

CHOICES FOR CHANGE

A Study of the Fort Ware Indian Band and
Implications of Land Settlements for Northern Indian Bands

by

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A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS
in
THE FACULTY OF GRADUATE STUDIES
in the
SCHOOL OF COMMUNITY AND REGIONAL PLANNING
1984

We accept this thesis as conforming
to the required standard.

THE UNIVERSITY OF BRITISH COLUMBIA
1984



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ABSTRACT

This thesis analyses the options for Indian land settlements in terms of the social, economic, and cultural implications for northern Indian bands. The focus is on three Sekani communities in northeast British Columbia, but more specifically on Fort Ware, a remote Indian settlement located in the Finlay-Parsnip watershed within the Rocky Mountain Trench.

Social and economic problems faced by Canadian Indians have, in the past, always been met by remedial programs, programs that have been directed at the symptoms of distress, not the causes. This thesis examines land settlement as a possible long term solution to the economic and social problems of Canada's Indian population. The question that is posed in the thesis is: what would be the optimum kind of settlement in terms of bringing about positive social and economic change?

To answer this question, information was gathered on three Indian communities - Fort Ware, an Indian reserve without road access and remote from non-Indian settlement and resource developments; McLeod Lake, a settlement surrounded by industrial development and severely affected by the massive 1960's W.A.C. Bennett hydro-electric project; and Ingenika, a community displaced by the same project. The thesis focusses chiefly on Fort Ware because it is a northern band whose territory has not yet been significantly altered by non-Indian resource developments and is similar in this respect to many northern

Indian settlements that are still just beyond the frontier.

In order to determine the present extent of territory and the value of Indian subsistence activities of the people of Fort Ware and McLeod Lake, a land use and occupancy study was carried out in these two communities. It was found that country food (food from gathering and hunting) was critical to the diet of both communities and that the territory used by the bands was extensive. In Fort Ware the extent of territory used for hunting, trapping, guiding, and fishing was almost as extensive as that used at the time of white contact. In McLeod Lake the extent of territory used has declined since the contact period, with the major decrease occurring since completion of the W.A.C. Bennett dam.

The thesis focusses on the village of Fort Ware and its choices for change. Options for land settlement for Fort Ware and other similar northern Indian bands have been grouped into four categories and analysed. They include: traditional, following the Indian treaties; moderate, characterized by the James Bay Northern Quebec Agreement, the proposed Yukon agreement and the Committee for Original Peoples Entitlement (C.O.P.E.) settlement; assimilation, following the Alaska Native Claim Settlement, and Indian reform, characterized by the Nishga negotiating proposals.

It was concluded that none of the settlements were satisfactory, although several elements were considered to be positive. The

treaties fall short of providing the necessary land base for continued Indian subsistence activities, do not provide Indian participation in resource management, and do not provide capital for the bands' economic development.

The moderate agreements - James Bay Northern Quebec Agreement, the proposed Council for Yukon Indians agreement and the C.O.P.E. settlement - address the issue of native resource use but fail to provide comprehensive control over resource management. Even the C.O.P.E. agreement, which has the most extensive land base, falls short because the Inuvialuit, the beneficiaries in the agreement, have insufficient voice in resource and land use decisions.

The Alaskan agreement is an assimilation package with little protection for subsistence use or adequate political framework for the Indian and Inuit people.

The Nishga negotiating proposals are the most positive in terms of support of the Indian culture and in terms of bringing about social and economic development. Because these proposals are aimed at gaining Indian control over all the extensive, claimed land and resource revenues, it is not realistic that such proposals could be successfully negotiated for all northern Indian bands.

Some general conclusions have emerged from this analysis. In order for northern Indian bands to achieve economic, social and

cultural growth, a land claim agreement should contain at least the following:

1. One to one and one-half square miles of land per beneficiary to be owned by the Indian group.
2. Priority rights to resources (for hunting, fishing, trapping, guiding, and forestry) on the balance of the claimed land.
3. Equal voice on decision-making resource management committees.
4. Cash settlement sufficient for the band's economic development.
5. Greater political and administrative control over matters affecting the Indian group.

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Acknowledgements

I am grateful to Chief Emil McCook who supported my research in Fort Ware and to the many Fort Ware Band members who participated in the survey. I would like to thank Hazel and Charlie Boya who befriended me and the Van Sommers who assisted me. Also I want to remember the band manager Robert Inyalie, the John McCook and the John Poole families.

At McLeod Lake I had the support of Chief Harry Chingee and his wife Pat and the co-operation of all the band members in the village.

I appreciate the assistance I received from Indian and Northern Affairs, Canada in providing essential information and the invaluable help from Medical Services staff of Health and Welfare who graciously offered me accommodation in Fort Ware. The Provincial Government staff in the Ministries of Forests, Mines and Environment assisted me by providing research data.

Most important to the success of this work was the support I received from my husband, Paul, who cared for our young daughter Emily while I studied.

I wish to express my appreciation to my advisors, Mildred Poplar of the Union of B.C. Indian Chiefs, Robin Ridington, Department of Anthropology and my supervisor, Peter Boothroyd of the School of Community and Regional Planning.

Finally, I want to acknowledge the financial assistance I received from Central Mortgage and Housing Corporation. There is no group in Canada more inadequately sheltered than the Canadian Indians. Through research such as this it is hoped that the root of the problem, not the symptoms will be addressed.

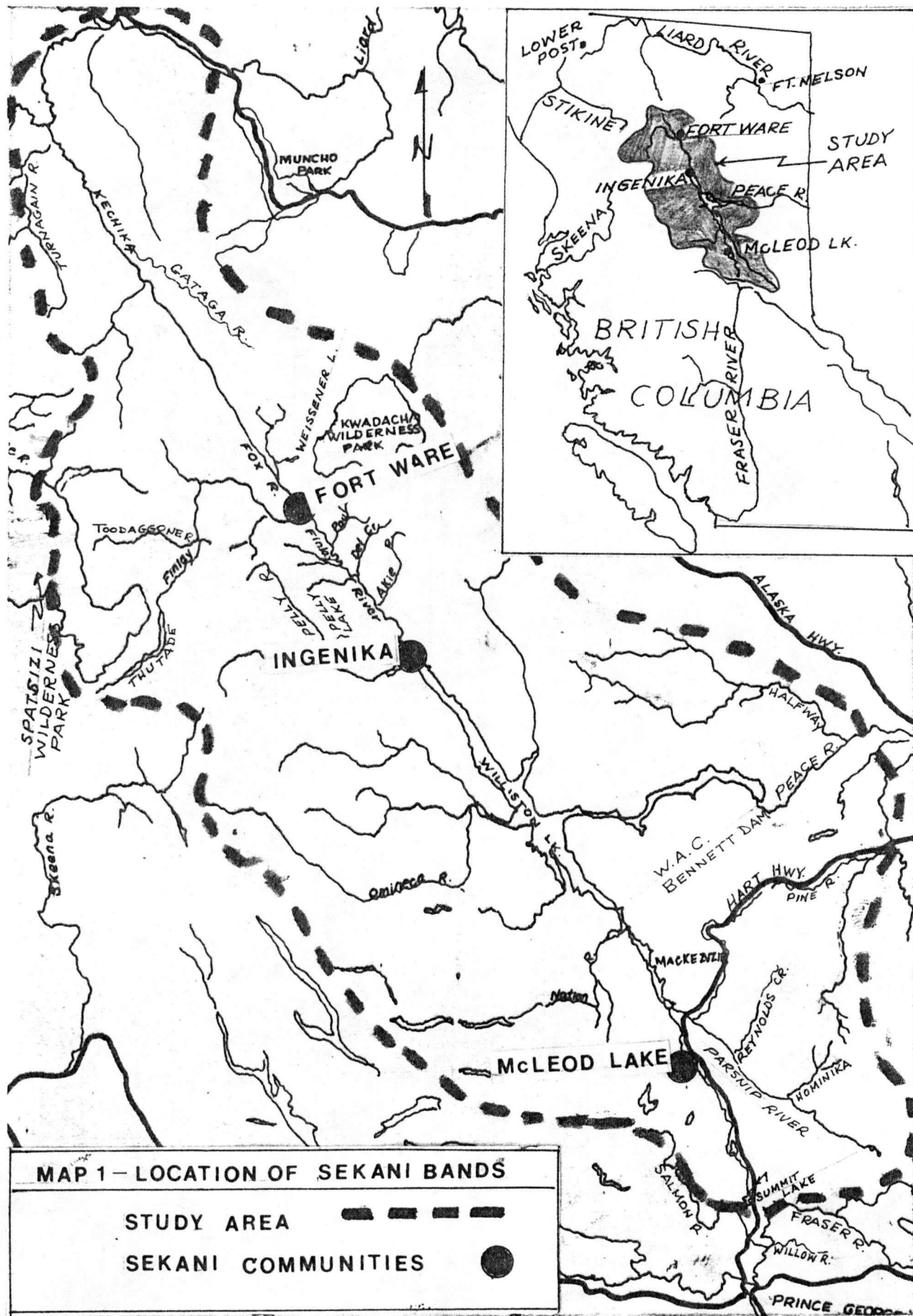
CHAPTER I

INTRODUCTION

This thesis will analyze land claim settlement options in terms of the social, economic and cultural implications for northern Indian bands. The focus will be on three Sekani communities, and more specifically on Fort Ware, a remote Sekani community located in the Rocky Mountain Trench of northeast British Columbia (see Map 1).

The land claims referred to are comprehensive claims based on the concept of aboriginal title. A comprehensive claim, as defined by Indian and Northern Affairs Canada, involves a group or groups of Indians within a geographic area and may include land and subsistence rights to hunting, fishing and trapping, as well as other economic, social or cultural considerations (Indian and Northern Affairs Canada 1982:7).

The question of aboriginal rights is gaining importance in British Columbia. In the 1970's two events occurred that dramatically affected federal policy on native rights. The first was the application by the Cree and Inuit for an injunction which stalled the giant James Bay hydro-electric project; the second was the Supreme Court of Canada decision on the question of whether or not the Nishga Tribe had retained aboriginal title to the Nass Valley. It was primarily the Nishga case that became the catalyst for a revised federal policy on native land claims.



The possibility of Indian title being upheld by the Supreme Court strengthened the bargaining position of Indian bands across Canada, but more so in areas where title had never been extinguished by treaty.

Although treaties were signed in Ontario and across the prairies in the late Nineteenth and early Twentieth Centuries, significant portions of Canada were never the subject of Indian treaties. Indians in the Yukon, northern Quebec, and most of British Columbia and the Northwest Territories did not come under treaty.

Since the 1970's a major land claim settlement has taken place in northern Quebec and settlements are near completion in the Northwest Territories and the Yukon. In contrast, land claim negotiations in British Columbia are progressing slowly. The federal government has the responsibility for resolving land claims, yet title to the land is in the name of the province. In Quebec the provincial government settled with the Cree and the Inuit in order to move ahead with its massive hydro-electric project; in British Columbia the provincial government has not perceived any pressing motivation to resolve land claims.

Once settlements are finalized in the Yukon and Northwest Territories the Indian land claim issue may focus more directly on British Columbia. The Province faces a very complex array of legal arguments on the subject of aboriginal title; it also faces an array of Indian proposals for land settlement.

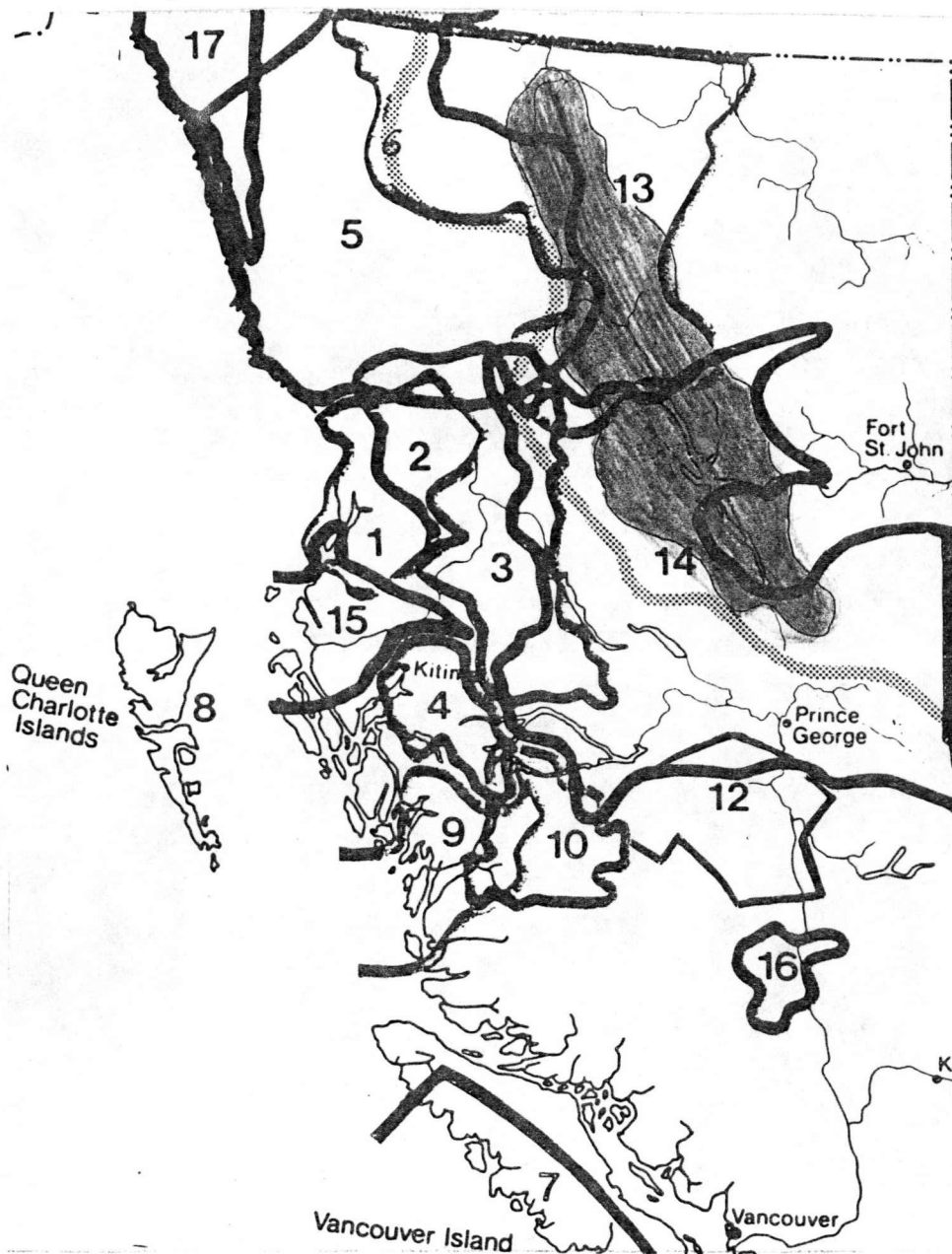
The issue of land settlement is made more complex in the northeast of British Columbia because of an anomaly that exists. The boundaries of Treaty 8, signed in 1899, extend over territory traditionally used by bands that never signed or participated in the Treaty. These bands, as a consequence, are confronted with the additional option of adhering to the 1899 Treaty.

As the constitutional debate on aboriginal title heated up in 1980-81 and again during the March 1983 constitutional accord talks, the positions of the various actors emerged. What became evident was the polarization between the Province of British Columbia and the more militant Indian organizations. It also became evident that there was little consensus among various Indian bands as to the direction for land settlements and resource use.

Indian bands are considering a range of choices. Although Thomas Berger will be undertaking the task of analyzing the Alaskan settlement, at this time there is little information available on the implications of the various choices for settlement. An examination of the options available to Indian bands is required to ensure greater understanding by the bands as they formulate proposals for land settlement.

Options for Settling Land Claims

Although land claims have been submitted for most of the land in



COMPREHENSIVE CLAIMS 1983

UNDER REVIEW

- 7. NUU-CHAH-NULTH
- 8. HAIDA NATION
- 9. HEILTSUK
- 10. NUXALK
- 11. KOOTENAY NATION
- 12. NAZKO-KLUSKUS
- 13. KASKA-DENA
- 14. CARRIER-SEKANI
- 15. TSIMSHIAN
- 16. ALKALA LAKE
- 17. ATLIN

ACCEPTED

- 1. NISHGA
- 2. KITWANCOOL
- 3. GITKSAN-CARRIER
- 4. HAISLA NATION
- 5. UNITED TAHLTAN
- 6. TREATY 8

MAP 2 - LAND CLAIMS SUBMITTED IN BRITISH COLUMBIA

STUDY AREA



British Columbia (see map 2), all bands have not finalized their negotiating strategies. Some Indian bands may opt for adhesion to the existing Treaty 8 while others may follow the stand taken by the Nishga, namely, that no land be ceded and that Indians assert title over all the claimed land. In exploring the various choices, this thesis will detail four options which encompass the range of choices facing Indian groups. These options will be labelled traditional, moderate, assimilation and Indian reform. Examples of the traditional approach are the treaties where title was extinguished in exchange for a relatively small land and cash settlement, with little protection for ongoing resource use; the moderate approach is demonstrated by the James Bay Agreement where title was extinguished for a fairly generous land and cash settlement along with some ongoing resource use; the assimilation option is patterned from the Alaskan settlement, and the Indian reform, from the Nishga negotiating proposals.

This oversimplifies the choices. Obviously, there are many possible settlements that fall between the four categories and some that may fall outside. The rationale for this thesis is that there is no analysis available at the present time for northern Indian bands to use in formulating land claim proposals.

Socio-economic Considerations

The various options for land settlements will be viewed in relation to their impacts on the social and economic conditions

of the Indian people. The condition of Canada's registered Indian population is documented in a 1979 report commissioned by D.I.A. (Indian and Northern Affairs Canada). That Indians suffer from deprivation and social dislocation is not news; the 1979 report simply provides the statistical evidence of this widespread problem. Below are some of the results from that study (Indian and Northern Affairs Canada 1979).

Indian infant mortality in 1976 was 32.1 deaths per thousand, or twice that of the general population. The mortality rate for the 20 to 44 age group was four times that of the general population. Major causes of death were accidents, violence and poisonings. Suicides among status Indians were twice as prevalent as compared to the general population. The majority of Indian suicides occurred among young adults.

The percentage of students carrying on to grade twelve in 1976 was 18% among Indians compared to 75% in the general population. Five percent of Indians age 18-24 continued to University compared to 12% in the general population (Indian and Northern Affairs Canada 1979:28).

Although Indians represent only 2 to 3% of the population, (including status and non-status) they make up 9% of the prison inmate population (Indian and Northern Affairs Canada 1979:41).

An issue that has gained more and more attention among Indian leaders has been child apprehension. In 1976 eight percent of

the 0 to 16 age group were in government care - four times the rate in the general population. The concern expressed by many Indian leaders is that removing children from their community is not only destructive to the child, deprived of family and cultural environment, but depletes band population.

Employment figures for status Indians are difficult to compile because of the lack of data on the number of people engaged in traditional Indian activities - trapping, fishing, hunting, and guiding. Figures for social assistance indicated that in 1976 approximately 50 to 55% of reserve population was in receipt of public assistance, compared to 6% in the general population. However, these figures are misleading if used as an indication of employment since many of the families on social assistance are working in traditional Indian occupations. Income from trapping, however, without social assistance, is in many cases insufficient to support a family (see Chapter V).

Finally, the study documented housing conditions on Indian reserves. Forty percent of all reserve housing is in need of repair; 32% accommodates two or more families, suggesting severe overcrowding; and only 45% of reserve housing is serviced with water and sewage (Indian and Northern Affairs Canada 1979:39).

Until recently every problem identified among Canada's Indian population was met with a program. Funding has been provided to upgrade substandard housing, combat drug and alcohol abuse, improve health conditions, encourage economic development, and

provide community infrastructure. The symptoms, not the causes, were being treated. Approximately 94% of D.I.A. funding has been channelled into remedial, maintenance programmes which have achieved little positive social or economic change. D.I.A. officials themselves have admitted that federal programmes tended to foster dependent and alienated Indian societies which demonstrated many of the characteristics of underdeveloped nations (Thalassa 1983:46-47).

In analyzing land settlement issues, the pivotal question to raise is, "How will a particular settlement strengthen the Indian culture, economy and self-awareness of the Indian people?" In this thesis the case study is a northern B.C. band and the accompanying analysis will apply primarily to northern bands - the hunting and gathering societies. Although there were several assimilation programs initiated by the federal government, these hunting and gathering groups remained as separate, albeit weakened and dispirited societies. Economic uncertainty and political emasculation undermined their traditional leadership and eroded social and cultural structures.

Canadian Indians have resisted assimilation due in part to the reserve system which isolated Indians from mainstream society. The 1969 White Paper advocated the dismantling of the reserve system, the repeal of the Indian Act, and the end of any special status for Indian people (Canada 1969). This was the ultimate in assimilation policy. However, Indian reaction was so adverse that the paper was withdrawn.

In the 1980's federal policy has been directed at re-assessing the relationship between Indians and the federal government. A committee established in 1982 to study Indian self-government recommended the federal government recognize Indian First Nation governments as a distinct order of government within the Canadian federation, and that the Department of Indian Affairs and Northern Development be phased out (Canada 1983(a)). The potential restructuring of Canada's political relationship with the Indian population can not be separated from the question of land settlement. Self-determination without a land base, capital and resources would not work, just as significant land and cash settlements without political authority over the land and resources would do little to alleviate the socio-economic problems faced by Indians. Self-government and land settlement are inseparable (Thalassa 1983:117).

The issue of land settlement is the focus of this paper. But this focus will be considered within the context of the structural changes that are expected to take place with respect to increased self-determination of the Indian people. In one of the background papers to the report of the Special Committee on Indian Self-government, the researchers state that the economic foundation for self-determination is control over a resource base sufficient to meet material needs (Thalassa 1983: 119-120). In order to address the central problem of the under-development and social dislocation of Canada's Indian population, the researchers argue that we must begin with the reinstatement of

the Indians' resource base and political authority. This thesis will examine various land settlement options and analyze those options in relation to the economic and social growth of the northern Indians.

METHOD

In order to reach the point where it is possible to examine on a broad basis the choices available to northern bands, I will first analyze the options facing the Fort Ware Band. As part of the background to the Fort Ware claim the following data have been compiled: the Band's land use and occupancy at the time of white contact; present resource use; the current extent of band territory; and the impacts on the band of non-native resource use.

The area of land occupied at the time of white contact is an important element in land claim negotiations. For this reason, historical accounts are included of the tribal ancestors of the Fort Ware people. These accounts detail, as much as possible, the territory used at the time of white contact and the type of resource use. The Fort Ware Band belongs to the Sekani Tribe which in turn is part of a large northern Athapaskan linguistic group. Reference will be made later to the Athapaskans in terms of the early migrations of this cultural group. The main historical focus will be on the Sekani - the tribal group which is presently represented by three bands: Fort Ware, Ingenika, and McLeod Lake.

Fort Ware is of particular interest with respect to the land claims issue because it has been relatively unaffected by non-native resource development. Its transportation system has been disrupted by the W.A.C. Bennett Dam but the full impact of forestry development is still outside of the Fort Ware territory.

In contrast to Fort Ware, the McLeod Lake Indian Reserve is the site of the first continuously occupied white settlement in British Columbia; the Band has been in close contact with the Euro-Canadian society since completion of the Hart Highway in 1948; and, the territory of the McLeod Lakers has not only been flooded by a major hydro-electric project, but has been covered by access roads and extensive logging since the late 1960's.

The interesting contrast between these two Sekani communities is valuable for the analysis of future options. Consequently, a land use survey was conducted in both settlements - McLeod Lake and Fort Ware. Land use at Ingenika is similar to Fort Ware in that both communities are remote and still largely dependent on hunting, fishing and trapping. Because of these similarities, no land use and occupancy study was undertaken for Ingenika.

The land use survey was comprised of a questionnaire and a mapping project. All households were contacted and a questionnaire filled out (see Appendix). A map was drawn by adult members of the family unit who used the land for food or economic gain. Where two families or a second or third

hunter/trapper shared the household, each hunter/trapper would draw a map and be interviewed.

The questionnaire was primarily intended to determine the amount of 'country food' (food from hunting and gathering) the two villages obtained in a one year period. The survey questionnaire also provided information on the trapping harvest, on big game guiding, the present extent of land usage, and the opinions of the hunters/trappers as to whether or not the resource had improved or declined since construction of the W.A.C. Bennett Dam.

The mapping project was patterned on the techniques first applied in the land use and occupancy study of the Inuit (Indian and Northern Affairs Canada 1976) and later by Brody in his book, Maps and Dreams (1983). Using topographic maps, respondents drew with colored pens, all the areas where they usually hunted, trapped, guided, fished, and picked berries. Respondents were also asked to identify areas which they used prior to 1970 (before the dam and major resource developments) and which they now no longer used. All map makers generally drew the outer boundaries of the areas they used. These individual maps were aggregated to show the total land area used by the Fort Ware and McLeod Lake bands.

To supplement the resource data provided by the Fort Ware Indian band members, information was collected from agencies on the resource base and proposed resource developments. The latter

included future forestry plans, mining proposals, hydro-electric projects and roads and transmission rights-of-way.

Once the data were compiled a meeting was arranged with the Fort Ware band members for the purpose of including resident participation in the study. Band members were presented with the survey data, the composite map showing native land use, and the maps showing proposed resource developments. A number of questions were posed, relating to the band's choices in land claim settlements.

What occurred at the meeting was a co-operative search for solutions and a mutual exchange of information. As Friedman (1981) points out there should be a transactive style of planning that effectively bridges the gap between client and planner to allow a two-way flow of information. The responses and community consensus reached at the meeting influenced the range of strategies analyzed for Fort Ware and added considerable weight to the overall conclusions reached.

Two more areas of research were undertaken to complete the data gathered in this study - one dealing with the legal question of aboriginal title and the other dealing with the range of settlement choices facing Indian bands. Research on the issue of aboriginal rights and/or title began with early colonial policy and continued through to the present day positions of the provincial and federal governments. This thesis summarizes the major events and legal decisions critical to the issue of

aboriginal rights. These include the Cree/Inuit court action in Quebec, and the Supreme Court decision on the Nishga case (Calder vs A.G. 1973) to cite the most prominent.

Finally, the thesis analyzes the various existing or proposed settlements including Treaty 8, the James Bay Northern Quebec Agreement, the Alaskan settlement, the proposed Yukon and C.O.P.E. settlements, and the Nishga's negotiating position. In conclusion, this thesis analyzes Fort Ware's options and then moves on to the broader area of examining the implications for northern Indian bands given the various choices for change.

CHAPTER II

THE SEKANI BANDS

There are three Sekani communities located in a north-south direction within the Rocky Mountain Trench (see map 1). Fort Ware is situated 80 kilometres north of Williston Lake, Ingenika is 90 kilometres south of Fort Ware, on Williston Lake, and McLeod Lake, the most southerly, is located 120 kilometres north of Prince George.

In 1970-71 the Finlay, Parsnip and Peace Rivers were flooded by the W.A.C. Bennett Dam to create Williston Lake. The affects of the dam have been devastasting for the Sekani people, but less so for Fort Ware than the other two bands. For members of the two more southerly bands, Ingenika and McLeod Lake, the impacts of the hydro-electric project have been permanently disruptive.

FORT WARE BAND

The village of Fort Ware is located on the banks of the Finlay River between the mouths of the Fox and Kwadacha Rivers, in an area of northeast British Columbia about 400 kilometres north of Prince George. There are 223 band members and a village population of approximately 160.

Socio-Economic Characteristics of Fort Ware

Indian leaders are well aware of the problems faced by many of their people - the high rate of homicide, especially among the young, higher than average infant mortality, and over use of drugs and alcohol. Fort Ware is no exception in terms of

indicators of social dislocation. In the past decade there have been four homicides and seven accidental deaths in this small settlement. One of the most tragic was the shooting of a twelve year old girl by her six year old relative. Guns are essential to the subsistence way of life of the people, yet their use, especially where children have ready access or where liquor is involved, has become a serious problem.

Fort Ware is a dry reserve. According to section 97 of the Indian Act all reserves are prohibited liquor unless the band council passes a motion to the contrary. There is no liquor sold in the community but a home brew is made and liquor is brought in from Mackenzie and Prince George. According to Health and Welfare officials the high incidence of illness in Fort Ware is linked to alcohol abuse (Prestage 1983 per.comm.). In addition to the homicides, there have been several accidental deaths, the most recent caused by a house fire which took the lives of two very elderly people and their small great grandchildren.

Violence and alcoholism are present in the community but they are not prevailing characteristics; they are problems that erupt periodically in a community that I found to be friendly and cohesive. Ties in the extended family are strong and there is a positive sense of each individual belonging to a network of supportive relatives.

Political Characteristics

Political structure is to an extent influenced by the provisions

of the Indian Act. The chief and councillors are elected approximately every two years. Leaders are selected on the basis of family as well as leadership qualities. The chief is not expected to act independently but to work with the community to reach consensus, before making major decisions.

The chief's role is becoming less and less a political one and more and more administrative as the work involved in the delivery of Indian Affairs (D.I.A.) programs increases. In addition to the task of organizing and hiring workers for projects, the chief is also expected to act as a liaison between band members and government agencies.

Regional political relationships were in a state of flux in 1983-84. Fort Ware is presently a member of the Carrier-Sekani Tribal Council. This organization also represents the Sekani band of Ingenika along with approximately 12,000 Carrier Indians. The Tribal Council has an office in Prince George with a staff of ten, including several professionals. The first Indian tree farm license in British Columbia was negotiated by the Carrier-Sekani Tribal Council. This Indian-run forest operation, Tanizul Timber Ltd., has been cited as a unique and positive economic move for a native organization. Despite the administrative abilities of the Carrier-Sekani Tribal Council, it has been unable to bring McLeod Lake into its membership, and it may lose Fort Ware whose interests lie more to the north than the central interior. Fort Ware has allied itself with the Kaska-Dene to the north in a joint land claim submission and is

considering joining that tribe's council.

Cultural Characteristics

There is little in the way of Indian handicraft in Fort Ware although there is now a school program designed to revive Indian culture. The middle-aged and elderly people are skilled in trapping, hunting and some in boat building, and these skills are to an extent being passed on to the young. The Sekani language is spoken by most people middle aged or older and the children appear to understand the language, but are not fluent.

Economic Characteristics

There are few employment opportunities in Fort Ware. There is the position of band manager, community health care representative, one or two part-time janitorial jobs, and work in temporary band projects. Most families have at least one person engaged in trapping. The majority of village income is made up of federal transfer payments in the form of social assistance and project funding.

The Cyprus-Anvil silver/lead mine is located 18 kilometres south of Fort Ware. The mine was in the development stage when the operation was put on hold in 1983 due to a shortage of development capital. Had the mine gone into production there may have been job opportunities in mining for band members.

Physical Characteristics of Fort Ware

There are 32 dwellings in the community with the average size of

dwelling 58 square meters (622 sq. ft.). The average number of persons per dwelling in Fort Ware is 5.5 compared to the average in British Columbia of 2.75 (Statistics Canada 1981). In one dwelling there were twelve persons temporarily occupying a 45 square meter (484 sq. ft.) house while in another, there were ten people living year round in a 70 square meter (753 sq. ft.) dwelling. Houses are heated by wood and there is no indoor plumbing. Residents take water from the Finlay River. The school, health unit, teacherages and store all have electricity and indoor plumbing, while only one dwelling, owned by the former storekeeper, is serviced by power and water. Project plans for 1984 included construction of sewer and water services for the village.

The Department of Indian Affairs's school serves grade one to eight, has two teachers and an enrollment of 40. Students who continue on to high school go out to Mackenzie or Prince George. Indian Affairs education officials in Prince George stated that since 1979 a few students continued on to grade nine but that none continued on to grade eleven or twelve.

The health unit is the most impressive building in the community. This unit has two bathrooms, a washer and dryer, all available to members of the community. In addition to a waiting room and examination room, there are two suites used for visiting agency staff. The band owns a small cabin served with power, which is leased to D.I.A. for the use of its staff.

Up to 1980 the store had been operated by a non-Indian, Jim Van Sommers, who had originally taken over from the Hudson's Bay Company. In 1980 the band received funding from D.I.A. to open its own store which is now in operation and experiencing the usual difficulties encountered in a new operation. This will be discussed in more detail later.

The airport is the only link to the outside now that the water transportation route has been disrupted by the Williston Lake reservoir. There are charter flights to the community from Prince George, at a return cost of \$1900. It is possible to fly to Fort Ware as an incidental passenger at a cost of \$200 return providing one of the agencies has scheduled a flight and gives permission to the additional passenger to occupy a seat.

Facilities in the community were being expanded in the summer of 1983, with the construction of a community hall, enlarged school and a new teacherage. Priorities for the future include electrification and completion of the sewer and water system.

Fort Ware's territory abuts Ingenika's. A four wheel drive road has now been pushed through from Ingenika to the Finlay River, and an all weather road leads from a barge landing on the Finlay to a mine site only 18 kilometres south of Fort Ware.

Fort Ware stands beyond the frontier. The floodwaters filling the Williston reservoir stopped just 80 kilometres south of Fort Ware; forestry development is still five years into the future;

the mine is on hold; and the Liard hydro-electric project has been postponed for 20 years. The Band appears to have been given a reprieve from the encroachment of development. It is a time for the people of Fort Ware to work out an appropriate strategy for dealing with land settlement and future resource use.

MCLEOD LAKE BAND

This most southerly Sekani band is located on reserve land and is part of the non-native community of McLeod Lake. The feature which distinguishes McLeod Lake reserve from the settlements at Fort Ware and Ingenika is that, unlike these two more northerly communities, McLeod Lake has both Indian and non-Indian settlements and the reserve is in close proximity to extensive non-Indian resource development. The McLeod Lake Indian Reserve is situated across the Pack River from a primarily non-Indian settlement. At McLeod Lake there are 80 band members living on or near the reserve, compared to a non-Indian population of 135. Across from the McLeod Lake reserve, there is a store with a liquor outlet, two service stations, and a hotel with a restaurant. Children from the McLeod Lake Band are bussed a few miles north on the Highway to a provincial school located adjacent to Westcoast Transmission company housing.

There are various employment opportunities available in the vicinity of McLeod Lake. The pulp mill town of Mackenzie is 60 Kilometres north; there are jobs with forestry, Westcoast Transmission, and with the service industry along the highway, although few band members have obtained employment in the area.

The proximity and easy access to urban communities is thought to be one of the factors contributing to the high emigration from the reserve. Of the McLeod Lake band membership of 229 people, 149 or 65% live off-reserve; in Fort Ware 63 people or 28% live off-reserve.

A more critical cause of the high off-reserve population in McLeod Lake is the impact of resource development on this band's territory. McLeod Lake has been the community most negatively affected by the W.A.C. Bennett Dam and by resource developments. Few of the traplines remain in Indian ownership, there is high unemployment despite the proximity of resource industries, and there is a considerable alcohol problem. One of the objectives of this thesis is to determine the effects on Indian resource (hunting, fishing, etc.) of major forestry and hydro-electric developments. Because McLeod Lake has taken the brunt of resource mega-projects, events in McLeod Lake may be the harbinger of events in Fort Ware. By comparing the two communities it is possible to speculate on future impacts that may be faced by the more northern and isolated communities.

INGENIKA

The third Sekani community, Ingenika, initially would appear to be the most tragically affected by the dam. These people are descendents of the Fort Grahame nomads who trapped and hunted from Finlay Forks (the conjunction of the Finlay and Parsnip Rivers) up the Finlay to the Ingenika River. They were later defined by D.I.A. as the Finlay River Band, along with Fort

Ware. They lived for the most part along their traplines, visiting Fort Grahame periodically to trade (see map 3).

When logging operations were taking place in preparation for the dam, many of the Ingenika people who lived along the Finlay River relocated at Finlay Forks to work at the temporary sawmill. They built makeshift housing near the sawmill and lived there until the dam was completed. In the winter of 1970-1971, the flood waters rose and inundated their homes at Finlay Forks. Industrial sheds were brought in by government officials and located on higher ground to provide some shelter for the winter. The following year officials from D.I.A. and other government agencies tried to relocate the residents to new reserves, Tutu Creek, located near the new forest industry town of Mackenzie, and Parsnip River, located 28 kilometres from the Mackenzie townsite. The intention of the officials was to bring the Finlay River Indians into the industrial work force and into mainstream society. But assimilation never occurred and both reserves are now abandoned. The people have relocated to Ingenika where they are, for the most part, engaged in hunting, trapping and fishing.

Ingenika is unique in one respect - the band is located on crown land rather than a reserve. This settlement of approximately 100 is situated on the Ingenika River near where it flows into Williston Lake. Because the land is not an Indian reserve D.I.A. is reluctant to fund housing and capital projects. Until the land question is resolved the band remains disadvantaged in

terms of federal funding.

Ingenika has many characteristics similar to Fort Ware - it is remote from white settlements, the residents are involved in subsistence harvesting, and, like Fort Ware, the community has a few basic facilities such as a store, health unit and school. Forestry development has now reached the south bank of the Ingenika River directly across from the community. When the river is bridged, Ingenika may find its resource base threatened as the clear cut logging moves across the trapping areas and the non-Indian hunters and fishermen compete with the Ingenika band for fish and game.

CHAPTER III

LAND USE AND OCCUPANCY AT TIME OF WHITE CONTACT

The argument that Indian communities make in defending their land claims is that prior to the arrival of the Europeans, the native group or tribe used and occupied a fairly well defined territory and that the land was home to their people and provided for their food and shelter. Although no title exists on paper, claims of ownership are based on a common law interpretation of title and Canadian constitutional statute. It is this type of argument that will be followed in the historical accounts of the Sekani.

Because the hunting/gathering bands in northeast British Columbia were nomadic and tended to group and regroup (Duff 1964:18-36), it is not possible in most cases, or practical, to define a particular band's territory. For this reason the territory of the Sekani tribe at time of white contact will be established, rather than the territory of an individual band.

Alexander Mackenzie, the first European to reach the Pacific Ocean overland and the first explorer to enter Sekani territory, described a number of meetings with this tribe during his 1793 voyage of exploration. This Northwest Company employee first met the Sekani, which he called Rocky Mountain Indians, inhabiting the area from the junction of the Pine and Peace (See Map 3), near Fort St. John up to the falls at Fort Vermillion (in central Alberta near High Level) (Mackenzie 1902:15). They told

Mackenzie that the Beaver Tribe was encroaching on them and pushing them west across the Rockies. This group has been defined as Sekani by Jenness (1937:7)) but it is not conclusive that they were part of the same tribe occupying the Finlay-Parsnip River watershed (Lanoue 1983:225). Another group of Sekani were at the Peace River Canyon (now the site of the W.A.C. Bennett Dam) and assisted the explorer and his party over the difficult portage. The first indication we have of the Sekani's extensive knowledge of the country was from Mackenzie's account of his decision on the route to take at Finlay Forks. Mackenzie wrote that he would have taken the north branch in his attempt to reach the Pacific Ocean had he not been dissuaded by a Sekani guide. The "old man" told Mackenzie that the south branch leads to a "carrying place" to another great river (the Fraser) and from there to the ocean (Mackenzie 1902:72).

As Mackenzie travelled up the Parsnip River he noticed several Indian encampments and noted that it appeared from the number of sites that the Rocky Mountain Indians (the Sekani) inhabited the area in the spring and fall (Mackenzie 1902:83). He also wrote that there were beaver lodges almost every canoe length along the river bank. It was along the Parsnip River that the party encountered Indians with iron implements. These Sekani described how they travelled west to trade with neighboring tribes who lived in houses and traded in iron on the 'stinking lake' (the ocean) (Mackenzie 1902:91). This would be the Carrier who in turn traded with the Tsimshian (Fisher 1977:33). The prevalence of iron implements indicated to Mackenzie that trade with the

coastal Indians was well established. Mackenzie reached Bella Coola on the Pacific Ocean having been guided by the Sekani through the upper Peace and Parsnip River systems, and by the Carrier up the Blackwater and overland to the Pacific Ocean.

There is one final incident that Mackenzie recounted which attests to the manner the Sekani displayed in their first dealings with these early explorers. On his journey up river en route to the Pacific, Mackenzie traded for a beaver skin with a Sekani hunter but left the pelt in the Indian's care to avoid further burdening the exploration party. When Mackenzie completed his trip to the Pacific and was returning down the Parsnip later that summer, the Indians had dispersed but the beaver pelt was hung prominently along the river bank for the explorer to retrieve (Mackenzie 1902:102).

Although Mackenzie's journey is important in the annals of Canadian history, it did not resolve the problems of the Northwest Company in its bid to expand the fur trade west of the Rockies. The company needed a good water route to the Pacific in order to tap the resources of the west and yet avoid the costly shipping route east across the continent. To achieve this the Northwest Company commissioned Simon Fraser to establish trading posts west of the Rockies and find a water route to the Pacific.

Fraser first entered Sekani territory in 1805 when he journeyed up the Peace, Parsnip and Pack Rivers to establish a post at Trout Lake (McLeod Lake). There was no journal of this first

trip but from later accounts we can establish that Fraser left a small contingent to man the Trout Lake (McLeod Lake) post while he returned to the east side of the Rockies for the winter of 1805-06. Fraser described a meeting at Rocky Mountain Portage with the Sekani Indians whom he referred to as Meadow Indians. In several references to this band, Fraser placed their territory in the valleys of the Pine, Halfway River, Moberly River and Moberly Lake (see map 3). He also mentioned how this band was being pushed across the Rockies by the more aggressive and well armed Beaver Tribe. In fact, by the early part of the twentieth century this area was considered to be Beaver country (Jenness 1937:Figure 1).

There is a story, recounted by Simon Fraser, about the Indian chief at Rocky Mountain Portage which throws an unfavorable light on the explorer. It serves as an interesting anecdote on the relationship between the Indians and the newcomers. While Fraser was waiting at Rocky Mountain Portage for spring breakup, he harassed the old chief of the band, Little Head, into supplying fish and meat and also compelled the chief to accompany Fraser on his journey to the Pacific. Little Head was often brought reluctantly to the post where he was berated for not supplying enough food. When the time for Fraser's departure was upon them, Little Head was again brought to the post by the explorer's men. This time the old Chief was to remain at Rocky Mountain Portage until it was time to go up river with Fraser. Instead, Little Head insisted on returning to his camp first and Fraser sent a young voyageur to make sure he came back. But

Little Head gave his captor the slip by crossing on snowshoes onto the soft, deep spring snow, leaving his pursuer lost and up to his knees in snow. Days later the young voyageur returned without the crafty old Chief (Lamb 1960:171-183). This story is not typical of how the Indians received the newcomers, as Little Head was somewhat less accommodating than most of the Sekani that aided Mackenzie and Fraser. The attitude of the Sekani to the early explorers and fur traders was generally one of flexibility, an attitude which, some claim, they have retained up to the present (Lanoue 1983:6).

There are other accounts of mistreatment of the Sekani, but without any records preserved by the Indians themselves we are not likely to have the benefit of an objective account of how the Indian people were dealt with by the newcomers. In one event, the Chief at McLeod Lake was to receive a gun from La Malice, the fur trader who was left in charge of the McLeod Lake post in the winter of 1805-06. Instead, La Malice took the lock from the gun to mend his own and sent the Chief, for payment, to Rocky Mountain Portage, a journey of 240 kilometres. On the Chief's arrival at the Portage Fraser refused to make good the payment saying that the Chief must return to McLeod Lake and try to get La Malice to honour the debt. Guns were valued highly by the Sekani. Their tribe was being threatened by the more aggressive, armed Beaver Indians. It was essential for the Sekani to obtain arms in order to prosper during the early part of the fur trading era. In this incident the fur traders forced the Sekani chief to travel a total of 480 kilometres in order to

receive a gun that he had paid for with furs. The records do not show if he actually received the gun upon his return to McLeod Lake.

Another account details the way in which the explorers dominated the local Indians. When Fraser was informed that the band had killed thirty moose near Rocky Mountain Portage he sent a voyageur to the Indians to prevent them from wasting any of the meat and to "force them to dry and pound it" (Lamb 1960:170-171). Despite this type of treatment, there is no indication that the Sekani ever responded aggressively.

There is also an account in Fraser's journal which adds to our knowledge as to where the Sekani travelled. When Fraser reached the headwaters of the Parsnip River at Arctic, Pacific and Portage Lakes, he met a band of Sekani who gave him valuable information on a shorter route to the Fraser River. One of the Sekani Indians told him of a route south from McLeod Lake on the Crooked River that required only a short and easy portage to the Fraser River (Lamb 1960:210-211). This would either be the portage from Summit Lake to the Salmon River or the Giscombe portage to the Fraser River. The latter became an important supply route from Fort George (Prince George) north to the fur trading posts within the Finlay-Parish watershed.

Fraser described how the Meadow Indians killed plenty of moose and deer by chasing them with dogs on the hard crusts when the snow would carry the weight of the dogs but not the game (Lamb

1960:169). He also described how these people chased sheep on the mountain sides leaping from precipice to precipice and finally killing the sheep in their snares (Lamb 1960:188-189).

As Fraser made his way up the Parsnip River, and passed the mouth of the Nation River, he noted that the headwaters were inhabited by a Sekani band related to the McLeod Lake band. During Fraser's stay at McLeod Lake in 1806 he pressed the Indians to supply his party with fish and game. The band at McLeod Lake, which Fraser called 'Big Men', provided 600 to 700 dried carp plus several deer in one trip and were then required to return for more (Lamb 1960:200). It was essential to the success of Fraser's journey that his party live off local food in order to preserve the supply of pemmican and dried meat for the trip ahead. The Sekani at McLeod Lake appeared to have aided the explorers without complaint.

The fourth explorer to enter Sekani territory was a Hudson's Bay Company man, Samuel Black. In 1797 John Finlay explored the southern portion of the river that bears his name but there is no written account of his travels. In 1824 Black travelled up the Finlay to its headwaters and then overland to the source of the Liard. On this journey Black was guided by a Sekani Indian, "the Old Slave" who brought along his wife and two children. They travelled with Black from May to August, an estimated 600 kilometres through extremely hazardous waters and dangerous portages. The Sekani family eventually deserted Black but only after leading him safely through the most difficult part of the

journey.

On the way up the Finlay, the party passed the present day location of Fort Ware, but Black made no mention of whether or not there were any old encampments at this spot (Rich 1955:25). His only comment is that they arrived at a considerable fork in the River (the mouth of the Fox). At the fork the Sekani guide attempted to persuade Black to take the relatively easy and known route up the Fox to where it meets the headwaters of the Liard. This, the guide explained, would lead Black to the Mackenzie River and back to his company posts. Black was also told that the Sekani travelled down the Liard system as far as Liard Canyon (between Fort Halkett and Hell Gate), and that other tribes, the Thluckdennis and Thloadennis (present Kaska-Dene Tribe), inhabited the Liard River (Rich 1955:25-32). The Kechika River, which flows into the Liard River, and part of the Liard, up to the canyon, was overlapping territory, used by the forefathers of both the Sekani and the Kaska-Dene Tribes.

Black disregarded his guide's advice and veered west up the Finlay. Rather than take the cut-off trail to avoid the canyons, Black chose to follow the main river through canyons that are still unnavigable today. At Fox Pass on the Finlay, they found an enclosure for ensnaring caribou, indicating a site that the Indians would visit regularly. Their guide explained that most of the Thecannies (Sekani) spent the winter on the east side of the Rockies but that one Sekani band, led by Chief Methodiates, stayed year-round with its main hunting area along the Caribou

Hide Trail (see map 3). Black met Methodiates along the Finlay River and asked the Chief to fish and hunt for the explorers at Toodagone Lake (Rich 1955:51-83). Black also encountered a band of Thecannies (Sekani) after Cascade Canyon whom he described as desperate because they had been forced to survive on roots due to a shortage of game. Along the Finlay near Toodagone River, Black made an interesting discovery of a rock sculpture depicting an Indian man, woman, and child (Rich 1955:59). If the Sekani people had time for rock sculpture this indicates that there were periods when the food supply was good and the hunting group had a reprieve that allowed for artistic work.

The exploration period included only four trips in a period of thirty-one years (Mackenzie 1793, Finlay 1797- undocumented, Fraser 1805-08 and Black 1824). It is difficult to attempt to define the territory of a nation of people based on limited accounts written by explorers who neither understood the culture nor the language of the indigenous people.

The fur traders followed on the heels of the explorers. A journal by Daniel Harmon, written between 1810 and 1819, provides further information on the Sekani during this early period in Euro-Canadian history. It was Harmon who first used the term 'Sicaunie', to describe the inhabitants of the Finlay-Parsnip watershed (Harmon 1903:156). Harmon wrote that the Sekani remained on the east side of the Rockies in winter where they hunted buffalo, moose and deer and returned to the west side of the mountains, (the Finlay-Parsnip watershed) in

the summer. This may have been somewhat of a narrow view because we have seen from Black's account that there was at least one band which stayed in the Findlay watershed throughout the year. It was also Harmon who first conjectured that the Sekani and the Beaver may have been one tribe at an earlier time and that the Sekani had split off and were then pushed west into the Finlay-Parsnip watershed (Harmon 1903:159). This may also be too simplified an explanation since Harmon had little knowledge of the Finlay River bands connected to the Kaska-Dene to the north. The same conclusion was reached independently by Morice (Morice 1978:29-30), however, his knowledge of the Finlay River Indians was also limited. While it is possible that the McLeod Lake people may have arrived recently there is no evidence to support a recent migration into the Finaly-Parsnip watershed of all the Sekani bands or to accept an oversimplified theory of an east-west migration. The extensive territory covered by the Sekani in trading and hunting leads more reasonably to a far more complex explanation of their origin. Rather than accept that the Sekani are a fragmentation of the Beaver Tribe, it is more probable that the Sekani were connected to the Kaska-Dene to the north, the Carrier to the south and west, as well as to the Beaver to the east; rather than repeat the unsubstantiated remarks of Jenness (1937:7) that the Finlay-Parsnip watershed was likely unoccupied before the eighteenth Century, it is more reasonable to delay drawing a conclusion regarding the occupation of the area until adequate archeological research is carried out.

Not only is there no evidence that the Sekani recently occupied the Finlay-Parsnip watershed, there has been little archeological research to determine if the Sekani were indeed the first aborigines inhabiting that part of the Rocky Mountain Trench. According to Brody, ancient bands could have migrated south through northeast British Columbia around the end of the last ice age or through ice free corridors that were known to have existed (Brody 1983:16,20) There is evidence of a 10,000 year old Indian site east of the Rocky Mountains near Ft.St.John (Fladmark 1983 per.comm.) and a 4,000 year old site 60 kilometres south of Prince George (Fladmark 1974). In terms of the land settlement, the land occupied at time of white contact is critical; in terms of the people who are the subject of this research, their prehistory is also important. Indian people that I have spoken to are annoyed at the statements regarding a recent migration of their people into an area that their grandparents told them had been used by the tribe since the beginning of their oral history.

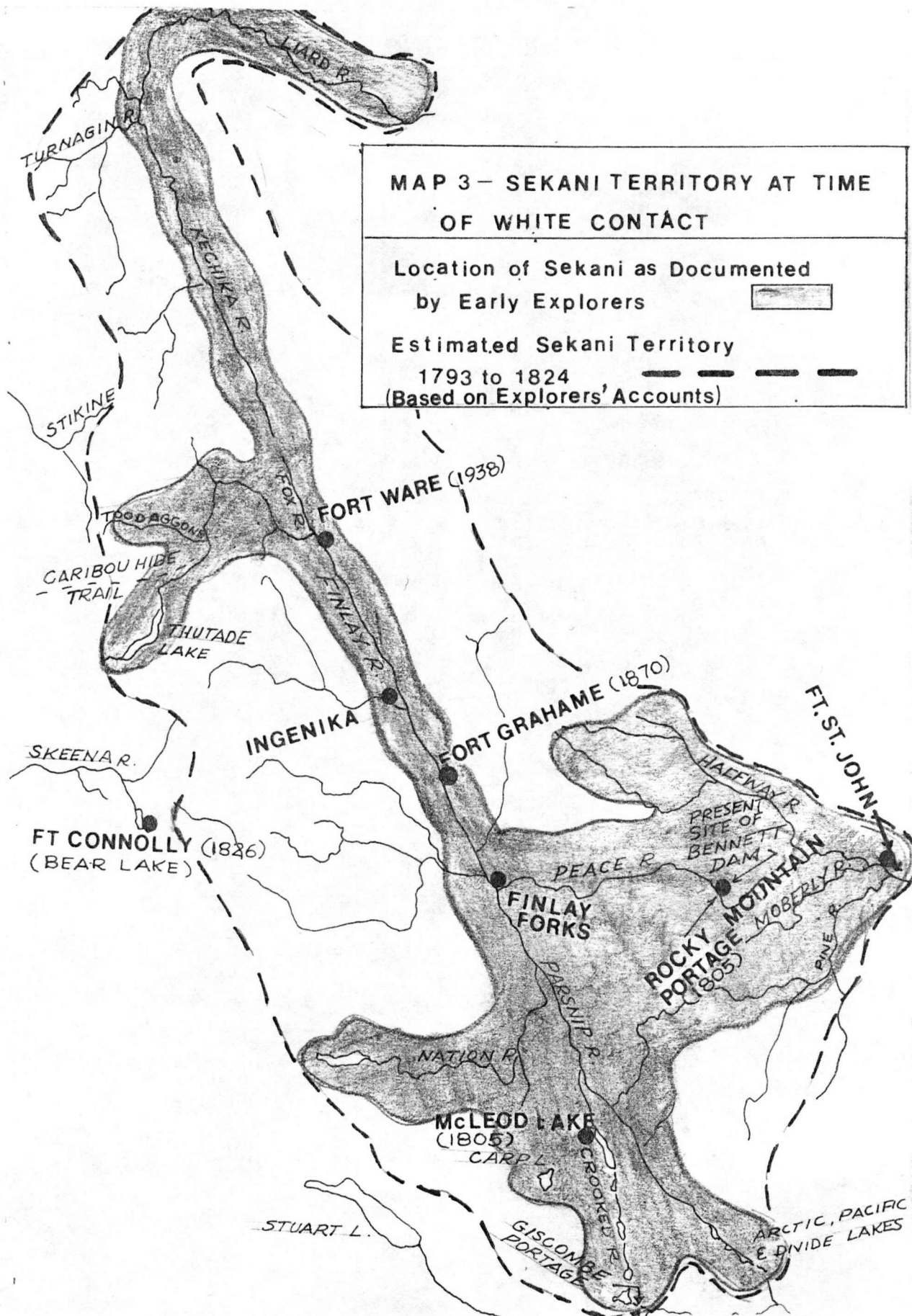
The question of the occupation of the Finlay-Parsnip watershed may not likely be resolved for some time because much of the territory which could have provided archeological evidence has been lost to the W.A.C. Bennett dam. But there are areas promising rich archeological evidence which may eventually shed light on the prehistory of the Sekani. These include the Caribou Hide Trail and Thutade Lake west of Fort Ware, areas where Black located the northern Sekani band (Rich 1955:25-83) and where there are remains of an old Indian cemetery. Reynolds Creek,

thought to be an ancient Indian trail (Chingee 1984 per.comm.) and Arctic Lake where Mackenzie encountered the Sekani at the headwaters of the Parsnip are two other possible sites that may reveal an early occupation by aborigines. Until archeological research is undertaken in these and other areas the argument over the date of the occupation of the Trench cannot be satisfactorily resolved.

In terms of this thesis it is not important to determine when the Sekani ancestors occupied the Finlay-Parsnip watershed; it is only important to establish the territory the tribe occupied at time of white contact.

In 1924 Jenness, who has left us the 1926 account of the Sekani, described the Sekani territory as follows: lying between latitude 54 20 (Summit Lake) and 58 north (Sifton Pass), combining the waters that form the Peace River with the western boundary along the Pacific divide except a spur around Bear Lake, and the east boundary, the Rockies, except a spur down the Peace to the canyon (Jenness 1937:1). According to the records of the early explorers, in 1793 to 1824 the Sekani were occupying areas east to the Pine River, north as far as the Liard Canyon, south to the Salmon River and west to the Pacific divide (see Map 3).

In summary, the territory occupied by the Sekani at the time of white contact was even more extensive than the tribal territory thought by Jenness to have been occupied by the Sekani during



the beginning of the Twentieth Century. There was some overlap in land use between neighboring tribes. The Kaska-Dene also hunted along the Liard, the Beaver were pushing into the area around Peace Canyon and the Carrier were occupying the area north from Prince George to the Salmon River.

CHAPTER IV

FORT WARE - EXISTING RESOURCE BASE AND DEVELOPMENT IMPACTS

In order to formulate a land settlement the Fort Ware Band needs to know the location and value of the area's natural resources, as well as any future resource developments planned for the area. A land settlement may include exclusive hunting and fishing rights or a quota of the potential yearly hunt or catch; it may include rights to harvest timber, subsurface rights, or revenue sharing agreements on mineral extraction. The natural resources within Fort Ware's territory are forestry, mineral deposits, wildlife, and fish and water resources. Following is a more detailed analysis of the existing resource base and planned resource developments. In Chapter V the present land use of the Band is documented. If the traditional activities of hunting, trapping and fishing are to continue, the Band will have to negotiate protective measures to ensure future harvests.

Forestry

Most of the Fort Ware territory is within the Mackenzie Timber Supply Area (T.S.A.) and all the timber cutting rights have been contracted to Finlay Forest Products and B.C. Forest Products under 20 year contracts signed in the mid-sixties. Both companies have sawmill and pulpmill operations in Mackenzie, 220 kilometres south of Fort Ware.

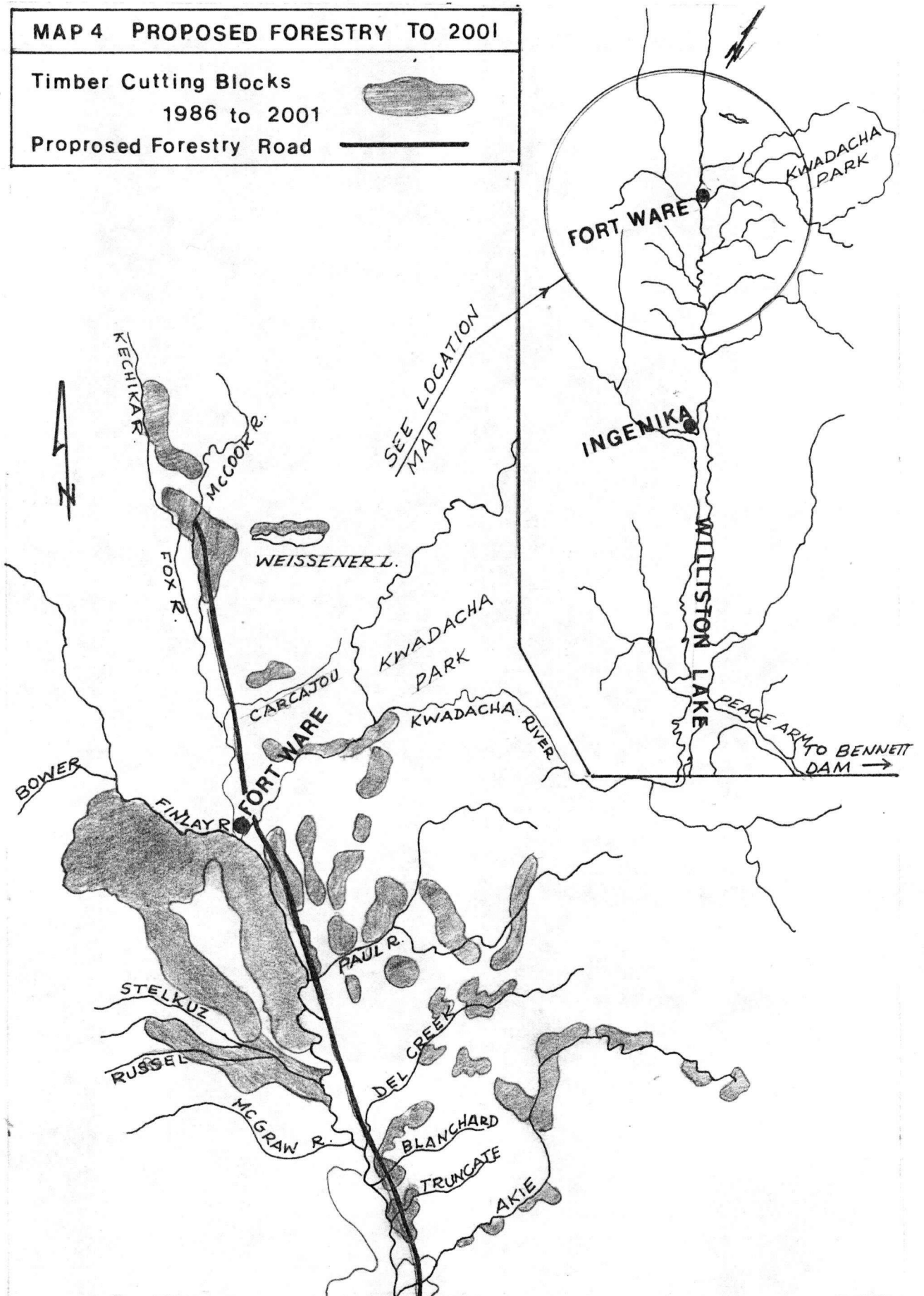
Under the terms of their contracts the companies are required to submit a cutting plan, or development plan, prior to

commencement of the timber operation. Both forest companies have submitted twenty year development plans to the Ministry of Forests indicating proposed timber cutting to the year 2001 (see Map 4). The timber companies' development plans show cutting blocks along the rivers and creeks where the band members have their traplines. In the second phase the forestry operation will have reached the village of Fort Ware and a large block opposite the reserve will be logged. Because the Rocky Mountain Trench is narrow at this point, most of the logging will take place near the settlement and in the areas used for trapping, hunting and fishing. Weissener Lake is a special Indian fishing area partially protected under Indian Reserve status. The timber companies' development plans show most of the lakeshore, not included in the Reserve, designated for logging. During the community meeting with the band members, the plans for logging Weissener Lake were strongly opposed.

The Timber Sale Harvesting Licences signed between the province and the two forest companies are due for renewal in 1987 and 1989 (Ministry of Forests, Prince George Regional Office, Province of B.C.). Under the terms of the contract B.C. Forest Products is authorized to harvest 1,651,110 cubic meters of timber annually and Finlay Forest Products, 1,301,210 cubic meters. The contract actually sets out that the companies must harvest at least 75% of the Annual Allowable Cut (A.A.C.) over a five year period. It is presumed that if, over a five year period, the harvest is under 75% the terms of the contract have been violated. Harvest figures available show that a total of

MAP 4 PROPOSED FORESTRY TO 2001

Timber Cutting Blocks
1986 to 2001
Proposed Forestry Road



1,902,326 cubic meters was harvested in 1982 in the Mackenzie T.S.A. or 67% of the A.A.C. set out in the two contracts. Given the continued recession and the 1984 lockout in the pulp industry it is very likely that the companies have not met the terms of the agreement.

This fact is important in terms of the band's bargaining position. If it can be shown that the forest companies are not living up to the terms of their contracts and not utilizing the available timber in the T.S.A., then the position of the band in negotiating a revision to the contract will be strengthened. A revision to the existing contracts with the forest companies may be desirable for two reasons. The Band will want to chose settlement lands presently held by the two forest companies. (Settlement lands would be owned by the band or Indian group and used for housing, community use and exclusive Indian resource use.) Because there is limited valley bottom lands, parcels chosen for settlement will most likely be good forest land, presently proposed for future logging. Apart from settlement lands the Band may want to consider negotiating for the rights to harvest timber within the traditional Fort Ware territory. (The traditional territory is the land area used by the band members for hunting and gathering prior to white settlement. Indian use of the traditional territory may have continued into the present and may be the area claimed under a land claims submission.) Where timber rights are held by a band engaged in subsistence land use it is in the interests of the band to manage the timber to ensure the continued supply of all the

resources used by the band. Under the present system the forest companies have no economic stake in the protection of fish, game and furbearers, although there is a legislative mandate.

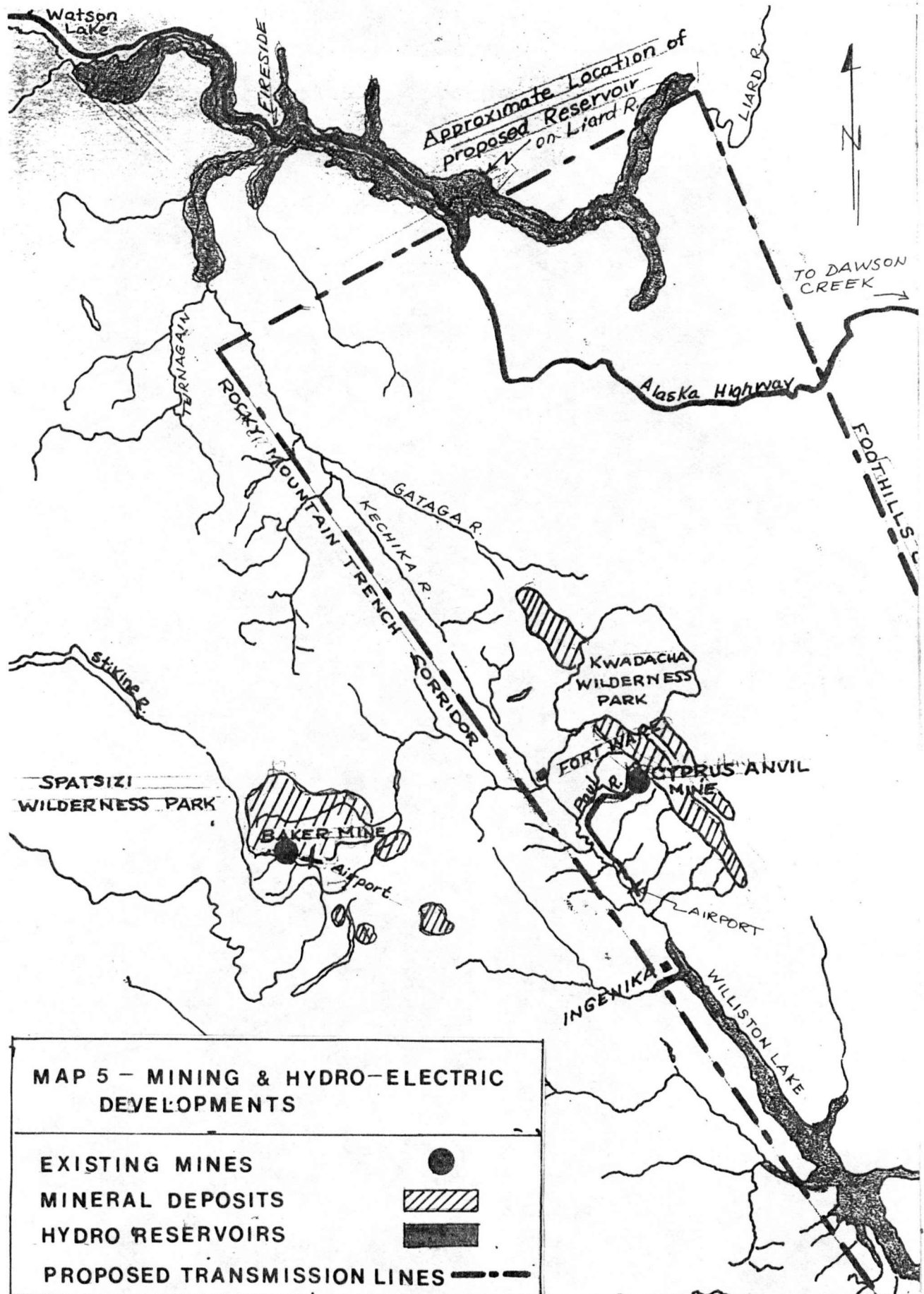
Mining

The area has several deposits of lead, zinc, gold and silver. Although mines have operated within the Fort Ware territory, at present they are all dormant. The mine closest to the community is the Cyprus Anvil lead /zinc /silver operation near Paul River. This is controlled by Dome Petroleum and has suffered from lack of capital. Plans in 1980 were for a work force of 100 to 150. The original plan was to base employees in Mackenzie and periodically fly them into the camp. The mine is only 19 kilometers south of the reserve and the access road has been completed from the airstrip on the Akie River to the minesite (see Map 5).

There are several other mineral deposits in the area. The Baker mine was in operation until 1983 when it closed due to depletion of commercial grade ore reserves. This gold/silver mine is on Toodagone River and was reached by air from Smithers. The other major deposit is in the Gataga area where there are several deposits of lead and zinc.

Wildlife

The Rocky Mountain Trench and bordering ranges support a range of wildlife including moose, deer, elk, caribou, sheep , goat, bear, wolf, cougar and the furbearers - beaver, lynx, marten



(British Columbia h.d.).

The W.A.C. Bennett dam inundated approximately 1400 square kilometres of Class 1 to 3 habitat for wildlife in the Parsnip, Finlay and Peace River valleys. It is estimated that the dam resulted in a loss of 12,500 moose (British Columbia h.d.:122). Apart from the effects of the reservoir, the declining supply of moose is influenced by the forest industry. The practice of creating large clear cut areas has reduced moose browsing areas. Moose depend on small openings in the forest where they can venture out to browse and still be close enough to return to cover. The extensive cutblocks do not provide the proper ratio of mature forests to younger successional stages. Forestry has not yet reached the Fort Ware territory, however, the hunters claim that the effects of the dam have resulted in declining moose population. The Finlay River arm provides one of the remaining Class 1 to 3 habitats for moose, one which has a potential for increased population if the objectives of the Fish and Wildlife Branch are met (British Columbia h.d.:117-122). If forestry practice does not change, and current methods of clear cut logging are extended north, the moose decline will continue.

Caribou require wild ranges to accommodate their mobile grazing habits. The largest known herds are located on the west side of the Finlay Reach and near Pelly Lake. It is estimated by the Ministry of Environment that there is a potential for approximately 3000 caribou within the Fort Ware area. The study by the Ministry of Environment estimated that caribou herds

within the Finlay-Parsnip watershed were reduced by 30% from 1972 to 1982 and that future forestry development will destroy two-thirds of the valley forest area critical for wintering habitat (British Columbia h.d.:130,136).

The entire world population of Stone sheep reside in British Columbia and the Yukon with the Sekani territory accounting for one-quarter. Within Fort Ware territory Stone sheep are found in the Toodagone River area on the upper Finlay. However this habitat is only rated low to moderate. Other areas in the Fort Ware territory have not been mapped for capability for sheep habitat and there is little inventory. The harvest of Stone sheep had been declining in the Finlay-Parsnip watershed from 37 in 1971 to between 18 and 29 in the period from 1976 to 1980, indicating that there may be a declining population. Stone sheep require rocky and mountainous terrain with grasslands. One of the major factors limiting good habitat for stone sheep is the control of forest fires which allows the wood species to encroach on grasslands. With greater control of forest fires the grassland habitat of the stone sheep will be overtaken by forest. Increased pressure from hunters and mining operations may also directly affect the sheep population.

Mountain goats only exist in the northwest of North America, with one-fifth of the population within the Finlay-Parsnip watershed. Mountain goats are found south of the Fort Ware territory along the Finlay Reach. Most of the Fort Ware territory has not been mapped, however, the Ministry estimates

that the northern area would support even larger numbers of goats than the areas already mapped (British Columbia h.d.:149-151). Resource developments are thought to have little negative impacts on the population of mountain goat, although increased hunter pressure could affect the herd size.

Elk and deer are not prevalent in the Fort Ware territory. However, both are found in the Ingenika area to the south.

The most important species of fur bearers are marten, lynx and beaver. Up to the present, resource development has not negatively affected the furbearers in the Fort Ware area. Responses from Fort Ware trappers indicated that the resource was as good if not better than ten years ago (see Chapter V). The areas to the south around McLeod Lake and Ingenika have suffered considerable loss of riverine habitat with the inundation of the Finlay, Parsnip and Peace Rivers.

Fifty-two out of the 93 traplines in the Finlay-Parsnip watershed are native owned (British Columbia h.d.:221). In the Fort Ware area all fourteen traplines are native owned. The resource analysts for the Ministry of Environment expressed concern over the lack of inventory for furbearers and lack of harvest records due to the number of native trappers not filing returns (British Columbia h.d.:171).

The existing wildlife resources and potential for wildlife are rated high by the Ministry of the Environment. There are,

however, considerable problems to be faced. There is a lack of inventory of populations and harvests, making effective management of the resource impossible; there is a threat of incompatible forest development which may lead to declining populations; and there is the forecasted increase in access roads which will be expected to lead to over harvesting. These two problems, inadequate multi-resource management and anticipated increase in hunter/angler pressure, are serious concerns of the Fort Ware people. They talk about the decline of game and fish in the McLeod Lake area and see similar devastation of subsistence activities occurring in Fort Ware. The Fort Ware band members have not developed a plan for settling their claim that will address these concerns, but they believe that if there is no mechanism to arrest the encroachment of non-Indian resource development the present resources that the band depends on will be seriously threatened. There is a hope in the community that the land claim process will prevent the loss of their fish, game and furbearers.

Fish

The W.A.C. Bennett dam has resulted in a loss of Arctic grayling and rainbow trout in Williston Lake and an increase in whitefish (Abelson 1983 per.comm.). The upper reaches of the Finlay River, where Fort Ware is located, remain relatively unaffected by the reservoir. However, inappropriate resource development could reverse this. One side affect of the impoundment which has affected Fore Ware has been increased mercury levels in some fish species in the Finlay system. The Federal Department of

Health and Welfare carried out a study of mercury content in the Fort Ware area (Health and Welfare, Canada 1981). The Department of Health and Welfare considered the mercury content to be of critical concern to newborns and expectant mothers. Dolly Varden were found to have unacceptable levels of mercury and the report recommended that this species, if taken from the Finlay River, should not be consumed (Health and Welfare, Canada:8-9). There is a certain natural level of mercury in most lakes but when a reservoir is created there can be a significant rise in mercury levels which will in turn cause certain species of fish to exhibit increased levels of mercury. With few exceptions, the people of Fort Ware continue to eat Dolly Varden. There has been no compensation from B.C. Hydro for the pollution of this resource.

Hydro-electric projects

Although the Liard hydro-electric project has been placed on hold till at least the turn of the century, it is necessary to include it in this analysis because of the potential impacts of the project. The dam proposed on the Liard Canyon between Lower Post and Fort Nelson, would have a devastating affect on the Kaska-Dene to the north of Fort Ware. The reservoir created by the flood waters will reach the north boundary of the territory used by Fort Ware (see Map 5). The flooding of the Kechika River from Turnagain River to Fireside River will disrupt a traditional transportation route used by the Sekani since pre-historic times (Rich 1955:25-32). Impacts on the fish and wildlife habitat are unknown at this time. A related development

that will affect the Fort Ware territory more severely is the proposed transmission line corridor (see Map 5). There are two proposed corridors for the Liard River project - one through the Rocky Mountain Trench, and the other through the Foothills corridor to the east of the Rockies. If the transmission line is built through the Trench it will pass close to the Fort Ware community and will cross the hunting and trapping territory of these people.

If the Liard hydro-electric project ever goes ahead, it will result in Fort Ware being surrounded from the north and the south by two giant hydro projects, the W.A.C. Bennett dam to the south and the Liard dam to the north.

Summary

As Fort Ware negotiates its land settlement, the band needs to consider the land area and resources it will want to acquire. This chapter provides an overview of the resources. As part of a land claim settlement, the band would want to map these resources in detail. From the resource analysis and mapping the band could determine the most suitable land for community use, for subsurface rights, for resource use (forestry, fishing and wildlife), and resource conservation.

In the next chapter the existing land use of the Fort Ware people is documented. The survey results and mapping should be viewed in light of the existing resources and the resource development proposals that would be expected to affect the Fort Ware territory.

CHAPTER V

LAND USE AND OCCUPANCY STUDY

Chapter III provided an historical description of Sekani territory at the time of white contact. If a band's territory has been entirely usurped by non-Indian settlement or resource development it may be necessary for the band to rest its native land claim entirely on such an historical account. If an Indian group has been successful in retaining its territory since the contact period then its case for land claim is strengthened considerably. In the case of all three Sekani bands, use of extensive areas of land has continued up to the present, although with differences in the intensity and extent of the use.

In the previous chapter we looked at the natural resources within Fort Ware's territory. In this chapter, present native resource use is documented not only for Fort Ware, but also in the interest of providing a contrast, for the McLeod Lake band. A survey of households was carried out in 1983 in Fort Ware and McLeod Lake (see questionnaire, Appendix). In each household, the adult members who used the land to hunt, trap, fish, guide, or pick berries were asked to be interviewed. At each household I asked who hunted, fished, trapped or guided. If someone who used the land for income or income-in-kind was absent, this was noted and I attempted to contact the person later.

FORT WARE SURVEY RESULTS

I contacted 31 out of the 32 households in Fort Ware and interviewed approximately 90% of the hunters and trappers (See Table I).

TABLE I - WILD GAME KILLED FOR FOOD IN FORT WARE
DURING ONE YEAR 1982-83

<u>Moose</u>	<u>Goat</u>	<u>Sheep</u>	<u>Bl.Bear</u>	<u>Caribou</u>	<u>Elk</u>	<u>Small Game</u>
69	11	3	7	2	1	50-60 (1)

(1) beaver, porcupine, grouse, rabbit

Most hunters thought that the band members usually killed one hundred moose a year for food and that the figures compiled in the survey represented 70% of the average yearly harvest. If we assume that the kill is between 70 and 100 moose a year, is that sufficient meat to supply a village of 160 persons? According to a resource study by the provincial Ministry of the Environment, a family of three requires one moose plus one medium sized game (sheep, goat or caribou) for its meat supply for one year (British Columbia h.d.:218). When I mentioned this to Fort Ware residents they laughed, telling me that they eat lots more meat than that.

Although the Ministry's criterion for subsistence on wild game may not be too applicable to Fort Ware, working out the calculation will provide some idea of the importance of wild game to the Fort Ware diet.

Using the Ministry's criterion, Fort Ware requires 53 moose (160

3=53) plus 53 medium sized game per year. The yearly harvest in Fort Ware is 70 to 100 moose and the equivalent of 30 medium sized game . (Note:ten small animals are estimated to equal one medium sized game.) This is 32% to 88% more moose than the Ministry criterion and 56% of the medium sized game.

It is also useful to look at the game kill in terms of quantity and commercial value of the meat. One hundred moose, at an average of 225 pounds of meat each after butchering (King 1984 per.comm.), provides a yearly total of 22,500 pounds of meat for the village, or 140 pounds per person per year. Translating this into economic value, the game kill is estimated to have a commercial value of \$112,500 per year (\$5.00/pound meat, including the freight charge). This clearly indicates that game from the hunt is critical to the village food supply and economy. This meat diet is supplemented by fish (See Table II).

TABLE II - FORT WARE FISH CATCH
DURING ONE YEAR 1982-83

<u>Rainbow</u> <u>Trout</u>	<u>Arctic</u> <u>Grayling</u>	<u>Kokanee</u>	<u>Dolly Varden</u>	<u>Suckers (1)</u>
508	492	50	40	350

(1) used for dog food

On the average, Canadians eat seven kilograms of fish per person per year (Fisheries and Oceans 1983). Assuming an average of one-half kilo per rainbow trout, Arctic grayling and kokanee and one kilo for Dolly Varden, it is estimated that the village caught 565 kilos of fish for food. This works out to 3.5 kilos of fish per person compared to the average Canadian consumption

of seven kilos.

The figures compiled in the survey are thought to be low in terms of the average yearly fish catch in the village. In many cases respondents did not know how many fish were caught by their family. The children do much of the fishing in the village. Unless prompted, parents did not always mention the fish caught by the children. The estimate is also thought to be low because many people complained that there were no fish hooks in the store and few people had anything to fish with that season. There were also some conflicting comments which indicated that for some families fishing was not important and was thought to be somewhat demeaning, especially for a hunter. Several residents mentioned that they no longer fished because of a Federal Department of Health study which determined that there were high levels of mercury in some fish species (Health and Welfare 1981).

In the interview respondents were asked about sharing fish and game. Since there is no refrigeration in the dwellings, except for the home of the former storekeeper, sharing is a practical as well as a social consideration. The village has strong, extended family connections and the practice of sharing within the family unit would continue whether or not there was refrigeration. The assumption that sharing is an important characteristic within the community was supported by the survey findings. One hundred percent of the hunters shared their kill and seventy percent of the fishermen shared their catch.

Because food costs in the village are extremely high the fish and game harvest buffers people from undernourishment. When there is a good supply of fresh meat in the village, people eat well with meat forming the main part of all three meals. I saw a very elderly man who spends his day sleeping and lying on his cot in the kitchen, get up and eat a portion of meat that would choke a football player. If there were no wild game, residents would be reduced to eating canned food purchased at inflated prices from the band operated store. In 1983 a can of fruit priced at \$1.09 in Prince George was priced at \$2.65 in Fort Ware; twenty pounds of flour, regularly \$6.89 in Prince George sold for \$27.00 in Fort Ware. The high prices in 1983 reflect, to a degree, transportation costs since all goods were transported at a cost of \$.76/lb. (\$.60/lb. air freight from Ingenika to Fort Ware plus \$.16/lb. barge cost from Mackenzie to Ingenika).

Prior to the W.A.C. Bennett dam freight was brought in by riverboat and barge from Prince George using the old Indian route along the Crooked River system. Residents in Fort Ware were able to combine a yearly shopping trip to Prince George with visits, hunting and fishing. After Williston Lake was created, for a time goods were brought in across the reservoir from Mackenzie and up the Finlay River. This water route is still used at times but the risks are quite high. Debris is blown to the north end of the reservoir, plugging the mouth of the Finlay River and making water access extremely hazardous.

Because B.C. Hydro has recently paid for the air freight cost to fly supplies from Ingenika over the plug on the Finlay River to Fort Ware, transportation costs are not the only reason for the high cost of goods. Shortly after the band store opened it was burned down with the loss of an entire winter supply of goods. The store was rebuilt, using funds from federal and provincial sources. However the operation has not run smoothly and has been unable to keep a good supply of food in stock at a price that residents can afford. The difficulties with the store make hunting and fishing even more essential to the well-being of the people in the community. In 1984 the Band hired a new storekeeper and the most recent reports are that the stock and the prices have improved considerably since 1983. But the threat of food shortages still overshadows the community. In the spring of 1984 stories about starvation in Fort Ware reached the southern newspapers. "Starvation Denied, Hard Times in Fort Ware", was the headline (The Citizen, Prince George; May 11, 1984). The Member of Parliament for that area was quoted as saying that people were starving, living for two weeks out of each month on porcupine legs. Local spokesmen denied people were starving but admitted that there had been a hard winter in the village, that there were food shortages in the store and that game was scarce. My experience is that game was essential to the families' well-being. When no fish or game was killed the people went without meat. In the summer and fall of 1983 there was no fresh or frozen meat in the store; fresh vegetables and fruit were not brought in and canned goods were extremely expensive.

Fish and game are not so much a supplement to the store-bought food, as the store food is ancilliary to the subsistence diet of wild game and fish.

Apart from the activities of hunting and fishing, most households have at least one person engaged in trapping. As part of the survey, trappers were interviewed to determine their average income (See Table III).

Nineteen out of the twenty-one trappers were surveyed, or 90%. If the figures are prorated, the total fur harvest can be estimated at \$36,000. The average trapper's harvest in Fort Ware is considered low according to a trapping association official who estimated that full-time British Columbia trappers have an average harvest of \$7,000 a year and the best trappers can make up to \$40,000 (Sharpe 1983 per.comm.).

Respondents were asked whether or not fish and game had improved or declined since before the dam. Seventy-seven percent felt that game had declined but that trapping was either better or the same as before the dam (See Table IV).

TABLE III - FORT WARE TRAPPERS' HARVEST DURING ONE YEAR 1982-83

<u>SPECIES</u>	<u>NO.OF PELTS</u>	<u>VALUE</u>	<u>TOTAL VALUE</u>
Marten	482	\$40	\$19,280
Beaver	161	\$18	\$ 2,898
Muskrat	81	\$ 3	\$ 243
Lynx	30	\$300	\$ 9,000
Mink	22	\$ 30	\$ 660
Weasel	6	\$ 2	\$ 12
Wolverine	2	\$250	\$ 500
Otter	5	\$ 50	\$ 250
Wolf	4	\$ 75	\$ 300
Black Bear	1	\$ 40	\$ 40
Squirrel	250	\$1.50	\$ 375
<u>TOTAL HARVEST 1982-83</u>			<u>\$33,558</u>

(Pelt values from Sharpe :1983 per.comm.)

Trappers surveyed - 19

Average harvest per trapper - \$1,766.21

TABLE IV - OPINIONS OF FORT WARE RESPONDENTS COMPARING
EXISTING RESOURCES WITH RESOURCES BEFORE THE DAM

	<u>Percent of Respondents Replying Resources Are Now:</u>		
	<u>Better</u>	<u>Same</u>	<u>Worse</u>
	(N= 30)		
Game	15%	8%	77%
Fish	29%	29%	42%
Furbearers	55%	23%	23%

MCLEOD LAKE SURVEY RESULTS

Although McLeod Lake is not the chief focus of this thesis, material on the band is included to provide a comparison with Fort Ware. Having been surrounded by development for close to forty years with its hunting and fishing areas altered extensively by hydro development and logging, McLeod Lake differs significantly from Fort Ware. By carrying out a survey in both of these Sekani communities, one surrounded by the industrial society, the other still remote, some interesting observations can be made.

All households in McLeod Lake were contacted and 14 or 90% of the hunters were interviewed. Table V shows the results of the survey on game harvest.

TABLE V - WILD GAME KILLED FOR FOOD IN MCLEOD LAKE
DURING ONE YEAR 1982-83

<u>Moose</u>	<u>Elk</u>	<u>Bear</u>	<u>Small Game</u>
21	1	6	80-90 (1)

(1)birds, groundhogs, rabbits

Since the harvest shown above represents 90% of the hunters, the yearly game kill, if prorated, is estimated at 24 large game and 16 medium sized game. (Note 10 small game is equal to one medium sized game). Like Fort Ware, the amount of game killed for food has been related to the Ministry of Environment criterion for subsistence. Assuming that a family of three requires one moose plus one medium sized game, McLeod Lake with a population of 80 would need 27 moose and 27 medium sized game. The actual harvest, therefore is 11% less than the criterion set by the Ministry for large game and 40% less than the criterion set for medium sized game. Although the game harvest is short of the criterion set by the Ministry, this is supplemented by a large fish catch (See Table VI).

TABLE VI - MCLEOD LAKE FISH CATCH
DURING ONE YEAR 1982-83

<u>Whitefish</u>	<u>Arctic</u> <u>Grayling</u>	<u>Rainbow</u> <u>Trout</u>	<u>Kokanee</u>	<u>Dolly</u> <u>Varden</u>	<u>Other</u>
847	286	135	10	92	6

The fish catch is estimated at 731 kilos or 9.1 kilos per person. This is higher than the average consumption in Canada, calculated at seven kilos per person.

Although the trapping areas of the McLeod Lake people were inundated by the dam, some trapping is still carried on by band members. There are some differences between trapping at Fort Ware and trapping at McLeod Lake. In the northern community all the traplines are held by Indians; in McLeod Lake, many traplines have been sold to non-natives. The McLeod Lake Band has recognized this as a problem and has resolved to prevent any

further transference of Indian traplines. The reason for some band members abandoning the use of traplines must be at least partially related to the extensive damage caused by the dam when the Parsnip River from Tudyah Lake to Finlay Forks was flooded, destroying all the traplines in the river valley. Despite the losses suffered by the McLeod Lakers, there are still about ten people trapping (See Table VII).

TABLE VII - MCLEOD LAKE TRAPPERS' HARVEST
DURING ONE YEAR 1982-83

SPECIES	NO.OF PELTS	VALUE	TOTAL
Marten	375	\$40	\$15,000
Lynx	12	\$300	\$ 3,600
Beaver	102	\$ 18	\$ 1,836
Mink	44	\$ 30	\$ 1,320
Wolverine	1	\$250	\$ 250
Fox	3	\$ 60	\$ 180
Otter	2	\$ 50	\$ 100
Coyote	2	\$ 50	\$ 100
Muskrat	20	\$ 3	\$ 60
Bl.Bear	1	\$ 40	\$ 40
<u>TOTAL VALUE OF HARVEST</u>			<u>\$22,486</u>

Number of trappers - 9

Average harvest per trapper - \$2,498

The average McLeod Lake harvest per trapper is higher than that of Fort Ware. However, total value for the McLeod Lake Band is less because of the smaller number of Indian trappers in McLeod

Lake.

It is interesting to compare the existing harvest with the harvest at the height of the fur trade in 1830. Returns were considerably higher, especially for beaver, but the band population was also considerably higher. Population in 1830 was 202 compared to the present McLeod Lake population of 80.

TABLE VIII - MCLEOD LAKE TRAPPERS' HARVEST - 1830

<u>Marten</u> <u>Mink</u>	<u>Beaver</u>	<u>Muskrat</u>	<u>Lynx</u>	<u>Bear</u>	<u>Otter</u>	<u>Wolv'ine</u>	
454	2044	8	32	6	43	12	8

(Lanoue 1983 quoting from Hudson Bay Archives, Winnipeg, Manitoba)

If we apply 1983 pelt prices to the 1830 harvest the value would be \$70,206 compared to the present 1982-83 harvest of \$22,486.

Respondents were asked whether the resources, fish, game and furbearers, had improved or declined since the dam. Game had faired the worse in the opinion of the respondents, with 80% stating that the resource had declined from levels before the dam. There was a high degree of no reponse to this question primarily because four out of the 14 respondents were too young to have hunted and six respondents had not fished or trapped before the dam. Below are the results from the respondents who answered the question.

TABLE IX - OPINIONS OF THE MCLEOD LAKE RESPONDENTS COMPARING
EXISTING RESOURCES WITH RESOURCES BEFORE THE DAM

	<u>Percent of Respondents Replying Resources Are Now:</u>		
	<u>Better</u>	<u>Same</u>	<u>Worse</u>
Game	0	20%	80%
Whitefish	62%	25%	13%
Rainbow Trout	0	17%	83%
Furbearers	29%	14%	57%

MAPPING PROJECT

From a land claims point of view, the most important aspect of the survey conducted in Fort Ware and McLeod Lake was mapping of the areas where people hunted, trapped, fished, guided and picked berries. In each household, adult members who used the land for income or income in kind, were asked to participate in drawing a map which showed the areas they were accustomed to using. If there were several hunters/trappers in one family more than one map would be completed.

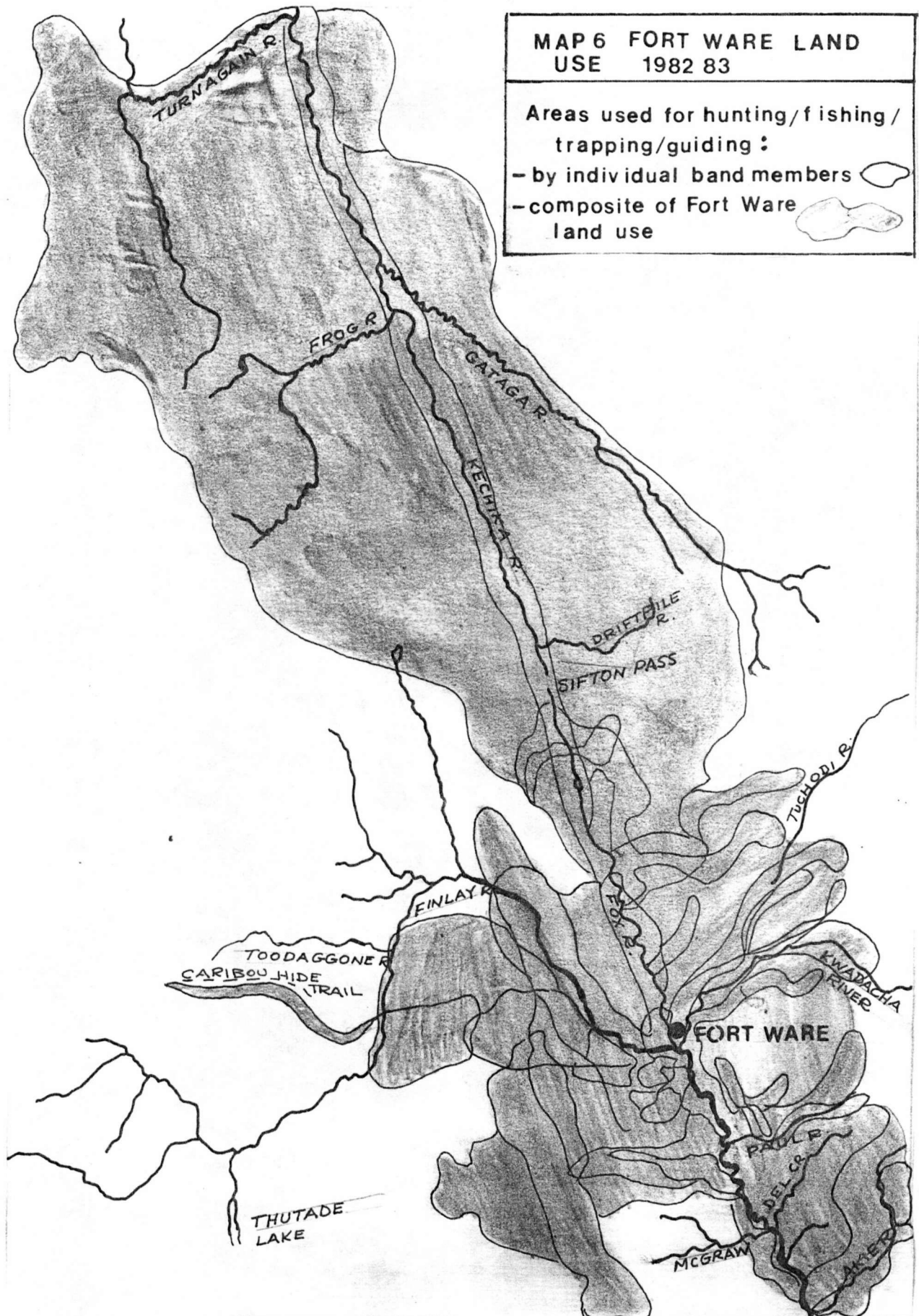
What was a surprise to me was the ability of these people to map the areas where they hunted, trapped and fished. The trappers would carefully trace the areas where they had their traplines, indicating the location of each of the trapline cabins and then pointing out good hunting areas for various species. The hunter's wife or children would prompt him during the map drawing and also add their special areas for hunting, fishing or berry picking.

MAP 6 FORT WARE LAND USE 1982 83

Areas used for hunting/fishing/
trapping/guiding :

- by individual band members

- composite of Fort Ware
land use



MAP7 McLEOD LAKE LAND USE

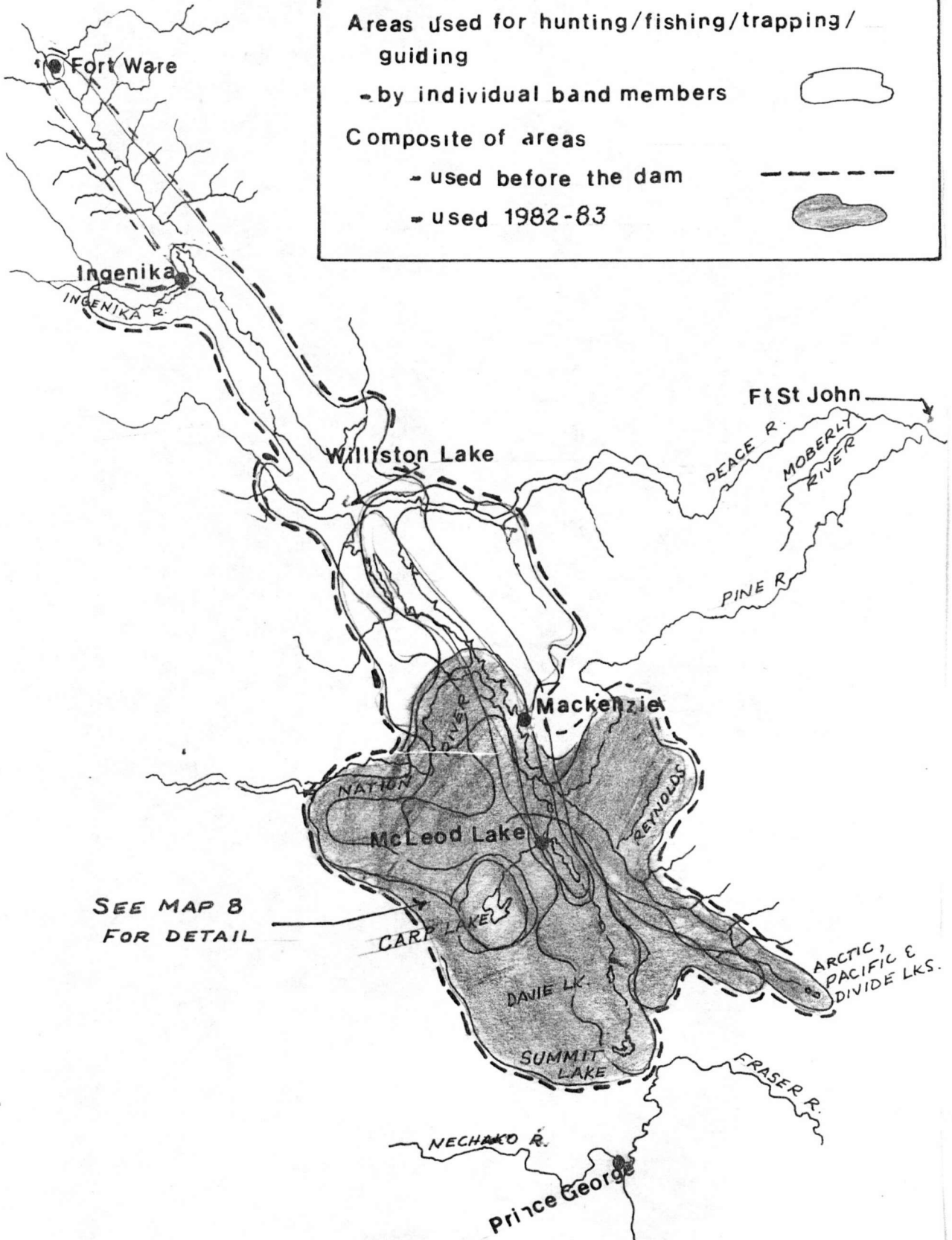
Areas used for hunting/fishing/trapping/
guiding

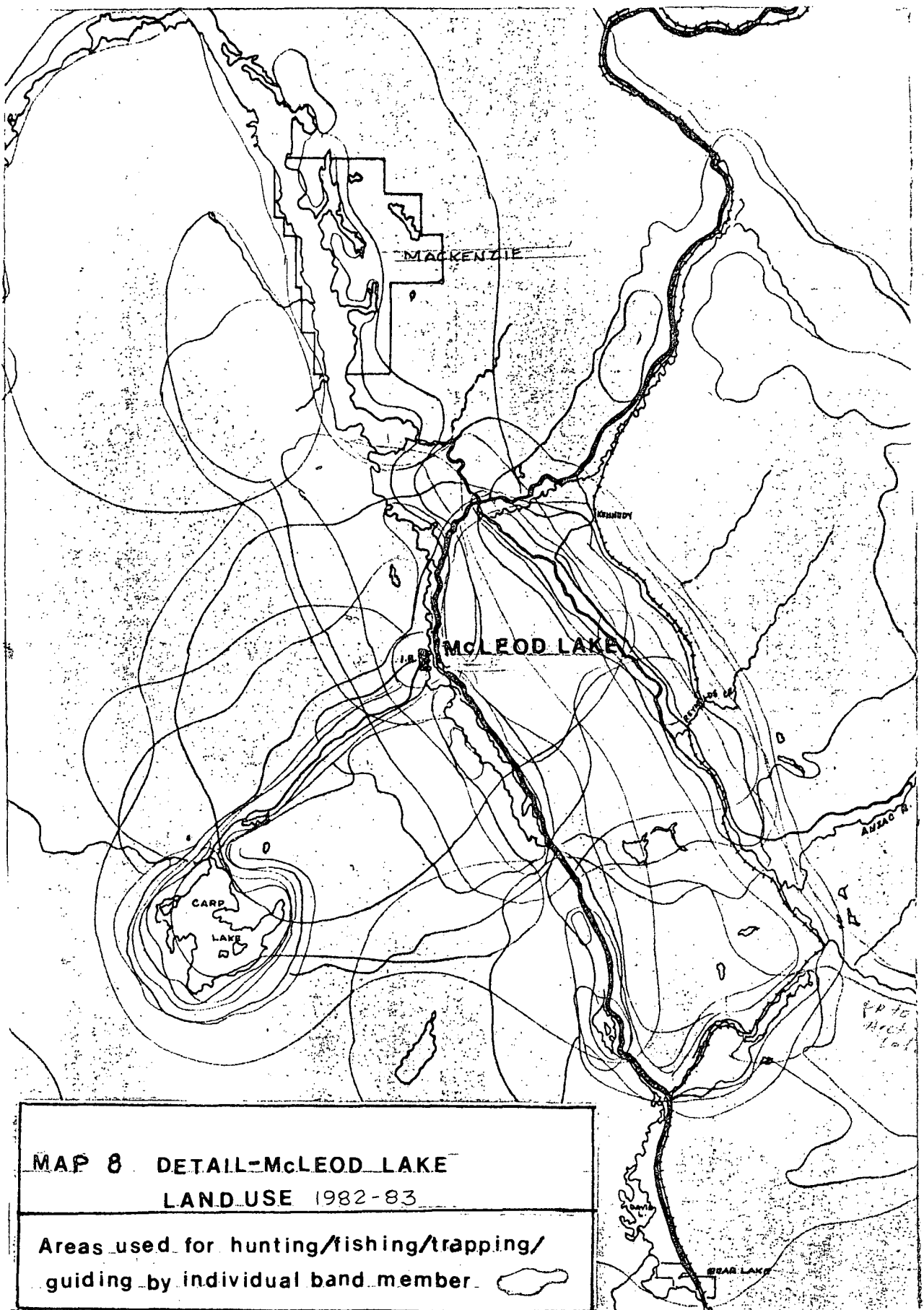
- by individual band members

Composite of areas

- used before the dam

- used 1982-83



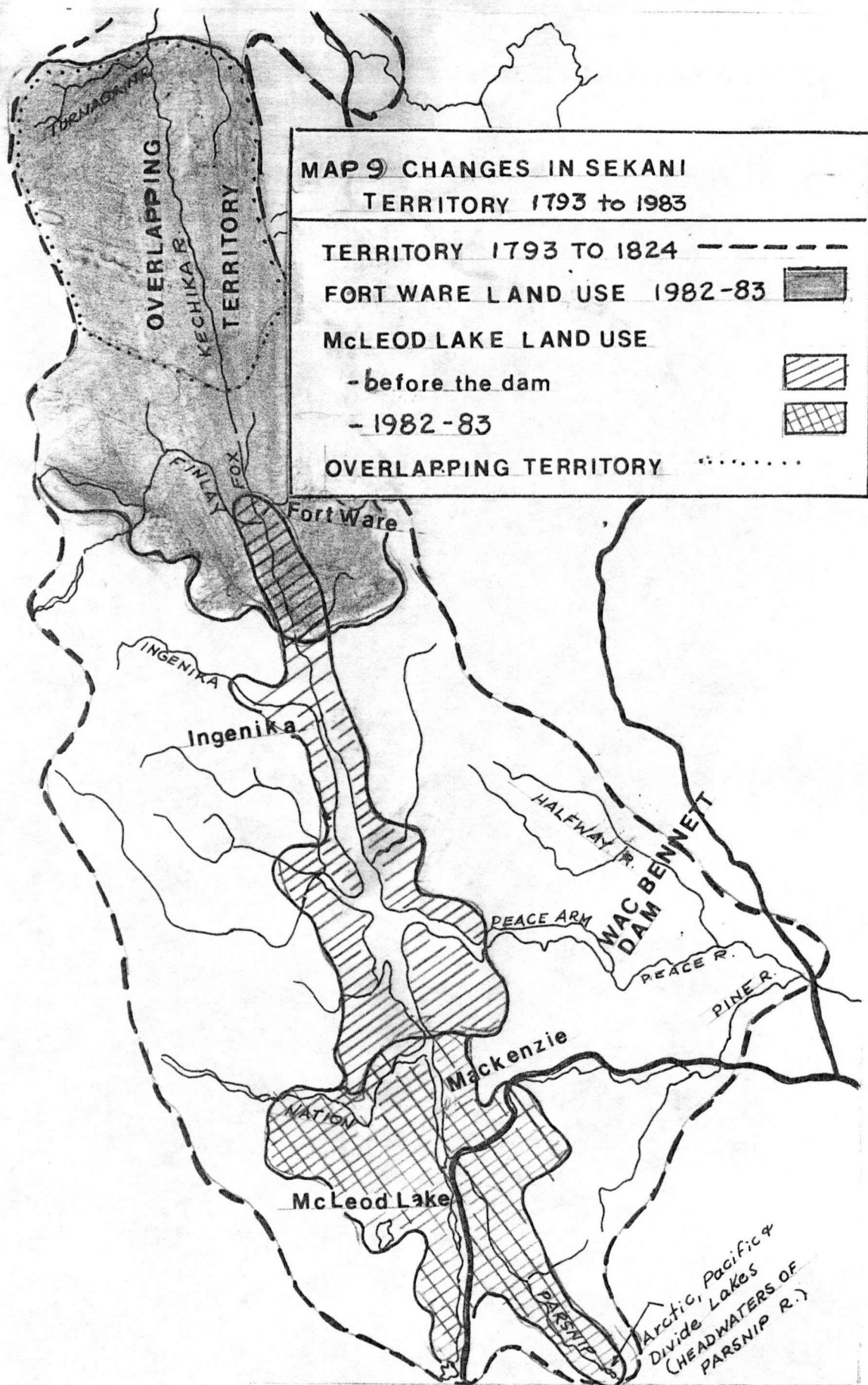


The results of the project are a series of individual maps each showing the boundaries for various land use activities - trapping, hunting, fishing, berry picking and guiding. These individual maps have been aggregated into composite maps for Fort Ware and McLeod Lake and provide a record of the land use pattern of these people in 1982-83. (See maps 6,7,8)

One purpose of the mapping project was to determine the change in the extent of land used for hunting, fishing, and trapping since the dam. Respondents were asked to show the areas they used before the dam as well as the areas they presently used. In McLeod Lake the two areas differed considerably (see map 7 & 8). In Fort Ware band members said there was relatively little change in the areas they used before and after the dam. Fort Ware residents, therefore, drew only one map (see map 6).

Existing land use patterns have also been compared with the extent of territory used at time of white contact. In Chapter III the traditional territory of the Sekani people was mapped based on the historical accounts of the early explorers. Comparing the map drawn for the period 1793 to 1824 (see map 3) with the territory presently used it can be seen that the northern Sekani have continued to use almost as much land as in the past whereas the territory used by the McLeod Lake band has decreased (see Map 9).

The mapping project has also revealed some overlap between



bands. The Fort Ware territory presently being used by band members extends up the Kechika as far as Turnagain River. The area from Sifton Pass to Turnagain may also be claimed by the Kaska-Dene Tribe, who occupy the territory north of the Sekani. There are two Fort Ware families trapping in this area and therefore the land can legitimately be claimed by Fort Ware. One of the families was originally from the Kaska and is undecided as to which band it will eventually settle with. In addition, this northerly portion of the territory has, up to 1982, been a guiding area belonging to a Fort Ware resident. This guiding license has been sold to a non-Indian, which may have the effect of the Fort Ware band members abandoning their use of some parts of the area. This northerly portion has therefore been defined as overlapping territory (see map 9). The area of land used almost exclusively by Fort Ware band members for hunting, fishing, trapping, guiding and berry picking has been calculated at approximately 20,000 square kilometres. In addition, some band members used a land area of 12,000 square kilometres which is also used by the Kaska-Dene Tribe to the north.

CHAPTER VI

ANALYSIS OF ABORIGINAL TITLE

In this chapter there is a definition of the nature of aboriginal title as seen by the Indian groups and by the courts. Northern Indian bands want to continue their use of the land for subsistence activities, others are looking for a land base that will provide resources for economic development, and others for compensation for the loss or destruction of their land. The extent to which these objectives will be achieved will be a reflection of the judged strength of the Indian argument that aboriginal title has been retained. Although the federal government presently recognizes usufructuary rights (rights to use of the land), it has stopped short of admitting that aboriginal title exists. This has not always been the position of the federal government. In fact there is historical evidence that establishes both British and Canadian support for the Indians' claim to ownership. This position of support for an Indian claim to the land was not peculiar to the British Commonwealth. The principle of aboriginal title which now forms an important basis in international law was first espoused during the Spanish exploration of the Americas. In 1532, a Spanish theologian professed that no claim to the Americas could be based on discovery because discovery implied that the lands were unoccupied. He further argued that Indians of North America, no less than the peasants of Spain, had property rights that could not be usurped even by the Pope (Cumming 1972:14; Jackson 1982:76). Although it is widely known that the

Spanish deviated a great deal from this ideal, the principle of the land rights of indigenous peoples has survived and has influenced the policies of several colonial powers.

There is considerable evidence that the British recognized the territory of the aborigines of North America in the pre-settlement period and that a policy was adopted to negotiate with the Indian Tribes prior to any permanent settlement. The use of treaties with the Indians implies that Britain recognized that the Indians exercised rights over the territory. When the Seven Years War spread to North America the British negotiated alliances with Indian tribes, promising that their land and rights would be protected by the British. When Britain ignored these promises by leaving British forts in Indian territory, the Pontiac War ensued. Following this uprising George III issued the Royal Proclamation which is often called the Indians' charter of rights. This constitutional document of 1763 reads in part:

"And we do further declare it to be our royal will and pleasure, for the present as aforesaid to reserve under our sovereign, protection and dominion, for the use of the said Indians, all the lands and territories not included within the limits of the territory granted to the Hudson's Bay Company, as also all the lands and territories lying to the westward of the sources of the rivers which fall into the sea from the west and north west as aforesaid:

And we do hereby strictly forbid on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our especial leave and licence for the purpose first obtained."
(Renaud 1977:229)

It has been argued that the Royal Proclamation does not apply to

British Columbia because that province had not been explored and was therefore unknown to the sovereign in 1763 (Calder vs A.G. 1973). This has been countered by a very reasoned argument by Cumming and Mickenberg who contend that two laws on aboriginal rights cannot apply within a nation and that a strong case can be made that the Proclamation is applicable throughout Canada. Furthermore, they wrote that even if the Proclamation did not apply in British Columbia the source of aboriginal rights is the 'law of nations', now incorporated into the common law of Canada and confirmed by policy and actions of the British and Canadian governments (Cumming 1972:30-34).

Confirmation of aboriginal title is supported by the treaties made with native tribes during Canada's colonial period, and extending into post-confederation. In 1850 the Robinson treaties formed a basis for further treaties to be signed with tribes on the prairies, in Ontario, and in parts of the Northwest Territories and British Columbia. In these post-confederation, or numbered treaties, there is a statement ceding rights to the territory along with provisions for reserves, small cash settlements and other benefits (Cumming 1972:179). Today, some Indian representatives contend that the Indians who signed the treaties had no intention of giving up Indian land but instead believed that the treaties simply allowed the settlers to share the territory.

In British Columbia, Governor Douglas was responsible for the development of colonial Indian policy. He took the position that

the Indians held title to the land and that no settlement would be permitted until reserves were established and compensation negotiated (Cumming:179). Fourteen treaties were signed with tribes on Vancouver Island between 1848 and 1859. After that no more treaties were negotiated because Douglas lacked the funds to pay compensation and the new colonialists were opposed to paying for Indian land. When the gold rush erupted in the interior of British Columbia in the 1850's there was considerable conflict with the Indians who saw their rights and their land being unfairly taken from them. Douglas continued to work to lessen conflict by allocating land for Indians according to the location and the areas favored by the Indians. Although Douglas encouraged the Indians to chose land they used for village sites and for resource use, the size of these reserves was very small in relation to the land allocations set out in the numbered treaties, averaging around twenty acres per family in British Columbia compared to either 160 or 640 acres under the treaties.

In 1864 Douglas was succeeded in his post as governor and the subsequent colonial administrations reversed the policy established by Douglas and embarked upon a period of blatant disregard for native rights. Settlement pressures were considerable and the policy reflected the views of the new settlers who saw the Indians as obstacles to proper use and development of the country. Land previously granted to Indian tribes was transferred to settlers without compensation and Indian territory was made available for settlement without

negotiating with the tribes (Cumming 1972:180).

It is this settlement policy that has been cited as having extinguished native title. In Calder vs the Attorney General 1973 it was argued that because the colonial government provided for homesteading of lands not ceded by the Indians that such action was sufficient to end the existence of aboriginal title. What is evident is that the colonial government acted contrary to the authority of the sovereign power and had no jurisdiction either under British Law, international law, or common law to allow settlement in the territory without first negotiating with the Indians.

These arguments and others were cited in two leading, modern day judgements on aboriginal rights. One was Kanatewat et al. vs James Bay Development Corporation and the Attorney General of Canada 1973 and the other, Calder et al. vs the Attorney General of British Columbia 1969,1970,1973 .

In the first case, the Cree and Inuit filed a petition in the Supreme Court of Quebec for an interlocutory injunction to stop the James Bay hydro-electric project. In the judgement by Justice Malouf, the court ruled that the Cree and Inuit, had exercised personal and usufructuary rights over the land and had retained those rights into the present day (Kanatewat 1973). Although the province immediately succeeded in having the injunction suspended and the Court of Appeals ruled against the native claim, the favorable decision at the lower court was

sufficient to force the Province of Quebec and the federal government to negotiate with the Cree and the Inuit.

The Nishga case (Calder 1973) is the most significant Canadian judgment on aboriginal title. The Nishga Tribe was seeking a declaration that their aboriginal title had not been extinguished. In the judgement brought down by the Supreme Court of Canada all judges agreed that the Nishga had retained aboriginal title up to the period of colonization. But the court split on the substantive question as to whether title had been retained up to the present. Three judges ruled that title had been extinguished prior to confederation and three judges agreed with the Nishga claim that title had been retained into the present. The seventh judge did not rule on the central issue, and instead denied the Nishga's case on a technical point dealing with 'fiat', or the Nishga's right to bring forward an action without the concurrence of the province.

Chief Justice Laskin was one of the three judges who agreed that the Nishga retained title. In his dissenting judgement he stated:

"There is a wealth of jurisprudence affirming common law recognition of aboriginal rights to possession and enjoyment of lands of aborigines precisely analogous to the Nishga situation." (Calder vs A.G. 1973)

Following the decision on the Nishga case Prime Minister Trudeau publicly stated, "You (the Indians) have more rights than we thought you had." (British Columbia 1983) Following the Supreme Court decision on the Nishga case, the federal government

established the Office of Native Claims and provided funds to Indian groups to carry out research on land claims. The Department of Indian and Northern Affairs came out with a revised policy on Native land settlements and began negotiations with Natives in the Northwest Territories and the Yukon (Indian and Northern Affairs 1981,1982).

Fort Ware's claim to its territory is similar in most respects to the Nishga claim. Like the Nishga, the Sekani Tribe occupied the territory at time of white contact and continue to use and occupy the land to the present day (see Chapters III and V). Fort Ware's ancestors never extinguished aboriginal title to the land nor accepted treaty benefits. The arguments advanced on behalf of the Nishga in the Supreme Court case were:

1. That their aboriginal rights to the land in the Nass Valley had never been extinguished.
2. The territory had been occupied by their tribe for hundreds of years and possibly thousands.
3. The Royal Proclamation of 1763 recognized Indian rights to their land and established that the Indian peoples must not be deprived of their land without negotiation and settlement agreed to by a competent representative of the tribe.
4. Governor Douglas established Native rights to the land in a letter to the colonial office in 1861, where he stated that the land belonged to the Indians and could only be extinguished by treaty.
5. Treaty 8 was signed in 1899 with tribes in Alberta, Northwest Territories and British Columbia, confirming

Canadian recognition of Native title (Calder 1973).

One of the leading witnesses at the Nishga court proceedings was Wilson Duff whose book Indian History of British Columbia was entered as evidence. Duff wrote:

"It is not correct to say that the Indians did not "own" the land but only roamed over the face of it and "used" it. The pattern of ownership and utilization which they imposed upon the lands and waters were different from those recognized by our system of law, but were nonetheless clearly defined and mutually respected. Even if they didn't subdivide and cultivate the land, they did recognize ownership of plots used for village sites, fishing places, berry and root patches, and similar purposes. Even if they didn't subject the forests to wholesale logging, they did establish ownership of tracts used for hunting, trapping, and food-gathering. Even if they didn't sink mine shafts into mountains, they did own peaks and valleys for mountain goat hunting and as sources of raw materials. Except for barren and inaccessible areas which are not utilized even today, every part of the Province was formerly within the owned and recognized territory of one or other of the Indian tribes."(Duff 1964:8)

From discussions with Fort Ware families, it was clear that concepts of ownership similar to those described by Duff exist

in Fort Ware. Families 'own' the areas where they trap and hunt. In interviews a family would say that the Pooles 'own' the Pelly River valley or that the McCooks 'own' Paul Creek. People also stated that the band 'owns' certain lakes where everyone fishes and alpine areas where the sheep and goat are hunted. When the mining company built an airstrip on the land used and owned by the Pierre family, there was no consultation with the Indian owner. The Indian family was angry and frustrated by this intrusion and lack of respect for their rights to an area of land that had been used for a generation by their family and by their father's family before them.

While Indian leaders contend that the land belongs to their people and their aboriginal rights must be recognized, it is not expected that the federal or provincial governments will accept the concept of an Indian title. The federal government takes the position that Indian land rights, if present, are possessed at the pleasure of the Crown. The Province of British Columbia has consistently denied the existence of Indian title (Calder 1973 and British Columbia 1983). For the Province to reverse its position would lead to a severe curtailment of its jurisdiction over the land base.

The issue of aboriginal title has been coming more and more to the forefront since the constitutional debates in 1980-81. After much debate and division among the provinces, native groups, and the federal government, a section was added to the Canada Act (1981) as follows:

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

This Constitutional entrenchment of aboriginal rights is not an admission of the existence of aboriginal title, it does however, give statutory recognition to Indian and Inuit rights to use of the land, and clearly places the treaties in a stronger position. Native groups have objected to the wording of Section 35(1), arguing at subsequent constitutional accord talks that the word "existing" must be deleted. While Indian and Inuit leaders were working to have constitutional recognition of aboriginal rights, extinguishment of title was being negotiated in two major agreements - the C.O.P.E. and Yukon settlements (C.O.P.E. 1984 ; Council of Yukon Indians 1983). The proposed Yukon agreement in principle has been criticized by some prominent Indian leaders. Bill Wilson of the Native Council of Canada opposed extinguishment and has charged that the federal government has forced Indians to cede title. Wilson explained his position on aboriginal title at the hearings on Indian Self-government held in Whitehorse, Yukon.

"In my area, it is our assumption, and always will be, that the land belongs to us. The discussions in regard to the resolution of aboriginal title and aboriginal rights do not flow on the basis of an exchange. They flow on the basis of ensuring that we exercise those rights." (Canada 1983 (b) 27:36)

The thrust of the federal policy on land claims is to exchange undefined aboriginal land rights for concrete rights and benefits (Indian and Northern Affairs 1981:19). The federal government will not likely affirm Indian title although it recognizes certain traditional Indian land use. With the change

in federal leadership in 1984 it is expected that there will be even less consensus between Indians and Ottawa on the the issue of aboriginal title. How Indian groups should approach the issue of aboriginal title is a very complex and sensitive subject. Because there is little hope that senior level governments will recognize aboriginal title, Indian groups not willing to cede the rights they believe they are entitled to, face difficult choices in negotiating a land claim. In Chapter VII the issue of aboriginal title is dealt with in terms of the various options available to Indian groups in their negotiations for land settlement.

Chapter VII

TREATIES, SETTLEMENTS AND AGREEMENTS

If the Fort Ware people are to have any chance of breaking away from the dependency and social dislocation so evident among many Canadian Indians, then a land settlement must lead to economic and social reform. There is a range of choices available to Fort Ware and similar northern Indian bands with respect to land claim proposals. For the purposes of this analysis, the choices have been categorized as traditional , moderate , assimilation , and Indian reform .

The traditional approach to land claim settlement is analogous to the conventional treaties concluded in Canada up to the early part of the Twentieth Century. The reason the treaties are important in terms of the choices facing the Sekani is that whether by error or design the tribe's territory was included within the boundaries of Treaty 8, even though the tribe was not asked to adhere to the document. In addition, the McLeod Lake band is considering adhering to the treaty and therefore we must examine the advantages and disadvantages of this Nineteenth Century document. In order to shed some light on the treaty-making process, a brief outline of the history of Canadian Indian treaties is included below.

Canadian Indian Treaties

Settlement pressures increased in Canada with the loyalist emigration following the War of Independence in 1783. The Royal

Proclamation was not adhered to consistently during this settlement period since the immigrants, hungry for land, made agreements with the Indian tribes contrary to the provisions of the Proclamation. Many of these agreements were later ratified by the colonial government in an effort to preserve the principles behind the Proclamation of 1763 and to keep peace between settlers and Indians (Cumming 1972:107,111). From 1670 (the date of the first Indian treaty (Pointing 1980:23)) to the first of the numbered treaties in 1871, there were over a hundred Indian treaties signed involving surrenders or agreements. Some dealt with only a few acres of land; others designated chiefs and set out provisions for government services (Coles Canadiana Collection 1971).

The process of Indian surrender of title, which began as a piecemeal process in the Seventeenth Century, grew into a major government program in the mid-Nineteenth Century. But was it an inevitable outcome that the Indians would have to relinquish their ownership of the land in favour of the new settlers? It would not have appeared that way to the Indian tribes who met the first explorers. At the time of white contact there were an estimated one million natives occupying the continent north of the Mexican border (Duff 1964:39). The first prolonged contact Indians had with Europeans was with the fur traders whose numbers were insignificant in comparison to the Indians. The fur trading period was welcomed by the Indians; it brought wealth to their people and did not threaten the integrity of their nations (Fisher 1977:12).

In British Columbia the early explorers met Indian tribes living in the most densely populated area in Canada. There were an estimated 80,000 to 100,000 Indians in British Columbia, most occupying the resource rich coastline (Duff 1964:39). The west coast Indians were astute traders and proud defenders of their territory and resources (Fisher 1977:9).

The Indians had little pre-warning that the first contact would be followed eventually by subsequent waves of settlers who would push the aborigines from their land. The sequence of occurrences that led from the fur trade period to extinguishment of title is aptly described by Hagan:

"The outline of events in such tragedies was clear. The traders first employed the Indians to gather furs and tribal standard of living rose as they acquired firearms and metal tools. Then as the game diminished and the frontier line pressed upon the Indian holdings the second act opened. It closed with the tribesmen having been forced or seduced into selling their land...The third act would find the Indian resistance crushed and the inevitable treaty written ceding even more land to the whites. The principal problem remaining would be the ultimate disposition of the tribe. The Indians might settle the problem temporarily by migrating westward to compete with already established tribes for their hunting grounds and set the stage for a repetition of the last two acts...The usual result was that the reservation Indians frustrated their well wishers and co-operated with their oppressors by dying off rapidly." (Driver 1975:481; quoting from Hagan 1961:29-30)

By the mid-Nineteenth Century disease and depletion of game had demoralized and weakened most of the Indian tribes. In British Columbia it was estimated that one-third of the Indian population died from European epidemics - mostly from smallpox. By the 1880's the white population in British Columbia exceeded

that of the Indians for the first time (Fisher 1977: xii). A similar situation existed across Canada with the Prairie Indians even more destitute due to the loss of the bison herds.

It was during this period that the newly federated Canadian government embarked on its program of treaties. Confederation was won with the promise of an east-west railroad. In order to survey the right-of-way and provide homesteads for settlers, the Canadian government believed that it would have to deal with Indian title.

The first post-confederation treaty was concluded in 1871 with the Swampy, Chippewa and Cree of Manitoba. According to Lieutenant Governor Archibald there was really no choice for the Indians since if they did not accept the treaty they would still be subject to white settlement (Cumming 1972:121).

Thirteen treaties were concluded in total since confederation. Treaties one to eleven, the so called numbered treaties, included surrenders of Northern Ontario, all of Manitoba, Saskatchewan, Alberta, and parts of the Northwest Territories and British Columbia.

Treaty provisions varied to a degree, with the common elements being reserve land, treaty money, small gifts and a statement regarding cession of title. The land settlement in Treaties one, two and five was 160 acres per family of five and in Treaties three, four, six, seven, eight, nine, ten, and eleven, one

square mile (640 acres) per family of five or 160 acres per person in severalty (Cumming 1972:124). Small annuities of \$5.00 per person were also paid, and continue today.

The most important provisions of the treaties, apart from the reserve land, established hunting and fishing rights. In Treaty 8 the federal government promised the Indians they could "pursue their usual vocations of hunting, trapping, and fishing throughout the tract surrendered, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty.." (Treaty 8:12). A similar provision is included in all the numbered treaties with the exception of treaties one and two.

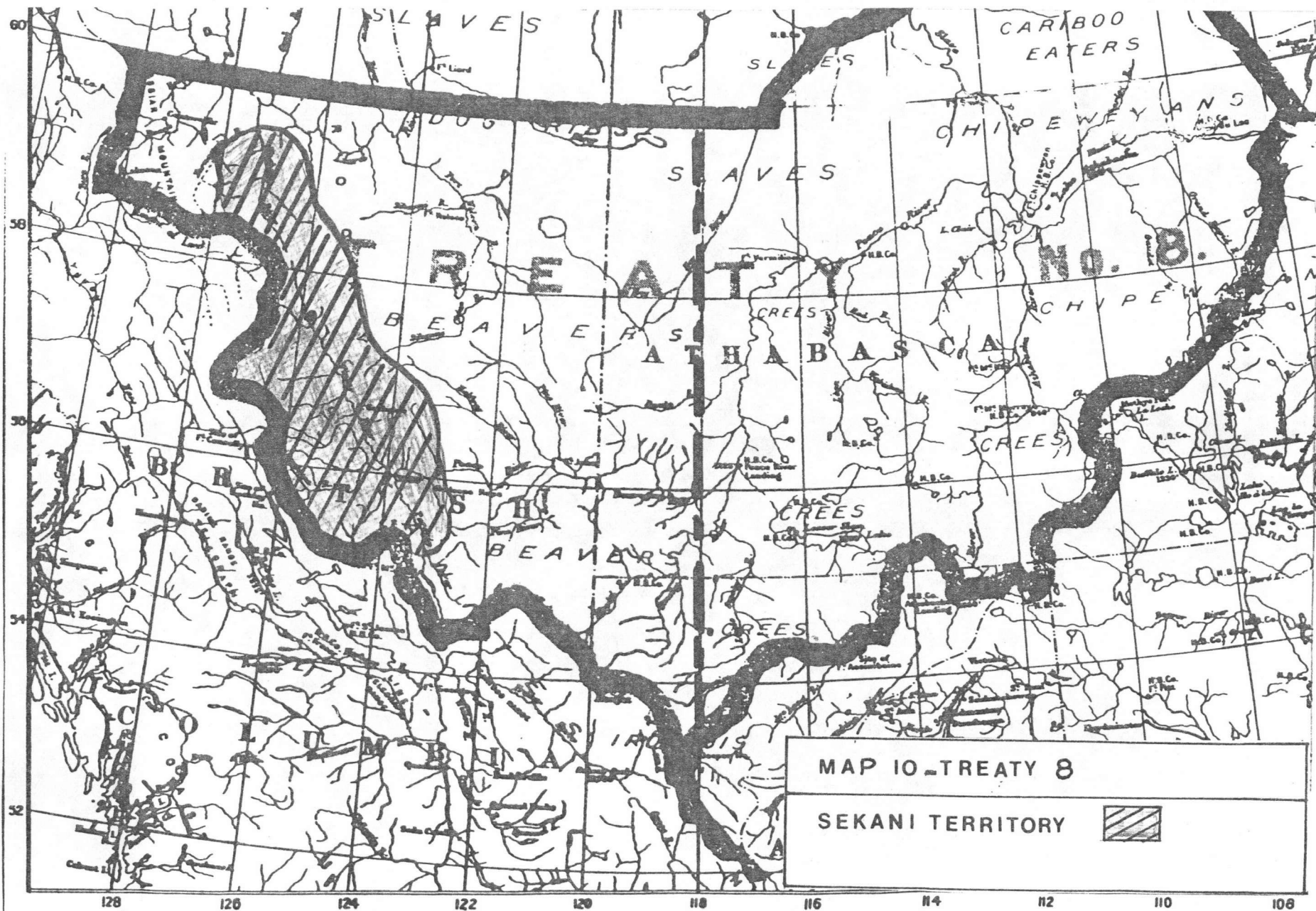
In British Columbia prior to confederation there were fourteen treaties concluded with the tribes on Vancouver Island. In these treaties, tribes received small reservations, annuities, gifts and freedom to hunt and fish as before on unoccupied land (Fisher 1977:66-67). Eleven treaties covered the areas surrounding Fort Victoria. The other three treaties concerned areas at Fort Rupert and Nanaimo. It is ironic that the land under the Legislative Buildings is part of one of the reserves established by Governor Douglas during this early period of treaty-making in the Colony of Vancouver (Fisher 1977:68). No claim has been submitted to the Office of Native Land Claims regarding land under the Legislative Buildings although it is possible that the Songhees, who held the reserve land, could bring this forward under a specific claim. Regarding the

fourteen Douglas treaties, the validity of these Colonial period treaties has been upheld by the Supreme Court of Canada (Sanders 1975:22 referring to the Supreme Court of Canada decision in Regina vs. White and Bob 1965). While the legal status of the Colonial treaties has been affirmed, there has been some question raised regarding the land areas ceded by the treaties. The Office of Native Land Claims in British Columbia received a submission from the Kwakiutl District Council, the descendant of one of the original Colonial treaty tribes, claiming ownership to traditional tribal lands not surrendered under the Colonial treaties.

The only other land under treaty in British Columbia is in the northeast of the Province (see map 10). It is this treaty that is important to the Sekani bands since according to the Department of Indian and Northern Affairs adherence is an option open to those bands whose territory is within the treaty boundaries (Walchli 1984 per.comm.).

There are two confusing matters with respect to Treaty 8. Firstly, there is no consensus regarding the correct boundaries of the Treaty and secondly, it has been generally agreed that the Sekani, whose land is included within Treaty 8, never signed or participated in the provisions of the Treaty.

The boundary confusion is described by the early Twentieth Century Indian Affairs official Mr. Ditchburn in his letter to the Indian Affairs office in Ottawa:



"I have before me a copy of Treaty 8 and from the map accompanying this document I note that the western boundary of this Treaty is shown to be the Height of Land, whereas the described western boundary in the Treaty itself is given as the Rocky Mountains, which are many miles east of the Height of Land." (Ditchburn, Chief Inspector of Indian Agencies to Scott, Deputy Superintendent General of Indian Affairs, November 19th, 1920)

Wilson Duff also noted the problem with the westerly boundary of the Treaty and came to the same conclusion as Ditchburn (Duff 1964:70). A different view was postulated by an Indian Affairs official in 1960. The Chief of Reserves and Trusts concluded that he had "no doubt that the McLeod Lake and Finlay River bands are located within the boundaries of Treaty 8". He does not, however, defend this opinion in any way (memorandum from Chief of Reserves and Trusts, Department of Indian Affairs, April 14, 1960).

Although there can be no resolution of the issue without further information, it appears to me that the boundary most likely was drawn in error on the map. The commissioners who were to negotiate the treaty were given fairly explicit instructions regarding the outposts they were to visit (Letter from North West Territory Commissioner to Secretary of Indian Affairs, January 12, 1898). The area west of the Rockies must have been well known to the commissioners. There had been a post located at Fort McLeod since 1805 and at Fort Grahame since 1870. McLeod Lake had been an important transportation post during the first period of the fur trade. If Indian Affairs had intended to include in Treaty 8 the bands within the Finlay-Parsnip watershed, why were the commissioners not instructed to visit

Fort McLeod and Fort Grahame to obtain consent of the bands? If there were no specific instructions regarding the bands in the Finlay-Parsnip watershed, would not the commissioners have felt obliged to visit Fort McLeod and Fort Grahame to request the Indians' adhesion to the treaty before including their area? It is possible that the officials in the Department of Indian Affairs were aware that the McLeod Lake and Finlay River Indians had not consented; yet, for expediency, they allowed the map to include the Finlay-Parsnip watershed. By showing the area as part of Treaty 8, the Federal government may have thought settlement could be permitted.

The Department of Indian Affairs has maintained the position that Sekani land is within the Treaty. For the bands involved, there is no advantage to be gained in refuting the boundary since it leaves an additional option open to the bands in their negotiations for land settlement. However, the problem needs to be resolved because of the misunderstandings that could develop because of the existence of the map attached to Treaty 8.

Because Sekani territory has been shown on an official government document as ceded land, provincial, federal and even Indian representatives may make decisions based on the false assumption that all Indian claims to that land had been surrendered. It is possible, in the past, that Indian claim to the territory was ignored because of the existence of Treaty 8. The W.A.C. Bennett dam was constructed without prior agreement with the Sekani; it was only after the completion of the dam that B.C. Hydro carried out its research on the status of Treaty

8 (Melville 1981).

While the boundary question has been argued from both sides, the point that has been generally agreed upon is that the Sekani bands did not adhere to the Treaty. Treaty 8 was initially signed in 1899 by a group of Beaver, Cree, and Chipewyan, and adhesions continued up to 1914. In 1910 the Indian Affairs Treaty commissioner was sent to Fort Nelson to obtain the consent of the Indians in the area. According to the Indian Affairs report, the commissioner met 140 Indians who were "mostly Slaves and a few Sicanees" (Annual report of Department of Indian Affairs 1911). The Indians were told to elect a headman to sign for them. The following year, there was a group of Sekani who accepted treaty money, but this band moved shortly after to appear as the Nelson River nomads in the report of the Stikine Agency of Telegraph Creek (Duff 1964:71). This relationship constitutes the Sekani's involvement with Treaty 8. The confusion remains, with the three Sekani bands occupying land that appears on government documents as treaty territory. No competent representative of the Sekani has ever agreed to the Treaty, no reserve land has been allocated and no annuities paid as per the terms of the treaty. The Sekani bands now face the choice of adhering to this Nineteenth Century treaty.

TRADITIONAL SETTLEMENT: TREATY 8

If the traditional settlement (Treaty 8) were to be accepted by the Sekani what would be their loses and benefits compared to the present situation? Treaty 8 generally follows the provisions

of the rest of the numbered treaties. A statement is included in all the numbered treaties regarding cession of Indian title. Land settlement under Treaty 8 is one square mile per family of five, or if remote from the reserve, 160 acres per person. If Fort Ware with its present band membership of 223 adhered to the treaty, land settlement would be 116 square kilometres (45 sq mi) or .6% of the 20,000 square kilometres of land the band presently uses. The Band's present reserve land is only 3.8 square kilometers (1.5 sq mi).

Treaty 8 promises the Indians freedom to hunt and fish. Where hunting or fishing rights have been legally adjudicated, the courts have considered accompanying documents such as the following Indian Affairs commissioner's report on Treaty 8, which in part states:

"Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. ...Over and above the provisions, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it." (Commissioner Liard to Sifton, Superintendent of Indian Affairs, Sept. 22, 1899)

There is a constantly changing body of law on the subject of Indian hunting and fishing rights established in the courts; however, a few legal principles have emerged. First, provincial or federal law may not impose regulations that are so stringent that the status and capacity of the Indian way of life is affected (Jackson 1982:300-305). For the members of the Fort Ware band, seasonal hunting restrictions imposed on the general

population would likely be declared inapplicable to the band. The supporting argument would be that the village has no refrigeration and it can be shown that the band depends on a year round supply of meat for sustenance (see Chapter V).

The second principle regarding Indian hunting and fishing rights is that Treaty provisions take precedence over provincial legislation, though not over federal statute. Based on this legal principle, there is greater protection in the courts for a Treaty Indian charged with an infraction of a provincial regulation than there is for a non-Treaty Indian. There are cases before the courts on this question of Indian hunting and fishing rights so it is premature to attempt to draw any final conclusions regarding the merits of the treaty provisions with respect to hunting and fishing rights.

While land entitlement and subsistence harvesting are the main provisions that bands will evaluate in considering adhesion to Treaty 8, there are other provisions. The annuities are so small as to be a source of humour. Considering that modern day agreements include cash settlements up to \$600 million, or \$100,000 per beneficiary, including all funding (Council of Yukon Indians 1983), the five dollars per person is unreasonable. Finally, the Treaty provides for educational benefits. Although Treaty 8 does not specify medical care, this is covered by the Indian Act. The federal government has provided health and educational services to status Indians whether or not they are covered by treaty.

In summary, before Fort Ware, or any other band affected by Treaty 8, considers adhesion to the Treaty it would be advisable to first compare the treaty provisions with the modern day agreements.

THE MODERATE SETTLEMENTS: JAMES BAY NORTHERN QUEBEC AGREEMENT
AND THE PROPOSED YUKON AND C.O.P.E. SETTLEMENTS

Bands negotiating land claims will certainly be looking at the recent land settlements in Canada, the James Bay Northern Quebec Agreement (J.B.N.Q.A.) and the proposed Yukon and the Committee for Original Peoples Entitlement (C.O.P.E.) settlements. These three agreements have been categorized as 'moderate' in terms of the groupings set out for this thesis. All three settlements exchange native title for benefits under the settlements and retain special native hunting provisions over the surrendered land.

The James Bay Northern Quebec Agreement (J.B.N.Q.A.) was signed in November 1975 and has since been implemented by way of several provincial statutes and by the James Bay and Northern Quebec Native Claims Settlement Act, a 1977 federal statute.

The text of the proposed Yukon Land Settlement was not publicly available as of December 1983; instead, a series of brochures was published which briefly outlines the main provisions. In late 1983 and early 1984, the Yukon bands were in the process of

voting on the agreement. The chief difficulty has been the question of extinguishment of aboriginal title with the Council of Yukon Indians (C.Y.I.) and the Territorial government at opposite ends of the issue. In August 1984 the Council of Yukon Indians decided against acceptance of the settlement.

The C.O.P.E. agreement in principle was signed in 1978; the final agreement was approved by the Federal cabinet on March 28, 1984, and by the Inuvialuit in a vote completed in May 1984. The C.O.P.E. settlement includes the Western Arctic Region in the Northwest Territories and the Yukon North Slope. The total area of claimed land is 168,000 square miles. The Yukon North Slope is the site of considerable offshore oil exploration. This factor has given the Inuvialuit a stronger bargaining position in negotiations.

A summary of the main features of these three moderate land settlements is outlined below:

Land Settlement

One of the most important clauses of a land claims agreement is the amount of land that will be held by the Indian beneficiaries. Under the traditional treaties the reserve entitlement was either one-quarter square mile or one square mile per family of five (.05 to .2 square miles per beneficiary), depending on the particular treaty. In the modern settlements, land entitlement has been considerably greater. Below is a summary of the three agreements with respect to land

entitlement:

TABLE X - SUMMARY OF LAND SETTLEMENT PROVISIONS

	<u>J.B.N.Q.A.</u>	<u>Yukon</u> (square miles)	<u>C.O.P.E.</u>
Total Land ownership per beneficiary	0.32	1 - 1.5	14.1
Surface Rights Only			2
Sub-surface Rights	0.32	1 - 1.5	12
% of total Traditional Land	1.3%	3.9%	20%

Land acquired through any of the settlements cannot be sold or transferred to non-Indians.

Harvesting Rights

While the J.B.N.Q.A provided for less settlement lands than the other two agreements, the Cree and Inuit in Northern Quebec gained stronger harvesting rights than the Council for Yukon Indians. The C.O.P.E. agreement has the strongest provisions for harvesting rights as is shown below:

TABLE XI - SUMMARY OF HARVESTING RIGHTS
AND RESOURCE MANAGEMENT

	<u>J.B.N.Q.A.</u>	<u>Yukon</u> (square miles)	<u>C.O.P.E.</u>
Land for Exclusive Native hunting/trapping	40,655	8,000	35,350
Land for exclusive Native hunting/trapping per beneficiary	3.8	1- 1.5	14.1
Seats on wildlife Management Committees	50%	50%	40%

Other Harvesting Rights

James Bay Northern Quebec Agreement (J.B.N.Q.A.)

The Cree and Inuit gained a quota of game on the surrendered aboriginal land, the quota to be set on the advice of the wildlife management committee.

Council for Yukon Indians (C.Y.I.)

The C.Y.I. would have had 50% of moose, southern caribou and fish on the surrendered aboriginal land (Yukon Territory excluding the North Slope). A wildlife management board with 50% Indian seats will set game quotas and advise on the fish catch.

Committee for Original Peoples Entitlement (C.O.P.E.)

C.O.P.E. negotiated and received extensive harvesting rights. These include exclusive rights to harvest furbearers and polar bears, preferential rights to fish and hunt throughout the surrendered aboriginal land, exclusive right to harvest game in two proposed parks, and priority rights to harvest marine mammals. These provisions are over and above the

exclusive harvesting rights on the Inuvialuit settlement lands (Land to be owned by the Inuvialuit).

If the Fort Ware Band were to negotiate a land settlement similar to the C.O.P.E. agreement (20% of its traditional territory), its land entitlement would be 4,000 square kilometres (1545 square miles). If in addition, Fort Ware could bargain for exclusive harvesting rights throughout its traditional territory, the subsistence activities of the band members could be reasonably protected.

Cash Settlement

There is a considerable variation in the cash settlement under these three agreements. The Council for Yukon Indians, who would have received the smallest land settlement, would have had the largest cash payout.

TABLE XII - SUMMARY OF CASH SETTLEMENTS

	<u>J.B.N.Q.A.</u>	<u>YUKON</u>	<u>C.O.P.E.</u>
Total			
Basic Compensation	\$150 million	\$380 million	\$78 million
No. of Beneficiaries (approximately)	10,600	6,000	2,500
(Total Compensation Per Beneficiary)	(\$14,000)	(\$63,000)	(\$31,000)
Other funding (economic, cultural & transfer of D.I.A. Funding)	\$75 million	\$240 million	\$17.5 million
TOTAL CASH SETTLEMENT	\$620 million	\$225 million	\$95.5 million

Note: C.O.P.E. negotiated \$45 million in 1978. Final compensation was \$78 million in 1983.

Under all three agreements, Native controlled corporations will manage the funds. In the J.B.N.Q.A. no dividends are paid to individual members although funds are available for band members to invest in businesses. Until all the details of the Yukon and the C.O.P.E. settlements are available it is not clear whether beneficiaries will receive dividends.

If Fort Ware were to opt for a large land settlement and a money package similar to the C.O.P.E. agreement, its cash settlement would be \$6.9 million. If the settlement followed the Yukon agreement, the cash settlement for the 223 Fort Ware band members would be \$14 million.

Aboriginal Title

The issue which has most seriously divided Indian groups and set Indian organizations against territorial and federal negotiators has been the question of surrender of aboriginal title. All three settlements include a clause ceding title to aboriginal land. The Council for Yukon Indians publication states that, "Yukon Indians will trade their aboriginal rights to lands in the Yukon for the rights and benefits in the land claim settlement." (Council for Yukon Indians 1983).

The Cree and Inuit agreed to "cede, release, surrender and convey all their Native claims, rights, titles and interests, whatever they may be, in and to land in the Territory and in Quebec, and Quebec and Canada accept such surrender" (Quebec

1975:Sec. 2.1).

In the C.O.P.E. agreement the wording is, "Subject to the Settlement Legislation coming into force, and in consideration of the rights and benefits in favour of the Inuvialuit herein set forth, the Inuvialuit will cede, release, surrender and convey all their aboriginal claims, rights, titles and interests whatever they may be in and to the Northwest Territories and Yukon Territory." (Committee for Original Peoples' Entitlement 1984: Sec. 3(2)(a)) The C.O.P.E. agreement also includes a statement declaring that, "nothing in the Final Agreement shall remove from the Inuvialuit their identity as an aboriginal people of Canada nor prejudice their ability ...to participate in ..any future constitutional rights.." (Committee for Original Peoples Entitlement 1984:Sec.3(2)(b)).

To several prominent Indian leaders, the question of extinguishment of aboriginal title is critical. During the 1984 Constitutional Accord Talks, Chief David Ahenakew of the Assembly of First Nations spoke at length on this issue, stating that in addition to aboriginal and treaty rights, his people are seeking to entrench aboriginal title within the Canadian Constitution (Canada 1984:30-34). His remarks on the present federal land claim policy were as follows:

"There is one urgent matter, Prime Minister (Trudeau), which is relevant to this process but which does not require a change in the Constitution, not even a change in legislation. The change can be accomplished with a stroke of the pen. It is solely a matter of federal policy. Many view the federal presence here as tainted by the current land claims policy. I refer to the policy of extinguishment of aboriginal rights which we are required

to accept if we want settlement of just claims." (Canada 1984:33)

Chief Ahenakew went on to propose the development of a new claims settlement policy (Canada 1984:35), one which would retain Indian title. To date there has been no indication that the senior governments are prepared to move on this issue. In the negotiations for the proposed Yukon settlement, the Territorial government was adamant that title must be extinguished (Canada 1983 (b) 27:19). The 1982 Federal government's position was that land settlement would erase aboriginal title, that the agreement would be "a final redress" (Indian and Northern Affairs 1982:24). If the Federal government maintains the position that all land settlements are to include surrender of aboriginal land, some Indian bands may chose not to negotiate through the federal land claims process. As an alternative to land settlement, bands could negotiate with senior governments for Indian rights to resources, such as, harvesting of fish, game or timber. The Province of British Columbia, while rigid in its position that aboriginal title is non-existent, has stated its willingness to consider other Indian rights (Debates of the Legislature of British Columbia, June 29, 1983:93). This is not to suggest the issue of aboriginal title should be set aside. Indian bands who opt not to proceed with land settlement because of existing extinguishment policy, can continue to assert ownership. In the face of proposals for non-Indian development of their territory, northern Indian bands could communicate their land claim position to government and the public, and if necessary use the courts to assert an interest in the land.

There are inherent problems associated with the question of retention of title. If land settlement is resolved under present implicit policy, as manifested in the C.O.P.E., J.B.N.Q.A. settlements and proposed Yukon agreement, the band loses title over most of the claimed land while gaining a defined land regime and funds for economic development; if land settlement is not resolved, aboriginal title (unrecognized by senior governments) is retained, but there will be no significant cash settlement or defined Indian lands until governments change their positions. It is a dilemma for the bands with outstanding land claims and there is no immediate implementable solution that will meet all the objectives of the northern Indian bands.

Government

The Parliamentary Special Committee on Indian Self-Government issued its report in October, 1983, recommending the transference of responsibilities for Indian services currently carried by Indian and Northern Affairs Canada, to Indian self-governing nations. The history making document radically departs from previous policy aimed at assimilation of Indians into mainstream society. In 1983 the Special Committee proposed a 'citizen plus' concept, and some recognition of Indian nations as occupying a unique position within confederation (Government of Canada 1983(a)). The preparation of this report likely affected the outcome of the negotiations between the Government of Canada and the Council of Yukon Indians. The proposed Yukon settlement provided for a one-government system. The support for

future Indian self-government, in the Special Committee's report, may have convinced some Yukon bands to reconsider the one-government system proposed in the Yukon agreement.

The James Bay agreement was negotiated prior to establishment of the Committee on Indian Self-Government and, as a result, provisions for Indian and Inuit government were included in the settlement. The James Bay Cree and Inuit, along with the Province of Quebec, have established many of the administrative structures envisaged in the settlement. The agreement provides for local authority over reserves and band matters and regional authority over education, social services and economic development. There are additional planning functions allocated to the Cree and Inuit but they are advisory in nature. The primary responsibility for policy and administration has settled with the regional authority, an administrative structure comprised of representatives of all the bands. In an analysis of the affects of the J.B.N.Q.A. on the Cree, it was found that the Cree Regional Authority gained most of the responsibility at the expense of both D.I.A. and the local bands (SSDCC 1979: 88-90). While local band councils previously played a strong role in the delivery of services funded by D.I.A., that role has been taken over largely by the regional authority. Band chiefs and councillors find they are making fewer decisions on local matters while expending time and effort contributing to regional decision-making. This does not mean the agreement has not achieved the goal of transferring authority to Indians. The Cree Regional Authority has been successful in bringing a growing

number of Indians into administrative and executive positions, a goal which D.I.A. had failed to achieve, and a range of services are now being administered by Indians (SSDDCC 1979).

The structures proposed for the Yukon Indians are relatively simple compared to those under the J.B.N.Q.A. Bands would retain existing powers and will have additional powers to make by-laws and run local band programs. There would also be new responsibilities in managing settlement lands. There will, however, not be separate Indian government. The thrust of the proposed Yukon settlement is "one government". Instead of the separate Indian controlled structures set out in the J.B.N.Q.A., there are provisions for Indian participation in Yukon municipal governments and on territorial or federal advisory boards. The participation in wildlife management is permanent, whereas the Indian seats on education, health, social service, justice and heritage, will end in 25 years. As expressed by a territorial official, "We do not want a settlement that will drive people apart on the basis of race (Canada 1983 (b) 27:11).

The C.O.P.E. agreement falls somewhere between the Yukon and the James Bay settlement in the way in which Indian participation in government is handled. Similar to the provisions under the J.B.N.Q.A., the C.O.P.E. agreement provides for an Inuvialuit Regional Council; however, this Council does not have authority over education and social services. The Council's main responsibilities are in the area of resource management, and administration of lands and settlement funds.

In applying the Fort Ware case, the most obvious conclusion is that a small band of approximately 200 could not likely anticipate taking over the complexity of administration presently handled by the Cree or Inuvialuit who each represent 2,500 to 4,000 natives. If the northern Indian bands are to propose taking over administrative duties of D.I.A. and obtain a greater degree of self-determination, there will have to be some consideration given to an administrative structure at a higher level than the band. The existing tribal councils in British Columbia could provide adequate structures for a regional authority. To avoid the problems encountered by the J.B.N.Q.A. there needs to be a great deal of consideration given to the division of power between bands and regional authorities in order to ensure that transference of decision-making from an Indian Affairs bureaucracy does not simply evolve into a centralized native bureaucracy.

Perhaps for the Sekani, a more workable approach than the J.B.N.Q.A. would be to negotiate broad principles of Indian authority over Indian affairs and lands. Rather than set out the structures in detail in the agreement, the principle of devolution of powers could be clearly spelled out, while the details of the political and administrative structures could be the subject of regulations to the enabling legislation once the needs of the various bands and regional and tribal groups have been worked out.

Summary

At the conclusion of the negotiations on the J.B.N.Q.A. it was acclaimed as a "political articulation of hunter to state.. a means of resisting threats to subsistence production..." (Feit 1979:37) and was seen as an agreement that would ensure the survival of a threatened minority (Quebec 1975:xxi). However as described above, there are shortcomings in the J.B.N.Q.A. But for northern British Columbia would it be possible to negotiate stronger protection for Indian resource use such as the provisions under the C.O.P.E. agreement? Perhaps the type of agreement reached in Quebec is as much as Fort Ware could hope to achieve given the political stand on Indian rights taken to date in this Province. British Columbia Indian policy has never been conducive to a fair settlement of outstanding claims. In addition, the Quebec Cree and Inuit had a stronger legal case with respect to Indian title than presently exists in British Columbia. In Northern Quebec the Dorion Commission, reporting on the integrity of the territory of Quebec, concluded in 1971 that the Province had a clear obligation to the Indians, an obligation that the Province had agreed to in 1912. In British Columbia there could be as strong a legal basis for title but to date the courts have not confirmed that and we are still in the position of being left with a contradictory body of statutes, precedent, common law and legal arguments, which neither clearly confirms or denies aboriginal title.

The J.B.N.Q.A. and C.O.P.E settlements and proposed Yukon agreement are considered to be moderate choices within the

spectrum of options for land settlement. At the two extremes from the parsimonious provisions of the numbered treaties are the Alaska Native Claims Settlement Act (A.N.C.S.A.) and the Nishga negotiating position. The former is a money/corporate package with little or no consideration for the retention of special Indian status and Indian lands, while the Nishga proposals place retention of Indian title over all Nishga land as a priority.

ASSIMILATION SETTLEMENT:THE ALASKA NATIVE CLAIM

The important aspect of the Alaska Native Claims Settlement Act (A.N.C.S.A.) was that stocks and land titles would be transferable. Cash settlement was \$462 million to be paid over twelve years. In addition, the Alaskan beneficiaries were to receive revenue shares from non-renewable resources up to a total of \$500 million. Total cash settlement per beneficiary is approximately \$16,000 for the 64,000 Natives in Alaska (Bureau of Census 1980). This is more than the J.B.N.Q.A. and less than the Yukon and C.O.P.E. agreements. Land entitlement varies from .5 to one square mile per beneficiary depending on the size of the native community. For example a community with a population between 25 and 99 receives 69,120 acres (108 square miles) while a community of 600 or more receives 161,280 acres (252 square miles) (Alaska Native Claims Settlement Act 1971:Sec.11 (a)(3)). The land entitlement per beneficiary is about the same as the proposed Yukon agreement but less than the C.O.P.E. settlement.

The A.N.C.S.A. is intended to transform Alaskan Natives into corporate owners with the expectation that Alaskan Natives are to prosper as corporate owners with no special status and little protection for the Native land base. The agreement can be likened to a monopoly game where inexperienced individuals are given money and title to valuable property and instructed to play the game with others who have been playing monopoly for years. The newcomers to the game are expected, not only to learn the rules in a short time period, but also to win. The entire concept has elements of social Darwinism for it would seem that some Natives will indeed prosper under the system while others will surely perish economically. There have been indications that some of the Native corporations have been quite successful (Bruchet 1984). But it is important to question the value of stocks in relation to a significant land and resource base for a people whose way of life is intrinsically connected to the land. Berger raised similar questions in a recent address.

"Are the pressures on corporations to make a profit inconsistent with expectations that the corporations would be the means for protection of native lands so as to enable the traditional way of life itself to be protected: If the native people of Alaska are to survive as a people, do they require a land base and recognition that they have political jurisdiction over the land?" (Berger 1983:5,10)

There is no long term provision for Native political structures under the A.N.C.S.A. Native settlements will evolve into municipalites. Village corporations, established to receive development funds in the early part of the agreement, will have both Native and non-Native membership thirteen years after the passage of the Act. One provision which is unique to this land settlement agreement is the timber allocation of 1,000,000

acres.

The eligibility provisions in A.N.C.S.A. differ from J.B.N.Q.A. and the proposed Yukon agreement. In both the Canadian agreements, local bands could define who was a beneficiary, whereas in A.N.C.S.A. membership is to be adjudicated by a five member committee with two native representatives. There are provisions for appeal, but the Alaskan Natives do not have the local control available in the other two settlements.

While land can eventually be alienated under A.N.C.S.A., there is a provision in the Alaskan settlement intended to protect fish and wildlife for Native use, however the responsibility for carrying out that mandate rests with the Secretary of the Interior.

Fort Ware shares many cultural characteristics with the Alaskan Natives. They are both hunting and gathering societies. Most Alaskan Natives are Athapaskans, members of the same linguistic group as the Sekani. The hunting and gathering groups have a special and close relationship with the land, a relationship which, to a great extent, forms the basis of their cultural identity as a people. The Alaskan settlement denies this connection to the land and may be quite different from the type of settlement that would be appropriate to Fort Ware or other similar northern bands.

INDIAN REFORM SETTLEMENT: THE NISHGA PROPOSALS

At the opposite end of the spectrum from A.N.C.S.A. are the Nishga negotiation proposals. The Nishga occupy land along the Nass River in northwest British Columbia. Their position may be summarized as follows:

1. No surrender of title; Nishga to manage their own resources.
2. Joint government-Nishga economic development programs with examples being the construction of the Canadian National Railway from Terrace to Meziaden, as well as forestry, mining and economic enterprises.
3. Self-government for the Nishga over the Nass valley.
4. Immediate cessation of logging operations on the west side of the Nass River valley.
5. Right of veto over hydro-electric projects.
6. Recognition that all resources in claimed area are owned by the Nishga and no new resource development unless consent has been obtained from the Nishga.
7. No further alienation of crown land.
8. Payment for past resources extracted by non-natives.
9. A 'citizen plus' status whereby the Nishga will receive all rights and benefits accruing to other Canadians and as well receive special rights.

This is a strong position regarding Indian land settlement and it would not be overly demanding if there were a better indication that aboriginal title in British Columbia had clearly been retained. If Indian groups could successfully defend

aboriginal title in the courts and then go to the bargaining table, an agreement based on this position might be feasible. Given the existing situation, both the provincial and federal governments would strongly resist such an agreement because of its precedent-setting nature. The Nishga are aware of this argument and have countered by qualifying their proposal with the statement that the agreement would not set a precedent for other Indian groups. In reality, it would, since governments are generally obligated to deal even-handedly with all claimants. The Province would be expected to argue that if the Nishga retained control over resource revenues, then other tribes, collectively claiming almost all the land in the Province, could also control resources.

The Nishga position may be viewed by Indian groups as an opening bargaining position; it is not a settlement that could realistically be won at this time. Perhaps Indian groups could look to a more united approach to land settlements. Rather than one group bargaining for a strong settlement and stating that other tribes need not gain similar benefits, tribes could form alliances and work out a joint strategy. Through a federated approach, settlement gains could be increased.

The Nishga position is by far in the forefront in concern for protection of the Indian subsistence way of life. Land, not money, is central to the settlement proposal. The Nishga have been defending their territory and title for over one hundred years. In 1888 David MacKay, the Nishga spokesman addressed the

Royal Commission on Indian land claims with the following words:

"These chiefs do not talk foolishly, they know the land is their own; our forefathers for generations and generations past had their land here all around us..." (Calder et al. vs A.G. of British Columbia 1973:319)

The Fort Ware people also believe the land is theirs but may, nevertheless, take a different approach to land settlement than that taken by the Nishga.

CHAPTER VIII

CONCLUSIONS

The land use and occupancy studies in this thesis have documented the extensive land area currently used by the Fort Ware and McLeod Lake band members. It was found that the territory used by the McLeod Lake band was significantly reduced following major resource developments. Fort Ware, the land claim at the focus of this study, has seen little change to its territory in the past two hundred years. A few mines located within the area but later they became dormant. In the next ten years the Fort Ware territory could become the new frontier for resource development. Logging operations are planned for the area, several mineral deposits are expected to be developed, and the giant Liard hydro-electric project may be lifted from the shelf. It is a critical time for Fort Ware. It must move to secure its land from irreversible development. In analyzing its options for land settlement, the band should consider which type of settlement is conducive to its social and economic growth.

In Chapter VII the options for land settlement were analyzed. None of the settlements were found to be entirely satisfactory as bargaining positions, although there were positive elements in each.

Although adhesion to Treaty 8 may be the most expedient route for the Sekani bands to take, the Treaty provisions fall well short of providing what is required for the band's development.

The Treaty land allocations of .05 to .2 square miles per beneficiary are extremely limited when compared to the land settlements in recent agreements. Under the Treaty, there is little protection for Indian harvesting. While the Treaty states that Indians covered by its provisions can hunt and fish as they have always done, past experience has shown that non-Indian settlement and resource developments gradually erode fish and wildlife resources. Because Treaty 8 contains no provision for Indian participation in resource management, the Indians dependent on fish and wildlife may find their resources diminished because of land use and resource management decisions over which they have no say. In the analysis in Chapter VII it was concluded that Indian economic investment and Indian control over local affairs and land would be important in bringing about positive economic and social growth to the Indian people. The cash settlement to the chief and headmen and \$5.00 annuities to band members are so small as to be insignificant as a source of funding for a band's economic development. The Treaty makes no provision for Indian governmental structures. In summary, the provisions of Treaty 8 would do little to alleviate the economic and social problems of the northern Indian bands.

The moderate agreements - James Bay, and the proposed Yukon and C.O.P.E. settlements - address the issue of Indian resource use but fail to provide the comprehensive control over resource management that will ensure future supply of fish and wildlife. Only in the Yukon does the draft agreement suggest that Indians should acquire actual decision-making power. The Council of

Yukon Indians would have had 50% of the seats on the wildlife management committee that sets wildlife quotas. Unfortunately, because the Yukon Indians have not gained similar participation in land use decision-making, the resources the Indians wish to protect may be destroyed by settlement and incompatible developments over which the Indians have no effective voice.

The C.O.P.E. agreement provides for extensive harvesting rights on settlement lands (land under Inuvialuit ownership), as well as on the land exchanged as part of the settlement. The Inuvialuit, however, do not have as strong resource management provisions as either the J.B.N.Q.A. or the proposed Yukon settlement. The Inuvialuit provide only advice on resource management and have less than fifty percent participation on wildlife management committees.

The Alaskan settlement is an assimilation package which does not meet the criterion of protection of native subsistence use. The Alaskan settlement provided funding for native economic investment but the land allocation is less than that provided under the C.O.P.E. agreement and there are no preferential native hunting rights or Indian participation in resource management. Northern Indian bands may need to have a financial stake in the industrial development of their area, but it should not be at the expense of the traditional Indian economic activities.

The Nishga proposals are a strong statement in support of Indian culture. The proposal for all the land to remain under Indian

control can obviously not be achieved by all Indian groups in British Columbia. It is not likely that senior governments would agree to a settlement that places the entire area claimed by various tribes under the jurisdiction of Indian groups. While the Nishga proposal has merit as a bargaining position from which to begin negotiations, it will not likely form the basis of a settlement.

With this analysis of the range of settlements, treaties, and agreements in mind, let us look in more detail at the type of settlement Fort Ware and other similar northern bands may consider. There are several aspects of a land claim settlement. These include land, resource use, financial compensation, economic development and government structure.

Land and Resource Use

Land allocations in the two most recently proposed agreements have been from one to one and one-half square miles per beneficiary in the Yukon and 14 square miles in the Western Arctic. Land settlement proposed under the Yukon agreement represents 3.9% of the claimed land; land settlement under C.O.P.E. represents 20% of the claimed land. If British Columbian bands are to be dealt with fairly in relation to other northern Indians in Canada, the land provision should be at least one square mile per beneficiary plus an extensive area for exclusive Indian resource use. The most positive settlement in terms of Indian harvesting rights is the C.O.P.E. agreement under which there would be exclusive Inuvialuit harvesting on

20% of the traditionally used territory, and for some species, on all of the traditionally used territory, plus a quota on the exchanged land. In 1982-3 the Fort Ware people were using an area of land estimated to be 32,000 square kilometres (12,360 square miles), some of which was overlapping territory with that of other bands. The area of land used for hunting, fishing, and trapping, almost exclusively by the Fort Ware people, is estimated at 20,000 square kilometres (7,723 square miles).

A northern band, such as Fort Ware, may approach the negotiations for land and resources in several ways:

1. A settlement similar to C.O.P.E., where 20% of the traditionally used land becomes Indian settlement land with exclusive Indian harvesting rights, plus a quota of the harvest on the balance of the traditionally used land.
2. A smaller land settlement, at least as great as that in the Yukon settlement with exclusive harvesting rights on the traditionally used land.
3. A land settlement similar to the Yukon's (1 to 1 1/2 square miles per beneficiary) plus quotas for harvesting on the balance of the traditionally used land, and a significant cash settlement.

It is not sufficient to negotiate for use of the land without including Indian control over the management of the resources.

In the three modern day settlements, Indian participation on resource and environmental management committees was included. It is important to bear in mind when negotiating participation in resource management that the band should have at least fifty percent control, if not majority control, and that the management committee should have decision-making powers over both resource (renewable and non-renewable) management and land use management. To effectively protect the traditional Indian economy, an effective voice on decision-making committees should include management of mining, forestry, hydro-electric, and oil and gas developments in addition to the management of fish and wildlife.

In addition to exclusive hunting, fishing, guiding and trapping rights over a defined area, Fort Ware may want to consider including within the settlement an agreement for development of timber resources and possibly mineral deposits. Since Fort Ware already has a sawmill and a few members have skills in logging, one viable option for providing jobs for the community could be to secure timber cutting rights. This would have the side benefit of allowing the band to plan the logging operation in a manner compatible with the fish and game resources. Because the Rocky Mountain Trench is narrow within the Fort Ware area, there is a limited valley floor for the production of good timber as well as a limited area for moose habitat. If the logging companies carry out their operations in the Fort Ware area using the same practices prevalent along Williston Lake, the moose habitat will decrease.

The bargaining power of the northern British Columbia bands will depend considerably on the policies of the senior governments. Indeed, Indians in British Columbia are in a different situation than Yukon or Northwest Territory Indians. In the Territories, the federal government is the land owner and although the Territorial governments were involved in the land claims negotiations, the concurrence of Yukon and the Northwest Territories was not essential to the resolution of the settlement. In British Columbia, the land is under the ownership of the Province and without provincial agreement a land settlement may be impossible.

Population density and the degree of non-Indian settlement are also factors in the land settlement negotiations. There are only 46,000 people in the Northwest Territories with a land area of 1,304,903 square miles; in British Columbia, there are 2.7 million people with a land area of 365,255 square miles.

These factors - the density of population, the degree of private ownership of land, and the provincial interest in the land - will all influence the land claims negotiations in British Columbia. While northern British Columbia bands will most likely study the proposed agreements north of the sixtieth parallel, gaining benefits equal to the C.O.P.E. land settlement will require strong bargaining on behalf of the Indian groups.

Financial Compensation

As outlined in Chapter IV, there are extensive mineral deposits in the Fort Ware territory. While a logging operation is within the capabilities of the Fort Ware people it may not be feasible for this small band to operate a mine. The Band could, however, negotiate for employment in local mines, participation in environmental management to ensure a degree of local control over the development, and a resource revenue sharing agreement to provide financial compensation to the Band in exchange for the extraction of minerals.

Cash compensation has been included in the recent agreements as payment for past use of resources and as an exchange for aboriginal title. The question of extinguishment of Indian title has become the most controversial issue in land claims negotiations. The Yukon agreement was near finalization when this issue was raised and negotiations reopened. It would be to the band's advantage to try and retain aboriginal title while negotiating for a defined land regime settlement and Indian resource use. As Berger (1977 xxii) emphasized, Indians do not want to extinguish title. What they want is a settlement that will entrench their rights to the land and that will lay the foundations of Indian self-determination under the Constitution of Canada.

Whether or not title is extinguished, compensation will be a factor in settlements. Financial considerations in modern day agreements have been in the range of \$14,000 per beneficiary in

the J.B.N.Q.A. to \$63,000 per beneficiary, in the proposed Yukon settlement. It is likely that Fort Ware will want to negotiate for a per capita cash settlement at least as great as the James Bay agreement which would amount to \$3.6 million. The band could then invest the funds in economic development projects to provide local employment and financial returns to the band.

In addition to compensation for exchanged land, the money settlement under the Yukon agreement includes band funding, payment of infrastructure costs and D.I.A. transfers. The initial cash payment, therefore, may appear to be substantial; however, if there is little or no further senior government funding available to bands, the Yukon Indians may find the large cash payment insufficient to meet the bands' financial costs for administration and services in the long term. The C.O.P.E. agreement does not include band funding and D.I.A. transfers. Instead, the bands would continue to receive existing funding from the federal government. Similar to small municipalities, which generally receive funding from provincial or federal sources, Indian bands require an assured, continued source of funds to support community administration and services. If the overall settlement package is to be of long term benefit, the existing federal funding should either be left in place or the agreement should include long term provision for band administration, infrastructure costs and services.

Governmental Structures

Although proposals for economic development may appear to be the

solution to all of the problems faced by Indian people, there is a root cause of the problems that must be resolved first. There is a strong relationship between the domination of a people and the social pathologies and economic difficulties they face (Berger 1982). The Special Committee on Indian Self-government (Canada 1983 (a)) recommends a new form of Indian self-government, one that is entrenched in the Canadian Constitution. This recommendation was supported by Indian groups across Canada but rejected by the majority of provincial governments at the March 1984 Constitutional talks. If the Federal government passes legislation enabling bands to become self-governing bodies, there will be no need to include governmental structures within the land settlement. The provisions in the James Bay agreement are unsatisfactory because there is not enough flexibility to accommodate changes or variations in the needs of various bands and the authority of the local bands has been severely eroded. Rather than attempt to work out in detail the administrative and political structures within a land settlement, bands should press for adequate federal enabling legislation that will allow for a range of options in terms of Indian government. Once the opportunity for increased Indian autonomy is in place, governmental structures can be designed to suit the particular abilities and needs of each band or tribal council.

Northern Indian groups are seeking to protect a culture and an identity that has been dominated by another society for over one hundred years. Indian groups do not wish to assimilate and erase

their culture--they want to gain meaningful control over their own resources and their communities. Land claim agreements which include provisions for resource use and opportunities for economic development and self-determination, could end a shameful era in Canadian history and provide the means for our 'First Nations' to develop a strong and healthy society within the framework of the Canadian federation.

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APPENDIX

CHOICES FOR CHANGE

A study of the Fort Ware Indian Band
and Implication of Land Settlement for Northern Native Bands

QUESTIONNAIRE

METHOD

Every household in Fort Ware and McLeod Lake will be included in the survey. The interview will be conducted person to person with an adult member of the household, preferably either the mother or father. Respondents will be asked the question and the interviewer will record the answers.

Introduction

This information is being gathered to find out the hunting, fishing, trapping and berry gathering territory of your people. I also hope to find out whether the dam has reduced the fish and game in your area. I will be asking you questions about your hunting to try and find out how much Native families depend on country food. This material will all be turned over to your band for them to use. I have permission from the band council to carry out this research.

The first question is on hunting.

Q1 Please list all the animals your household killed for food in the last year.

Moose Elk Deer Caribou Sheep Goat Grizzly Bl.Bear Rabbit Other

Q2 How does last year compare with hunting before the dam?

Last year was ...

BETTER _____

WORSE _____

THE SAME _____

than before the dam.

Q3 Did you share some of the meat?

YES _____

NO _____

If shared, how much did you share?

Q4 Describe your best year of hunting for game. Can you tell me how many animals you killed and what kind they were?

Moose Elk Deer Caribou Sheep Goat Grizzly Bl.Bear Rabbit Other

When was this approximately? _____

Q5 MAP DRAWING

Please draw a line on the map, using different colors for each use, around the areas....

(1) Where you hunted before the dam and where you hunt now

(2) Where you fished before the dam and where you fish now

(3) Where you gathered berries before the dam and where you gather berries now

FOR BIG GAME GUIDES

Q6 Please draw a line on the map around the areas where you guided before the dam and where you guide now.

Q7 Please list your clients' kills for the last year.

Moose Elk Deer Caribou Sheep Goat Grizzly Bl.Bear Wolf Lynx
Wolv'ne

Q8 Did you use any of this kill for food for your family or for others?

YES _____

NO _____

If yes, how much was used for your family? _____
for others? _____

FOR TRAPPERS

Q9 Please list your harvest for the last year, giving number of pelts for each species.

Beaver _____	Marten _____	Squirrel _____
Bl.Bear _____	Mink _____	Weasel _____
Coyotte _____	Muskrat _____	Wolf _____
Fisher _____	Otter _____	Wolverine _____
Fox _____	Skunk _____	Lynx _____

Q10 How does last year compare with trapping before the dam?

Last year was

BETTER _____

WORSE _____

THE SAME _____

than before the dam.

Q11 Where is your trapline? _____

Can you give me the trapline registration number? _____

Draw on the map around the areas where you trapped before the

dam and where you trap now.

FOR ALL RESPONDENTS

Q12 Can you tell me approximately how many fish your family caught for food for the household last year?

White fish____
 Rainbow____
 Arctic Greyling____
 Salmon____
 Kokanee____
 Dolly Varder____
 Other____

Q13 Did you use all the fish for your family?

YES____

NO____

If shared, how much did you share?____

Was any used to feed the dogs?____

Q14 How does last year compare to the fishing before the dam?

(a) for rainbow and grayling BETTER____
 WORSE____
 THE SAME____

(B) for white fish BETTER____
 WORSE____
 THE SAME____

(C) other BETTER____
 WORSE____
 THE SAME____

Q15 What is the size of your house?____

How many people usually live here?____