge in the litigation process may have difficulty developing an appreciation of the significance of resource concerns for each participant.

Opportunity for Participation

Conflicts, especially questions of public concern, attract the interest and value participation of many parties. The rulings that are produced by the litigation model consider only the parties that are before the court. However, the polycentric nature of many conflicts result in dissatisfaction and criticism from those interested parties that are not before the courts. Decisions of the court may affect changes that were not considered by the judge. The bargaining model, on the other

hand, is designed to incorporate more than principal parties in the conflict in an effort to reduce discontent among secondary interests.

It is clear that in the Wells Gray litigation only two parties were direct participants. The litigation model has provided a forum for the expression of dissatisfaction of one party of lesser stature with the government holding police power. The litigation mechanism may, in this case, have been Tener's only recourse. Additional interested observers though, included other holders of mineral claims within provincial parks, Ministry of Lands, Parks and Housing and Ministry of Energy, Mines and Petroleum Resources officials, and interest groups representing the diversity of views in the conflict. Rules of standing and questions of law have prevented these parties from going before the courts. The ramifications of the Supreme Court of Canada judgement have affected changes in the way each of these parties proceed with further parks / mines conflict resolution. One mining company has, as a result of the favourable decision for Tener, initiated a new court proceeding against the Crown to gain development rights to claims it has held in Strathcona Provincial Park since the 1960's. (Bohn, 1985b) The Ministry of Lands, Parks and Housing has been forced to allow changes in the designation of park land that facilitates mineral exploration and development. "... (G)overnment had 'no alternative' because of a Supreme Court of Canada decision..." (Bohn, 1985b) said the Minister of Lands, Parks and Housing. "The legislature approved a law that allows cabinet to 'exclude certain lands encumbered by various crown-granted mineral claims' in Wells Gray Provincial

Park" (Bohn, 1985b). The Ministry of Energy, Mines and Petroleum Resources now has to consider more carefully the administration of mineral rights within provincial parks and may have to adopt new regulations and inspection procedures to complete these tasks. Park advocates are now faced with a threat to the sanctity of existing park designations while efforts to have new areas preserved continue. Each of these parties has been impacted by the decision of the court without direct participation in the litigation.

The Chilko Lake bargaining experience has provided the opportunity for full participation in the decision making process. From the initial stages of the first public discussions, the variety of participation included all parties who, believing there may be some impact on their values or interests, cared to present their concerns. Initially, the diversity of participants was great, but as the concerns have been addressed or incorporated into the platforms of others, the number of parties has decreased. Native Indian groups, local residents, regional district representatives, wildlife and environmental interest organizations have all withdrawn from participation. However, none of these group's actions seem to have been a result of dissatisfaction with the process. Rather, it is an indication of the participants' satisfaction that their concerns are being dealt with satisfactorily in the process or that they will be represented by some other party. The Native and local groups as well as wildlife interests have each had their initial concerns answered. (British Columbia, 1982)

Regional districts' representatives have served to initiate the

process. The diversity of environmental groups has been diminished as values and concerns are amalgamated, usually in an informal manner, in the arguments of another party. Consequently, though it now appears that only approximately six parties are engaged in the process, the participation of a greater number of parties are represented.

The evidence found in our two main case studies reinforces the assertions made in chapter 3, that the litigation model constricts participation in the conflict resolution process while the bargaining model provides a forum for full participation. The Wells Gray conflict examined here has led to continuation of actions after the litigation processes as responses are required to the variety of parties not directly involved. Further, the bargaining processes seem to have lessened the dissatisfaction with decision making by including a full range of participants.

Flexibility of Outcomes

Litigation as practiced in the courts is a question of deciding on the legality or rightness of the questions that have been brought before it. The courts tend to narrow the range of opportunities for conflict resolution to the extreme positions of the parties as they come to the process. With these extremes come the intransigence of the losing party to accept the determination of the court. Alternatively, bargaining is capable of exploring a range of compromise agreements that fall between the initial negotiating positions.

There were only two options available in the Wells Gray litigation. The question through all levels of the court has

been the same: should compensation be made to Tener for the defacto loss of rights to minerals within the park boundaries? The court could decide yes or no with little room for comment. With this limited range of options, the court was not able to explore alternative conflict resolution strategies. Rather, the alternatives were forced upon the provincial government after the litigation was complete. The subsequent legislation to accommodate the ruling of the court is not a part of the litigation model per se. Legislation and regulation to resolve conflict in this case is a reaction to court rulings. As such, it is an extension that may lead to resolution that has not been accommodated by the litigation process.

The unstructured bargaining carried on in the Chilko Lake example has been able to adapt to changing political stresses and needs of participants to allow the examination of a variety of options. Though the 'mining to the exclusion of parks' or 'parks at the exclusion of mining' options are available, a range of co-management options are under consideration that will allow for the exploration and possible development of mineral occurrence within the Chilko Lake area while care and conservative management techniques are used to preserve the features and character of the landscape that make it desirable for the pursuit of outdoor recreation. Added to the initial questions of the Chilko Lake Park Proposal have been the need for development of a prototype decision making framework for the resolution of similar parks / mines land use conflicts throughout British Columbia. Once again this demonstrates the capability of conflict resolution within the bargaining model to adapt and

transform the positions of the participants into constructive actions.

The litigation model has not, in the case of the parks / mines issue, been able to address the diversity of issues that accompany and surround the court case and connect it through a polycentric network to the variety of concerns present. There are no opportunities in the courts to bring these forward. In contrast, the bargaining processes of the Chilko case have been flexible enough to incorporate in variety of concerns in attempts to achieve resolution.

Summary

Both the litigation model and the bargaining model, as practiced in the resolution of parks / mines conflict in British Columbia, do not exhibit time effectiveness or measures for reduction of delays. Though the litigation example demonstrates the considerable cost of this conflict resolution process, the bargaining that has taken place in this issue does not support the contention of cost effectiveness. There appears to be a greater capacity for technical issues and education of the participants in the bargaining model than in the processes of litigation. Participation is more complete and is more effective in representing the values and concerns of all parties interested in the resolution of parks / mines conflict. There are advantages of the bargaining process over litigation in providing opportunities for an array of outcomes in conflict resolution.

CHAPTER 6

CONCLUSIONS

Conclusions

The Wells Gray Provincial Park case does not reflect all the weaknesses that have been attributed to the litigation model nor does the Chilko Lake Wilderness Proposal case reflect comprehensively the claimed strengths of the bargaining model as outlined in Chapter 3. Built-in delays and inefficiency of the courts have, in the Wells Gray case, been shown to act strongly to prolong the decision making processes. Government desires to delay a decision in this case have been well served by the conflict resolution process. Lack of commitment to the bargaining model as a process for resolution of conflict has mitigated against the achievement of claimed advantages in time. Time limits have not been set in which the bargaining process should be effectively structured.

Progress during the prosperity and recession decision making environment phases, in bargaining conducted to resolve the Chilko Lake case, has been dependent in part on the Wells Gray litigation. The literature cited may be limited in that bargaining and litigation, rather than exclusionary and one better than the other, should be viewed as a group of options that are worthy of consideration due to the partial dependence of one upon the other. Though the Wells Gray experience has been problematic and less than desirable in many ways, it has served a purpose in setting new conditions and incentives for more bargaining. Precedents set in Tener's court battle have compelled parties on both sides of the conflict to pursue bargaining model processes.

Costs associated with the litigation model are unacceptable

and the cost of bargaining has not achieved any advantage as a result of the longevity of the process. There is room for advancement in the reduction of costs with use of bargaining through the deliberate and assertive adoption of structured bargaining on the part of participants and legislators.

Little evidence in the cases examined that would support or disprove the allegation that the litigation model is poorly suited to processing technical material and issues effectively in conflict resolution decision making. However, through the conciliatory procedures that have been adopted in the Chilko Lake unstructured bargaining, participants have been able to develop an understanding and appreciation of the resource constraints and needs of divergent parties and interests. Technical material has been communicated, and the need for improved communication has been recognized between the principle line agencies involved in the conflict.

There is little argument that the litigation model limits participation in the conflict resolution process. Participation constraints in the Wells Gray case have led to further litigation by parties in similar situations to the claim holders, added legislation and administration burdens on the provincial government, and further stresses in the political discussion between parks and mines proponents. Alternatively, the bargaining conducted in the Chilko Lake Wilderness Proposal case has led to participation of all parties to the extent that their concerns have been meaningfully represented.

The Wells Gray litigation was concerned with deciding on points of law the right to compensation of the claim holder.

Options are limited to finding for the appellant or the respondent. The litigation process does not allow room for consideration of the peripheral issues that are associated with the parks / mines conflict. Through the unstructured bargaining conducted in processing the Chilko Lake conflict, a range of management decisions has been considered as a part of the ongoing negotiations. Proposed co-management of land resources, with consideration of the needs and desires of all parties to the conflict, reflects the flexibility that is inherent in the bargaining model.

In summary, I have found that evidence, though inconclusive, suggests that the bargaining model, as practiced in the British Columbian context, presents an opportunity for improvement in the time and delay as well as cost criteria that have been examined in the case evidence. The superiority of either model to process technical issues cannot be decided given the extent and facts of evidence in the two detailed cases. As the criteria generates a null finding in the Wells Gray litigation, only speculation about the strengths of the bargaining model as illustrated here can be concluded. The issues of participation and range of alternatives in the decision making process however, favour the adoption of bargaining for processing the resolution of the parks / mines conflict.

There are shortcomings and limitations in this research. More detailed investigations would contribute to a fuller data set, such that the true costs to various participants would be identified. A more complete understanding of the individual parties' aspirations and disappointments with the processes might

be possible if all could be identified and were found willing to partake in the investigation. Furthermore, as the conceptual component of the thesis has been developed over a number of formulations, the emphasis and data requirements have changed accordingly. A lack of consensus among leading scholars in the field of environmental conflict resolution through negotiation and other conciliatory processes is rife. All of these factors together have served to create potential weakness in the thesis. However, the importance of the findings here are not diminished. Strong suggestions can be made for improvement of the existing conflict resolution processes in the British Columbia parks / mines situation.

Upon consideration of the evidence, the overall potential strength of the bargaining model relative to the litigation model is apparent. With this prerequisite, recommendations for the adoption of the bargaining model in a stronger and more aggressive manner as a tool for the resolution of parks / mines resources management decision making conflicts in British Columbia can be made.

Recommendations

Five recommendations can be made for the continued improvement of the parks / mines conflict resolution processes that we have examined. These recommendations can also be taken as a prescription in addition to existing mechanisms for the resolution of similar future parks / mines conflicts as they are addressed in British Columbia under the existing legislative, regulatory and administrative frameworks for decision making.

The recommendations include:

1. Attempt to discourage reliance on the litigation model for resolution of parks / mines conflict.
2. Eliminate the ad hoc character of the bargaining model in favour of more structured bargaining.
3. Develop continuity of political will to support the use of formal bargaining in the conflict resolution process.
4. Commit financial resources for participation of resource ministries on a consistent basis.
5. Establish time and performance objectives for the conflict resolution processes as they are established.

To reduce the tendency to chose litigation processes, the bargaining model must be perceived by all parties as more desirable and available for conflict resolution. The advantages of the bargaining model must be demonstrated such that a trust of the lesser known process grows among parties in conflict. The unstructured bargaining that is the manifestation of the bargaining model in British Columbia, could be improved with this goal in mind. The ad hoc approach exhibited in the Chilko Lake case was strengthened by establishing a structure that, while allowing the flexibility of the bargaining model, establishes the degree of involvement and limits the expectations of the participants such that uninflated and principled negotiation can be conducted. The political will to establish the bargaining model as a tool for conflict resolution is critical to its

acceptance. Continuity of effort, if maintained, will not stand alone in advancing the use of bargaining if implementation of decisions is not supported by the political decision makers. Agreements that may be reached between parks and mines representatives in the public service or in negotiation between parties representing various public interests must be supported with legislative or regulatory action. An extension of the political support for the implementation of bargaining is the requirement of financial support. Though interest groups may continue to have difficulty financing participation, participation of any kind is seemingly unfeasible without the sustained facilitation provided by the ministries responsible for natural resources management. The existing unstructured bargaining, with its accompanying open-ended structure, must be abandoned in favour of planned and time-limited bargaining.

Innovations in the existing practice of the bargaining model in British Columbia could reduce the time and costs that have been incurred by intensifying the process such that much of the unproductive time over the past years might be reduced or eliminated with emphasis placed on structured bargaining. The litigation model should not be discounted entirely however, as the need for adjudicated settlements will remain where the parties to the conflict are not able to pursue a more conciliatory process of resolution. Cases where one or other of the parties is unwilling to participate in a bargaining process will require the forced measures of litigation to engage processes of resolution.

Detailed strategies for implementation of these recommendations will have to be considered and developed by the parties that are to participate in processes aimed at resolution of the parks / mines conflict. Most prominent in the implementation will be the Ministry of Lands, Parks and Housing, and the Ministry of Energy, Mines and Petroleum Resources.

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APPENDIX 1

CHRONOLOGICAL LIST OF NEWSPAPER ARTICLES

1940 - 1985

PARKS / MINES CONFLICT

IN BRITISH COLUMBIA

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APPENDIX 2

PARKS / MINES DECISION MAKING ENVIRONMENT PHASES

FOUNDATION PHASE

- 1940's - 1950's No controversy. Era of economic optimism.
Claim staking and mining allowed in provincial parks.
- 1961 Park access restricted but permission granted in 80 % of cases. Economic growth in the mineral sector begins a long upward swing that will apex in 1981.
- 1965 New PARK ACT land use of parks unchanged. Mining in Parks is subject to ministerial discretion. Both mining and parks lobbies are very active. Environmental movement is gaining momentum on the pollution and conservation issues.
- 1967 Mining in Strathcona Park at Buttle Lake is proposed and negotiations are undertaken.
- 1968 Mineral staking allowed in all provincial parks. Mining allowed in Class B Parks. Mines minister proposes allowing mining in large parks regardless of class. Small parks mineral industry activity banned. Allegations of wrong doing are brought in the case of mineral claims in Tweesmuir Park.
- 1969 Mineral land Reclamation policy is introduced with strong opposition lobby from some sector of the mining industry.
- 1971 Mines Minister backs mining in parks. Government policy toward parks and resources is development oriented.

REVOLUTION PHASE

- 1972 Election of the New Democratic Party
- 1973 Environment and Land Use Committee and Secretariate are established.
- MINERAL ACT and PARK ACT amended.
Mineral claims pending registration in provincial parks are denied. Mineral exploration is banned in Provincial Parks.
- Mineral claims in provincial parks are subject to review for the purpose of purchase by the government to extinguish title.
- 1974 Though changes in taxation of the mineral industry has slowed growth in the value of mine production growth is still registered throughout the economy.
- 1975 Thirteen mineral claims are purchased by the government in Wells Gray Provincial Park.

PROSPERITY PHASE

- 1975 Social Credit Party elected.
- 1976 Minister of Mines makes statement in favour of mining in parks if controls are in place.
Government considers policy on mineral industry activity in parks.
Policy unchanged, mineral claim staking and exploration remain prohibited.
- 1977 Park planning continues on various fronts but no major parks are established.
- 1981 The apex of the prosperity phase is characterized by high metal prices, a generally fast moving economy and production and profits in all sectors of the provincial economy.

RECESSION PHASE

- 1982 As the provincial economy began to decline, in response to downturns in world prices of resources including minerals and forest products, competition for resource lands in British Columbia intensified.
Policies on mineral activity in parks remains under consideration. Various park proposals continued to be examined.
- 1983 Social Credit party is re-elected, with a mandate to restrain cost of government.
Resources management agencies and procedures are reduced and eliminated to enable cost savings.
Planning procedures and activities are targets for elimination as they are perceived to be a time encumbrance in the decision making process.
Ministry of Energy, Mines and Petroleum resources set policy of not willingly giving up any potential mineral lands to wilderness designation.
The Valhallas Provincial Park is designated after long lobby effort by conservationist interests.
- 1984 The Ministry of Lands Parks and Housing is faced with the task of winning political support as well as developing studies of the economics of park and wilderness designations that are proposed.
Park designation classes are simplified.

APPENDIX 3

CASE SELECTION FACTORS ANALYSIS

It is the objective of this component to make explicit the criteria and comparison format on which selection of cases for in depth analysis in chapter 5 of this thesis was conducted. Two matrices have been constructed to assist in this selection. The first reflects the presence of each type of conflict in each individual case. The relative incidence of the type of conflict in the case is indicated by designations of: Dominant; Elements Of; and Not Present. Any individual case can have more than one type of conflict that has the dominant designation as, in the same way, the not present designation can be applied more than once. See Matrix 1.

The second matrix summarizes the additional factors that have been considered in the selection process. These selection factors can be divided into two categories: factors of distinction and factors of practicality. See Matrix 2.

There are four factors that have been used to distinguish the cases from each other. Diversity of participants indicates the potential for complexity posed by a small or large number of actors in the conflict. Those cases where fewer parties are involved in the conflict may be thought of as having potential to be simpler. Applicability to other cases shows the interrelated nature of the cases that have been briefly examined to this point. While the Chilko Lake, South Moresby and Valhalla cases have factors and similarities that link them, the Wells Gray, Tweedsmuir and Atlin cases have similarities that indicate the study of one will result in findings that are significant in discussion of the others. Of further concern is the extent to which the cases chosen have advanced in the resolution processes

available in British Columbia. The existence of a resolution process apart from government legislative decisions is then indicated as a factor. Finally, another distinctive factor in the selection of cases is the relative position chronologically that the case holds. It is the researcher's opinion that cases with a high, or recent, position are potentially too contentious to be meaningfully accessible and objectively reviewed. A low chronological position indicates a case, that through inactivity is one that has become too old to permit relevant results to be drawn in light of the current decision making schema. While a median chronological position will reflect the optimal situation.

Three factors have been selected as factors of practicality in assessing the cases' suitability for in depth study. First is the existence of an extensive written record pertaining to the case. Second is the proximity of information sources to the researcher, and third, is the degree of accessibility of actors in the conflict.

The findings in these two matrices are based on my best knowledge of the eight cases in chapter 2, before full measure is taken in the in depth studies of chapter 5. Accompanying this knowledge are intuitive dimensions acquired through familiarity with the generic parks / mines conflict as encountered in British Columbia.

MATRIX 1 PRESENCE OF CONFLICT TYPES

	COGNITIVE				VALUE				INTEREST				BEHAVIORAL		
	1	2	3		1	2	3		1	2	3		1	2	3
CHILKO LAKE		X			X				X					X	
SOUTH MORESBY		X			X				X				X		
VALHALLA		X			X				X					X	
KWADACHA		X			X						X				X
STRATHCONA		X			X				X					X	
TWEEDSMUIR			X			X					X				X
WELLS GRAY		X			X				X				X		
ATLIN			X			X					X				X

1= DOMINANT
 2= ELEMENTS OF
 3= NOT PRESENT

MATRIX 2 CASE SELECTION FACTORS

	A					B		
	1	2	3	4		1	2	3
CHILKO	X	X	X	0		X	X	X
SOUTH MORESBY	X	X	X	X		X	X	0
VALHALLA	X	X	X	X		X	0	0
KWADACHA	-	0	-	0		-	-	-
STRATHCONA	X	-	-	-		0	0	0
TWEEDSMUIR	0	X	-	-		-	-	-
WELLS GRAY	-	X	X	0		X	X	X
ATLIN	-	X	-	-		-	-	-

X = HIGH
 0 = MEDIUM
 - = LOW

A= FACTORS OF DISTINCTION

1= DIVERSITY OF PARTICIPANTS
 2= APPLICABILITY TO OTHER CASES
 3= EXISTENCE OF RESOLUTION PROCESSES
 4= CHRONOLOGICAL POSITION

B= FACTORS OF PRACTICALITY

1= WRITTEN RECORD
 2= INFORMATION PROXIMITY
 3= ACTOR ACCESSIBILITY

Upon examination there are a variety of reasons that lead us to the selection of the Wells Gray Provincial Park and the Chilko Lake Wilderness Park proposals for in depth analysis in this thesis. It is my desire to be as representative as possible in

the cases such that the understanding of the conflict and consequently the proposition of appropriate conflict resolution processes is not unrealistically skewed. Further, a desire is explicit to choose cases that upon examination and analysis will result in findings that are transferable to cases of similar circumstance within the provincial jurisdiction.

Primary to the selection of these cases is the distinction that each represents an instance where each of the parties to the conflict are the first in right and the other is trying to assert some right to land. Though the Tener claims predate the establishment of Wells Gray Park, the current conflict is centered around the desire of the claim holder to get access to the park land. The Chilko case, on the other hand, entails the perserverance of the park proponent in advancing park land use designation on lands where mineral claims over well known mineral occurences are well known and of long standing.

The two cases chosen exemplify two different levels of complexity that are contained within the generic parks / mines conflict as we have come to know it. The Wells Gray case is one of a relatively simple nature where the number of participants is few and the resultant complexity is limited to that which is inherent in the arguments and negotiations presented. The Chilko Case, on the contrary, is one of potentially many participants in the conflict. Though the major difficulty lies in the divergence between the parks and mines interests, a large number of competing peripheral interests are present to compound the situation.

A third rational for the choice of these cases is found in

the approaches to conflict resolution that have been used in attempts to resolve them. Different approaches have been used for each case. The Wells Gray case is one where the courts have been used to adjudicate some resolution which to mid 1985 has not been satisfactory. The Chilko Lake Case has been the subject of an extended land use planning process that has not resulted in a decision or the resolution of the conflict that is present. Each of these processes reflect common approaches to conflict resolution in the parks / mines situation. In each of these, the degree of success has been questionable. It is therefore of interest to determine the types of conflict and response that brings an unsatisfactory result.

A final rationale for the selection of these cases is the apparent availability of information and sources of knowledge pertaining to the cases. With principles involved in each case located in the lower mainland of British Columbia and Victoria, as well as the court documentation of the Wells Gray Case, these selections have been made.

To summarize, there are four reasons for choosing the Wells Gray and the Chilko Lake cases. First, is the differentiation between proponents in each; second, is the differences in the number and complexity of the participants in the conflict; third, is the variety of the response proffered in attempts to resolve the individual conflicts; and finally, the relative proximity and abundance of information on these cases relative to the others examined in chapter 2.

APPENDIX 4

CHRONOLOGY OF EVENTS WELLS GRAY PROVINCIAL PARK

FOUNDATION PHASE

- 1934 June 5. First rights to mineral claimed
- 1937 July 8. A consortium of investors receive crown granted title to 16 mineral claims. Holdings are distributed as follows:
- | | |
|-----------|------|
| Bradley | 50 % |
| Tener Sr. | 25 % |
| others | 25 % |
- July 23. Certificate of indefeasible title is issued under the Land Registry Act.
- 1939 December 14. Notice of Wells Gray Park reserve appears in the British Columbia Gazette. The Park is created. Tener Sr. still has the right to minerals and to work on the surface.
- 1940's Some exploration and development work is conducted on mineral claims
- 1965 A park use permit is now required for development of mineral claims within all parks.
- 1970 Tener continues process of acquiring park land use permit.

REVOLUTION PHASE

- 1972 November. New Democratic Party replaces Social Credit government.
- 1973 February 22. The Park Act is revised to restrict the access of Tener to the surface of the claims.
- July 23. Provincial Government actively considers negotiation to buy out mineral rights held in provincial parks.
- 1974 September. Tener Sr. dies.
- Tener begins to request park land use permits such that work can continue on the claims.
- 1975 Spring. David Tener takes over Bradley's share to win controlling interest in the claims.
- Letters, telephone calls, and personal conferencing between Tener and the Parks Branch continue 1975 - 1978

PROSPERITY PHASE

- 1975 Social Credit government returns.
- 1977 Minister of Mines, Jim Chabot offers David Tener 100,000 dollar quit claim compensation.
- 1978 January 24. Parks Branch requests an itemized quit claim price.
- Tener, treats the letter as a denial of the rights to minerals that he holds.
- Tener, his accountants, lawyers, and P. Eng. W.T. Irvine prepare claim value estimate of historical expenditures at 1.5 million dollars, and the present value of loss of opportunity to be about 3 million dollars.
- Parks Branch employee who writes letter asking for quit claim price is fired.
- 1979 May. Issue a writ against the Crown in Right of British Columbia asking for compensation.
- 1980 British Columbia Supreme Court rejects Tener's claim for compensation.

RECESSION PHASE

- 1982 March 2. British Columbia Court of Appeal rules that Tener should be compensated for the 16 mineral claims in Wells Gray Park.
- December 30. Factums of both the Appellant (British Columbia) and Respondent (Tener) are submitted to the Supreme Court of Canada.
- 1984 November 2. Final documents of the parties to the case are submitted to the Supreme Court of Canada.
- 1985 April 26. Tener awaits the decision of the Supreme Court of Canada.
- Current compensation claim price is suggested of 5.2 million dollars. Upward estimates have been suggested of 12 million dollars.
- May 9. Supreme Court of Canada reasons are handed down in favour of Tener.
- June 28. Provincial legislature passes ammendments that allow the creation of a recreation area in Wells Gray Provincial Park, thus allowing Tener to proceed with development.

APPENDIX 5

CHRONOLOGY OF EVENTS CHILKO LAKE WILDERNESS PROPOSAL

FOUNDATION PHASE

- 1935 Prospectors recover gold from the Lord River area within the Chilko area.
- 1940's Mineral industry ~~industry~~ activity is increased with the exploration diamond drill coring and tunneling of mineral deposits.
- 1964 Further staking of mineral claims in the Chilko Lake area.
- 1970's Rising metal prices cause increased activity in Chilko area.

REVOLUTION PHASE

- 1973 Parks Branch of the Ministry of Recreation and Conservation do a series of studies to investigate park values in the region extending from Tweedsmuir Park in the north to Carpenter Lake in the south.
- 1975 September 11. Inter - agency Chilcotin Wilderness Park Study is initiated by the Environment and Land Use Committee Secretariate.

PROSPERITY PHASE

- 1980 Mineral exploration activity continues to attract a considerable expenditure.

RECESSION PHASE

- 1981 February. Deferred Area Planning Process initiated between Ministry of Forests and Ministry of Lands, Parks and Housing.
- 1982 July. Mineral resources and potential study is completed for the Chilko Lake area by Ministry of Energy, Mines and Petroleum Resources.
- November 5-7. Ministry of Energy, Mines and Petroleum Resources holds a Land Use Review Seminar in Victoria to assist in determining conflicts between mineral and other land uses.
- Mineral exploration activity is curtailed due to concerns for security of mineral rights tenure and falling mineral prices.
- 1983 May 28. Ministry of Energy, Mines and Petroleum Resources presents a position paper outlining the mineral resource management perspective for wilderness legislation and management in British Columbia.

June 17. Deferred Planning Area Report for Chilko is submitted to the Environment and Land Use Technical Committee of the Provincial Deputy Ministers.

July 7. Provincial Budget calls for the elimination of the Regional Resource Management Committees and a reduction in Planning activities throughout the provincial government services.

Cariboo Regional Resources Management Committee recommend the creation of a core recreation area with mineral exploration allowed in the periphery. Parks and Outdoor Recreation Division of the Ministry of Lands, Parks and Housing continue to push for the establishment of a Class A park in the Chilko area.

Lands, Parks and Housing realize that they need considerable political support before a park or recreation area proposal is put before the provincial cabinet.

Process of consultation and mediation between the parks and mines interests by Lands, Parks and Housing is begun.

1984 May. Mineral resource development land use policy for the ministry of Energy, Mines and Petroleum Resources is published.

Regular consultation between the Geological Branch of the Ministry of Energy, Mines and Petroleum Resources and the Parks and Outdoor Recreation Division of the Ministry of Lands, Parks and Housing continue at the headquarters level.

August 22. Parks and Recreation Branch of the Ministry of Lands, Parks and Housing publishes park land designation policy that will eliminate classes of parks leaving only Class A Provincial Parks and recreation areas.

1985 April. Parks and Outdoor Recreation Division of the Ministry of Lands, Parks and Housing submit a policy proposal to the mining industry for comment.