

## **“White Man Has No Right to Take Any of It” Secwepemc Water-Rights Struggles in British Columbia**

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In 1914, William Pierrish of the Neskonlith Band, Chief Louis<sup>1</sup> of the Kamloops Band, and other prominent leaders in the Kamloops-Chase region of British Columbia met the federal and provincial representatives of the McKenna-McBride Commission.<sup>2</sup> These Native leaders were invited to testify before the commissioners as to their concerns with their land and livelihood. Along with the issues related to inadequate reserve sizes,<sup>3</sup> their most pressing matters were the water shortages on their semi-arid reserves and the intensifying water conflicts with neighboring settlers, whose numbers were increasing. “The white man,” Chief Louis declared, “has no right to take any of it [water].” Pierrish also said, “we have water, but it is not enough for two farmers to use the water for irrigation purposes.”<sup>4</sup>

Later that year, the commission’s assistant secretary, H. Gibbons, made a province-wide survey of the records of water-rights claims, or water records, that Indian reserve commissioners or provincial authorities had filed to secure Native water use for storage and irrigation purposes. Much worse than federal officials realized, the survey revealed that provincial authorities had either improperly protected or utterly forgotten more than three hundred Native water records.<sup>5</sup>

The commission’s hearings and Gibbons’s report clearly warned federal officials of the urgent need to deal with water problems, but the officials were more concerned with resolving jurisdictional questions than with actually mediating local water conflicts. The Dominion

government had been troubled by the passage of the provincial Water Acts in 1909 and 1914 because those acts created a new water-rights tribunal called the Board of Investigation and delegated to it administrative power over all water rights in British Columbia.<sup>6</sup> In addition, the province had adjudicated water rights on such Dominion enclaves as the Railway Belt<sup>7</sup> and Native reserves without much knowledge of Native water rights. To counteract this provincial threat to the federal jurisdiction, federal officials hired an attorney and commenced legal and political actions against the province.<sup>8</sup> This intergovernmental fight reached a high point in the spring of 1920, when the Board of Investigation ruled that all Native water records entered by Indian commissioners were legal "nullities."<sup>9</sup>

This ruling worried some federal authorities, who wanted to use irrigation agriculture as a means to "civilize" the Native peoples. A. S. Williams, the Department of Indian Affairs' legal expert and future deputy superintendent, contended that the "avowed purpose of the Crown" in carrying out Native policies "was and is to encourage Indians in habits of industry and to induce them to engage in pastoral [sic] pursuits and in the cultivation of the soil in order that they may not only become self-supporting but that they may eventually take up the habits and busy themselves with the enterprise of civilized people."<sup>10</sup> In a letter to Thomas Dufferin Pattullo, provincial Minister of Lands and future premier, William E. Ditchburn, federal inspector of Indian Affairs stationed in Victoria, British Columbia, asserted that "if the Indians were to be expected to make full use of the lands allotted to them in the Dry Belt it was absolutely essential that sufficient water should also be allotted to them for this purpose, and I am of the opinion that the [Indian] Commissioner were [sic] perfectly justified in considering that water went with the land."<sup>11</sup> These federal efforts led to provincial recognition of Native water rights in the provincial Indian Water Claims Act of 1921, but the act still upheld the provincial position of its exclusive jurisdiction over water.<sup>12</sup>

The above-mentioned federal-provincial jurisdictional strife in the early twentieth century was not a chronologically or geographically isolated incident. The jurisdiction question regarding Native water rights for irrigation had been one of the most pressing and frustrating matters for both federal officials and Native leaders/farmers since the 1870s. Native water rights had been an essential part of assimilation packages that federal officials such as A. S. Williams and William Ditchburn tried to deliver not only to the dry belt of British Columbia but also to the prairie provinces, Ontario, and many other parts of Canada. Although the jurisdictional conflicts over Native water rights in British Columbia developed highly unique characteristics, the assimilationist ideas behind what historian Sarah Carter has called "peasant farming policies,"<sup>13</sup> resonated throughout Canada and

the American West<sup>14</sup> and even in Australia<sup>15</sup> and northern island of Japan (Hokkaido).<sup>16</sup>

Unfortunately, these highly contentious Native water-rights issues have gained scant scholarly attention, even though in the last twenty years scholars have devoted a great deal of attention to Native land and fishing rights issues in British Columbia and elsewhere. This is because academic paradigms tend to separate Native water-rights issues from those concerning land and fishing rights. Furthermore, with the increasing tendency toward scholarly specialization, Native "rights" issues have been largely relegated to legal professionals.<sup>17</sup> The result of the parceling up of water, fishing, and land issues is that we are left with little understanding of how Native water-rights struggles and agricultural policies affected the livelihood of the Native peoples on reserves in British Columbia.

In this article, I will provide an account of some of the social and legal aspects of Native water rights and irrigation issues. I will focus on the Kamloops and Neskonlith reserves and show how the Secwepemc people on these two reserves developed their irrigated agriculture successfully while competing with nearby settlers for control of water. According to the Department of Indian Affairs census, by 1897 the Secwepemc people in the Kamloops Agency, which included the two reserves, had become one of the largest Native producers of wheat, oats, and hay.<sup>18</sup> The examination of their responses to agriculture and irrigation from the mid-nineteenth century to the early twentieth century will help us clarify the roles these Secwepemc people played in water conflicts as well as address the question of how Chief Louis, Chief Pierrish, and others understood their indigenous water rights. Their responses also demonstrate the Secwepemc's intention to make water claims a significant part of their larger struggle for indigenous rights.<sup>19</sup> The struggle resulted in two provincial court cases in the early twentieth century, both involving the Secwepemc. I will discuss one of the cases, which specifically dealt with water rights on the Kamloops Reserve.<sup>20</sup>

### **PRELUDE TO NATIVE WATER CONFLICTS: SECWPEMOC AGRICULTURE AND COLONIAL LAND POLICIES**

Although farming was not part of the precontact economies of the Secwepemc people and irrigation technology would not reach the province until the late nineteenth century,<sup>21</sup> farming became an important component of their subsistence and trading economy from the early postcontact era to the late nineteenth century.<sup>22</sup> By the time Hudson's Bay Company (HBC) trader John Tod arrived at abandoned and desolated Fort Kamloops in August 1841,<sup>23</sup> the Secwepemc people were producing enough potatoes to supply his men. One month after

his arrival, for example, Tod sent two of his Native helpers to the upper river to obtain a few kegs of potatoes from the Secwepemc people. Three days later, they came back with nine kegs. The next spring, the Secwepemc people from the upper lakes were still able to visit the fort and share potatoes with Tod's starving men. After learning about the reliability of the Natives' supply, Tod regularly sent his men to procure considerable quantities of potatoes from them, especially from September to November. In October 1843, Tod's men obtained about sixty bushels of good-quality potatoes from a "young chief" of the upper lake [Neskaimlth?]. In the meantime, Tod had started farming, but his operation was not as productive as that of the Secwepemc growers. For example, in March 1843, he employed some Native families to clear potato patches at the site of the new post along the North Thompson River. After planting more than seventeen kegs of seed potatoes in April, the new patches yielded only fifteen kegs of potatoes.<sup>24</sup> By the time colonial officials visited the Kamloops area in the early 1860s, the Secwepemc had approximately one hundred acres under cultivation.<sup>25</sup>

In the 1860s, however, the Secwepemc people faced a serious threat to their emerging agriculture and other economic activities. In 1862, an outbreak of smallpox decimated the Secwepemc population,<sup>26</sup> although that did not stop them from planting potatoes. Along with the effects of the smallpox, the colonial land policies gradually marginalized Secwepemc rights to land. In October 1862, acting on the instruction of Governor James Douglas, the assistant commissioner for lands and works, William G. Cox, visited the Kamloops area to set aside reserves for the Kamloops, Neskonlith, Adams Lake, and Little Shuswap Native bands. According to the instructions relayed by Richard C. Moody, the chief commissioner of lands and works, Cox was to "mark out distinctly all the Indian Reserves in your District, and define their extent as they may be severally pointed out by the Indians."<sup>27</sup> After generally defining reserves, Cox gave stakes and copies of notices to Chief Gregoire and (his son) Chief Nesquaimlth of the Neskonlith people and Chief Petite Louis (or Chelouis) near Kamloops. The area of land that Cox marked out for the Douglas reserves amounted to approximately 384,000 acres (or 600 square miles).<sup>28</sup> The notices warned the settlers "not to cut timber, interfere or meddle in any way with the rights of the Indians on the Reserve."<sup>29</sup>

The settlers, who knew parts of these reserve lands were ideal for ranching and farming, thought Cox's "grants" were too generous. While some ranchers acknowledged Native rights and paid money to the chief for bringing cattle on Native land, those who were not willing to pay were blocked by strenuous Native resistance. Gold commissioner Henry Nind of Lytton complained to the colonial secretary in Victoria that Kamloops-area settlers found the local Secwepemcs "jealous of their possessory rights." "[Natives] are," he continued, "not

likely to permit settlers to challenge them with impunity; nor, such is their spirit and unanimity, would many settlers think it worth while to encounter their undisguised opposition."<sup>30</sup> One settler, James Todd, attempted to negotiate a land purchase from the Kamloops Band by relying on his "friendly" relationship with Chief Nesquaimlth.<sup>31</sup> This action had the potential to create chaos in land transactions by circumventing government authorities and thereby threatening their power to regulate settlement. Partly alarmed by this possibility, the government quickly and unilaterally decided to reduce the size of the reserves. After Douglas's retirement in April 1864, the new chief commissioner of lands and works, Joseph W. Trutch, led the business-oriented expansionism that many colonial officials upheld at the time and enthusiastically advocated the reduction policy. In 1865, for example, in his letter to the colonial secretary in Victoria, Trutch contended that the reduction of reserves would be necessary because "the claims of Indians over tracts of land, on which they assume to exercise ownership, but of which they make no real use, operate very materially to prevent settlement and cultivation."<sup>32</sup>

This belief corresponded with the colonial "savage" myth of the time, which shaped the image of "savage" people in contrast to the "civilized" utilitarian ideal of farming and industry.<sup>33</sup> As a successful businessman of the time, Trutch's vision of the future of the colony was mainly to promote industry, and he did not subscribe to Douglas's humanitarian vision concerning the eventual "advancement" of indigenous populations to mainstream society. However, as Douglas believed, what Trutch meant by saying the "real use" of land in the southern interior was to establish family-based ranching and farming settlements rather than to promote land speculation.<sup>34</sup> He was also clear that those economic activities belonged only to "white settlers":

Much of the land in question is of good quality, and it is very desirable, from a public point of view, that it should be placed in possession of white settlers as soon as practicable, so that a supply of fresh provisions may be furnished for consumption in the Columbia River Mines, and for the accommodation of those travelling to and from the District.<sup>35</sup>

Although the decision of the colonial administration of British Columbia to reduce the reserves might have seemed to be an easy policy to implement, the engineers and surveyors who had to carry out the task had to conceive a plan that would not provoke the Native people. In the Kamloops area, engineer-surveyor Richard D. Moberly made several attempts to persuade the Secwepemc to accept the scheme, but Nisquaimlth and Petite Louis vehemently opposed it. At the time of his negotiations with the Secwepemc people, Moberly had no information

about Douglas's instruction to Cox, but he nevertheless went ahead and told them that Cox's "grants" were "worthless" because he had lacked the power to make them. It was only Douglas, Moberly contended, who could authorize land grants, not Cox or Native chiefs. Nevertheless, Moberly did not forcefully impose the reduction policy on the Secwepemc people partly because he feared that such an action would meet with violent resistance.<sup>36</sup>

In 1866, the colonial government authorized Trutch to offer monetary compensation or gifts to the Native peoples in exchange for reducing their reserves. This time, Trutch sent Edgar Dewdney to survey the reduced boundaries of the Native reserves on the basis of occupation and agricultural use but not of traditional use. In his report on his assignment, Dewdney did not make it clear whether he had provided any explanation to the Secwepemc chiefs about either the reductions or the new colonial policies that were behind them. Rather, after the survey, during which he was accompanied by a few Native representatives, Dewdney merely noted that all the "Indians appeared perfectly satisfied with their reserves as laid out by me, and I think that no trouble may be apprehended from any of them in future about their land."<sup>37</sup>

Dewdney's self-serving statement would prove to be totally erroneous, as he himself would learn in the following decades as a member of the House of Commons (1872–1878), later as the superintendent general of Indian affairs (1888–1892), and finally as the lieutenant-governor of British Columbia (1892–1897).<sup>38</sup> In those capacities, he received persistent land-claim submissions from the Secwepemc and other British Columbia Native peoples who repeatedly asserted their rights to hunt, fish, and gather in the reduced territories. Unfortunately for the Native peoples, however, Dewdney and Trutch, who absolutely refused to recognize indigenous rights to land and water, played fundamental roles in shaping Native land policies in the North-West Territories and British Columbia.<sup>39</sup>

While these two government officials and settlers saw land and water mostly as economic resources, the Secwepemc saw the value of land and water within their holistic worldviews. Land and water not only provided food to the people and other living creatures but also enriched Secwepemc culture, religion, and spiritual activities. For those who lived in the Kamloops-Chase region, it was the South Thompson River, Neskonlith Lake, Little Shuswap Lake, and Adams Lake, along with surrounding grassy hills and coniferous mountains like Mount Tod and Mount Morrisey that provided the people with berries, deer, grouse, moose, and salmon. The unique landscape, rocks, and water sources also nourished their colorful stories of a water monster, trout children, small people, and trickster coyotes.<sup>40</sup> For the area's traditional land users, hunting and gathering activities, oral stories, and natural landmarks rather than the North American grid system and stakes

marked territorial boundaries and determined ownership of land and water. Under the teachings of the elders, people were and still are held responsible for protecting and respecting land and water as the sacred and powerful gift from the Creator.<sup>41</sup>

While maintaining these traditional values, the Secwepemc leaders such as Louis, Nesquaimlth, and his son Loon,<sup>42</sup> also guided people to practice agriculture in response to the changing world. As early as 1872, I. W. Powell, the superintendent of Indian affairs in British Columbia, observed that the Secwepemc people had produced considerable quantities of potatoes and cereals of all kinds without much encouragement from federal officials. He concluded that the prospects of the "Shuswap Nation" in agriculture were most favorable.<sup>43</sup> After James Lenihan, the second superintendent of Indian affairs, supplied agricultural implements, tools of various kinds, and seeds to the fourteen bands of the Secwepemc people, the Secwepemc people began harvesting wheat, oats, and peas.<sup>44</sup> Irrigation was perhaps not widely used at this time, except the seasonal flooding of the timothy hay ground by temporarily building storage dams on small mountain streams. In the 1896–97 agricultural season, the Department of Indian Affairs reported that the Secwepemc in the Kamloops Agency had harvested 5,060 bushels of wheat, 2,760 bushels of oats, 1,470 bushels of peas, 1,133 tons of cultivated hay, and 493 tons of wild hay.<sup>45</sup> At this time, the Kamloops Band mostly produced potatoes and hay, while the Neskonlith band harvested the relatively large amount of oats, wheat, and potatoes.<sup>46</sup>

**THE COLONIAL AND PROVINCIAL  
ENCROACHMENT OF NATIVE WATER  
RECORDS, 1869–1888**

After the reductions of the Kamloops and Neskonlith reserves, more settlers came to the region and made preemption claims under the Land Act of 1865. By 1869, some original settlers such as James Todd, Robert Thompson, and John Holland, who lived near the Kamloops Reserve, and Whitfield Chase and James Ross, who lived near Neskonlith Reserve, had claimed the reduced reserve lands. These individuals also obtained water rights to Paul Creek (or St. Paul's Creek) and Neskonlith Creek, respectively.<sup>47</sup> Colonial water regulations required the publication of notices before licenses could be issued, but there is no evidence that the province informed the Secwepemc people about the pending applications, and the Natives must not have known about the water records that affected their water supplies.<sup>48</sup> In fact, even in later years, Indian agents, provincial authorities, and local settlers lacked this knowledge until water disputes erupted between the Kamloops Band and the Western Canadian Ranching Company in 1906. Before then, both parties customarily shared water, with Native people on

the Kamloops Reserve obtaining two-thirds of their supply from Paul Creek. The discovery in 1906 of the 1869 Todd-Thompson water record changed this situation drastically, because it made the company entitled to most of the creek's water.<sup>49</sup> This marked the turning point in local water conflicts, which eventually led to the court dispute.

Before discussing the court decision, however, it is necessary to explore the nature of the 1869 record, as well as other colonial and provincial water records that affected the Secwepemc people in the Kamloops and Neskonlith reserves. When Peter O'Reilly, the gold commissioner in Yale, had granted water rights to James Todd and Robert Thompson in 1869, he had noted that their rights would not interfere with those of the Natives.<sup>50</sup> At the bottom of the Todd-Thompson record, O'Reilly wrote, "This record is made subject to the rights of the Indians, of using water on the Reserve opposite Kamloops."<sup>51</sup> Although O'Reilly's note recognized the prior rights of the local Secwepemc people and the importance of Paul Creek to them as the only source of gravity supply available on the reserve, neither he nor any other authorities filed water records on behalf of the Secwepemc. This oversight is possibly explained by the fact that laws at the time were not clear about who was responsible for protecting the Natives' rights to water. Also, government authorities did not specify whether the Native peoples could even enter water claims as non-Natives did. Initially James Douglas had allowed Natives to preempt tracts of lands on nearly the same terms as non-Natives,<sup>52</sup> but later colonial and provincial land laws excluded the Native peoples from this opportunity. Likewise, colonial and provincial legislation did not define what power, if any, the gold commissioners, who had been granted certain jurisdictional power over land and water in the colony,<sup>53</sup> or the chief commissioner of lands and works had over Native water rights.<sup>54</sup>

After joining the Union in 1871, British Columbia stipulated that the lieutenant governor (then Trutch) had the power to adjudicate Native water rights by issuing orders-in-council, although there is no evidence that he ever exercised this prerogative. When the joint federal-provincial Indian Reserve Commission clarified the boundaries of the Kamloops and Neskonlith reserves (and of others) in 1877, government agents finally attempted to specify the quantity of water the Secwepemc people were entitled to receive on these reserves. The commission said of the Kamloops Reserve,

The prior right of the Indians as the oldest owners and occupiers of the soil to all the water which they require or may require for irrigation and other purposes from St. Paul's Creek, and its sources, and northern tributaries, is, so far as the Commissioners have authority in the matter, declared and confirmed to them.<sup>55</sup>



In the same year, it also recognized the prior right of the Neskonlith people to the land and water on their reserve: "The prior right of the Neskonlith Indians as the oldest owners or occupiers of the soil to all the water which they require or may require for irrigation and other purposes from Neskonlith Lake and Creek, as far as the Commissioners have authority in the matter declared and confirmed to them."<sup>56</sup>

In accordance with these decisions, the commission granted five hundred miner's inches<sup>57</sup> of water per year to the Kamloops Natives. The problem, however, was that government officials again did not file the record at the Dominion or provincial land offices until 1888. The commissioners thought it unnecessary to file water records for the Secwepemc and assumed that they had law-making powers regarding Native affairs. As a result of the delay, the official priority date was September 26, 1888. It turned out to be a costly delay for the Native inhabitants,<sup>58</sup> as the Neskonlith people already had been experiencing water problems with neighboring settlers by the early 1880s. They requested the federal government to fulfill the promise made by the reserve commissioners several years earlier. Ironically, however, as for protecting Neskonlith rights, federal officials occasionally wrote letters to the provincial government rather than the federal government asking it to take the necessary step.<sup>59</sup>

#### **WESTERN CANADIAN RANCHING COMPANY AND THE KAMLOOPS NATIVES, 1880s-1906**

In the meantime, the Kamloops Natives faced the encroachment of a large ranching company, which had purchased some 8,900 acres of land, much of it to the east of the reserve on upper Paul Creek. In 1882, the owner of the company, Thaddeus Harper, applied for 250 inches of water to irrigate his large pasture, known as Harper's Meadow. This pasture had been part of the Secwepemc territory assigned by William Cox. Employing large gangs of men, Harper started constructing irrigation ditches to divert water from Paul Creek.<sup>60</sup> In 1886, as part of his irrigation works, he lowered the outlet of Paul Lake, from which Paul Creek drains, with the objective of increasing the water discharge to his ditches. In the following year, he approached the DIA to ask permission to build a more elaborate storage facility. Harper suggested to the DIA agent in Kamloops that the federal government share with him the cost of constructing a storage dam on the condition that he provide some of the stored water to the Native people living along the lower stream.<sup>61</sup> It is likely that this approach from Harper prompted the DIA agent in 1888 to apply to the provincial authorities for a water record.

The Kamloops people persistently resisted Harper's effort to control water in Paul Creek. In 1891, experienced Hudson's Bay Company trader and Indian agent J. W. MacKay reported that the Kamloops

people had "strongly objected to any interference . . . with what they considered their water-course."<sup>62</sup> In justifying their objection, these Secwepemc people also argued that Israel W. Powell, superintendent of Indian affairs (1872–1889), had assured them of protection from the disposition of their water rights. The elders made a point of emphasizing to MacKay that the entire flow of Paul Creek belonged to them.<sup>63</sup> They were outraged to learn that Harper had lowered the outlet of Paul Lake. A number of men from the reservation tried unsuccessfully to fill the cut. MacKay sided with the Kamloops people and directly opposed Harper's irrigation scheme. His effort only encouraged the rancher to consult a lawyer in Victoria. However, Harper's expenditures on the ranch had already saddled him with debt, and in 1888 he sold it to the Western Canadian Ranching Company.<sup>64</sup>

By the early 1890s, the diminished flow of water in Paul Creek had become obvious to both the Kamloops people and the ranching company. By this time, the Natives had substantially extended the area of their cultivation by constructing their own flume and water gauge. Meanwhile, the company had begun to suffer from overstocking and sought a larger grazing area. Further complicating the situation was the fact that a number of settlers began diverting water upstream of Paul Lake without regard to the prior water records held by the company and the Natives. For example, in 1896, A. G. Pemberton recorded five hundred inches of water from Hyas Lake, from which Paul Lake and Paul Creek received water. Frustrated by the "trespass" of the creek, some angry Natives cut the company's storage dam at Paul Lake. When the company attempted to increase the storage capacity of the lake by raising the height of its dam in the late 1890s to remedy the shortage of water supply in the creek, the Natives again attempted to stop the construction. At one point, Secwepemc men confronted the company's employees with rifles to stop the project. Although these incidents aggravated the relationship between the company and the Kamloops Natives, the company's manager, I. B. Martin, had reason not to confront the Natives and the DIA. Martin still wanted to maintain friendly relations with the Secwepemc people because the company desperately needed more pasture for its livestock. Accordingly, he approached the Secwepemc leaders, offering to pay them \$100 a year to use part of the reserve land, although this offer met strong opposition from the Indian agent, who thought that it would establish a "bad precedent" for the Natives.<sup>65</sup>

Despite these water shortage problems, Mackay and his successors became more aggressive in their effort to transform the Secwepemc people into bona fide farmers, and, in so doing, to moderate their claims against local settlers. MacKay believed that the reason the Secwepemc people persistently claimed ownership of the entire flow of the creek was that they were "half-tutored aborigines" who lacked a proper understanding of property rights. Using language that resonated with John

Locke's theory of property, he argued that time and patience would eventually make the Natives learn that they were entitled to claim water only when they could use it effectively. They also would have to learn that "they must not let it [water] run to waste." MacKay also subscribed to the long-held idea that the presence of white neighbors would give Natives the opportunity to learn about farming, especially about irrigation, the construction of ditches, and "the safest and most economical methods" of directing the flow of water over lands.<sup>66</sup>

### **FORMING AN ODD ALLIANCE, 1906-1920**

While the Secwepemc people fought against non-Native reclamation works, the DIA gained a strange ally with the Western Canadian Ranching Company. As noted earlier, the company strongly opposed A. G. Pemberton's irrigation works in the upper stream because it drew away crucial water. The company manager approached his friend, Archibald Irwin, who had become the new Indian agent, with a proposition to halt Pemberton's irrigation works. In February 1906, acting upon the suggestion of the Indian agent, company manager C.A. Holland wrote Arthur W. Vowell, superintendent of Indian affairs in British Columbia, that the company wanted to cooperate with the DIA in "preventing the continued invasion by Mr. Pemberton of the Indians' and the Company's rights." Holland suggested that Vowell send a competent surveyor to investigate the extent of Pemberton's water rights. He suspected that Pemberton had used his 1896 record merely as a "blind" to conceal his trespass. Holland also stated that the company was willing to share with the DIA the cost of a lawsuit against Pemberton. The company was especially apprehensive that continued water losses in Paul Creek threatened its substantial investment of \$2,500<sup>67</sup> for its storage dam under the new water license in 1904.<sup>68</sup>

Pemberton did not readily succumb to the threats of the ranching company or the DIA. He strenuously asserted his right, arguing that the company's allegation of trespassing was unfounded. However, when surveyor Ashdown H. Green inspected Pemberton's ditches, he found that they did adversely affect water flows in Paul Creek. Even then Pemberton remained adamant, contending that he was merely taking water from a lake, which was not connected to Paul Creek.<sup>69</sup> After examining Green's report, Vowell wrote Pemberton in June 1906 and ordered him to close his ditches and open his dam before the end of the month. Vowell also warned that if he failed to comply, the DIA would take legal action against him.<sup>70</sup> Pemberton did not respond to Vowell's letter and continued his operations. Rather than promptly pressing forward with litigation, however, the Department of Indian Affairs waited several months for Pemberton's reaction. The documentary record does not explain this delay. Indeed, DIA officials never acted to protect

the Secwepemc farmers from Pemberton's encroachment. Limited departmental financial resources and fears of ongoing hostilities may have been some of the reasons. A letter from former agent MacKay to Vowell in 1891 suggested that

Water disputes are in their nature difficult to explain, and to settle, legal proceedings in connection therewith are long, tedious, and expensive; the feelings of the contestants become aggravated beyond endurance, and they often wind up by fighting thereby increasing their troubles.<sup>71</sup>

Another likely reason for the federal government's failure to act was DIA's preoccupation with a lawsuit involving Williams Lake Secwepemcs and settler Louis J. Crosina regarding the encroachment of two storage dams that substantially diminished these Secwepemcs' water supply. This case took almost twenty years to complete, making it clear that MacKay's fears were well founded.<sup>72</sup> The DIA would have hesitated to use its limited financial resources to pursue a seemingly minor dispute with Pemberton.

The Kamloops Natives had a largely different opinion. During the McKenna-McBride Commission hearing from 1913 to 1916, Indian agent John F. Smith and the Kamloops Natives expressed the need to secure water, especially from Paul Creek. At the time, according to agent Smith, the Native people had an agreement with the Western Canadian Ranching Company to take half of the five hundred inches of water that was then available from the creek (subsequently, the company conceded two-thirds of the water to them). Although Smith thought the agreement represented a generous offer from the company, Chief Louis and many other Secwepemc people on the Kamloops Reserve remained unsatisfied. Rather than rely on the local DIA agent, the Kamloops Secwepemcs attempted to take control of their irrigation matters. Even though Smith had appointed a Native named Peter Bushy as a water bailiff in charge of distributing water, Chief Louis and others successfully curtailed Bushy's power. In response, Smith attempted to employ a non-Native as water bailiff instead, but the Kamloops Secwepemc leaders strongly objected. They wanted to manage their own affairs. Testimonies before the commission demonstrated that the Secwepemc leaders would not abandon their claims to the ownership of the creek and its water.<sup>73</sup>

### **THE WESTERN CANADIAN RANCHING COMPANY CASE**

By 1920, the Secwepemc people, agent Smith, and the Western Canadian Ranching Company all regarded the water supply from Paul Creek as unreliable. As an alternative, the Secwepemc and Smith turned their attention to the installation of an electric pumping system from the

North Thompson River, believing that this would make for successful agriculture. While the Secwepemc people on the Kamloops Reserve sent petitions to the DIA to obtain permission and financial assistance for the pumping system, they received surprising news. In August 1920, the provincial Board of Investigation held hearings and validated the Natives' prior right to Paul Creek for five hundred inches. The Board also recognized the priority date of the conditional license to be December 8, 1869, one day before the priority date of the Thompson-Todd record. This action by provincial authorities was extraordinary because it recognized the priority of water rights granted by the Indian Reserve Commission in 1877. Although this board's decision did not address the problem of the diminishing supply of water from Paul Creek, Smith and the DIA's legal representatives welcomed it nonetheless.<sup>74</sup> According to the ruling, the final license was to be issued in November 1930 upon completion of all required waterworks on the reserve.<sup>75</sup>

The Western Canadian Ranching Company was equally surprised at the Board's decision. The company promptly acted against the decision that had favored the Secwepemc people by filing an appeal at the British Columbia Court of Appeal. In April 1921, the court rendered its decision in favor of the company. The court's unanimous opinion was that the Board did not have the power to issue a water license on the basis of a record that had been entered by an Indian commissioner because the commissioner was not authorized to do so by provincial law. Concurring with two other judges, Judge Eberts declared that the Indian reserve commissioners did not have power to grant water rights to the Natives. He dismissed the validity of gold commissioner Peter O'Reilly's note on the priority of Native water rights in 1869 as the "then rights of the Indians," meaning that if the Native rights still were to be recognized as valid, it would make the Thompson-Todd record useless.<sup>76</sup>

The Department of Indian Affairs considered this decision a major setback and discussed what course of action it should take. William Ditchburn wrote to the Deputy Minister of the DIA Duncan Campbell Scott that the decision "is going to affect the Indians of the Kamloops Reserve very seriously as it practically means that we have no right to the water which the Indians have been using since 1862 or even prior to that time." Anticipating that the decision would determine the course of the board's rulings on Native water rights in coming years, he suggested that "something will have to be done along legal lines in order to establish the Indian rights to the use of water from a prescriptive standpoint."<sup>77</sup> On August 6, 1923, Scott and Ditchburn met with T. D. Pattullo, minister of lands, and Premier Oliver in Victoria to discuss the Kamloops Native case along with two other outstanding cases—one on Oregon Jack Reserve Number 3 (Nlaka'pamux) and the other on Lower Similkameen Reserve Number 6 (Okanagan). DIA officials felt that some remedial legislation was urgently needed. Scott and

Ditchburn recommended the protective provision, which would secure enough water for Native people to irrigate their reserves, since the provincial appeal court had ruled that the Board of Investigation lacked the authority to recognize rights granted by federal authorities.<sup>78</sup> Despite these legal suits and petitions, Pattullo declined to provide water for Natives. By February 1924, without having achieved any productive results, the officials in the Indian Department and the Power Branch gave up and considered the cases closed.<sup>79</sup>

In the meantime, the Kamloops Natives and DIA agent again focused on building the pumping system and implementing other measures to assure adequate water for irrigation. In June 1922, the Council of the Kamloops Band unanimously decided to press forward with the pumping scheme and urgently requested the DIA to approve using most of the band's funds.<sup>80</sup> This scheme, along with the need to repair irrigation systems, required an outlay of more than \$20,000.<sup>81</sup> The proposal immediately drew the attention of the manager of the Western Canadian Ranching Company. He suggested that the company share the cost in return for being part beneficiary of the water obtained. By having the DIA as its business partner, the manager also hoped that the DIA would share the cost of repairing the ditches to prevent seepage. The DIA was not in a mood to cooperate with the company, however, because of its bitter experience in the 1921 appeal decision that went against the interests of the Kamloops Secwepemc. With the company now fully controlling the water distribution from Paul Creek and Paul Lake, the DIA administration saw no reason to spend money for repairing the ditches. In the spring of 1924, federal engineers stepped in and suggested that a permanent agreement be reached so that the proposed works could go ahead with the intention of using the project as a means to patch up differences between the various parties. The DIA and the company were immediately receptive to this idea. In particular, they were interested in making an agreement in which both parties would receive final licenses from the Board of Investigation with the priority date of 1888. The company would waive its priority based on the 1869 records, and the two parties would equally divide the water. In addition, the company would open the dam on May 1, even though it would not need water for irrigation until the middle of the month. Both parties would use water until September 30. The DIA, in turn, would share the cost of maintaining the dam and ditches as well as the cost of fixing seepage problems. The DIA and the company finalized an agreement in March 1925.<sup>82</sup>

#### **NATIVE ROLES IN FARMING: NESKONLITH IRRIGATION AND STORAGE**

By the 1920s, farming had become an indispensable part of the livelihood of the Kamloops, the Neskonlith, and other neighboring Secwepemc

peoples. As mentioned earlier, the Secwepemc farmers in the Kamloops agency quickly rose as one of the biggest Native agricultural producers in the province at the turn of the century. However, the Secwepemc farmers faced hard times in the first two decades of the twentieth century largely because of increasing competition for water rights. In 1913, for example, the Secwepemc harvest of wheat fell to 2,950 bushels from 5,060 bushels in 1897. Other crops and fodder struggled to grow. The rapid depletion of salmon after the Fraser River blockages due to railway construction at Hell's Gate in 1913 affected many Secwepemc households.<sup>83</sup> The above-mentioned statements by William Pierrish and Chief Louis at the McKenna-McBride Commission hearings of 1914 reflected the mounting frustration of the Secwepemc people.

Coming back from World War I, Chief Louis on the Kamloops Reserve and Chief William Pierrish on the Neskonlith Reserve showed renewed interest in reforming the reserve economy and reascertaining self-governing agricultural activities. Even though the DIA agent attempted to control reserve affairs by appointing new authorities, such as Native water bailiffs, traditional chiefs maintained actual power over farming and irrigation. The late Chief George Manuel of the Neskonlith Band remembered that, during his childhood in the 1920s, a traditional chief would have led the people into the fields to tend crops in the growing season. The chief organized men to work for planting and harvesting and women to provide food. According to Manuel, many men, women, and children, including himself, worked all day, breaking ground with cattle and carrying water from the river or creek.<sup>84</sup> Their hard work had some effect. According to the DIA report of 1922, the Secwepemc people in the Kamloops Agency harvested 18,888 bushels of wheat, 48,540 bushels of oats, 11,075 bushels of peas and beans, 185,010 bushels of potatoes, and 6,211 tons of hay. In the provincial total of Native agricultural production, they harvested about 32 percent of wheat, 39 percent of oats, 39 percent of peas and beans, 58 percent of potatoes, and 28 percent of hay.<sup>85</sup>

The traditional and elected chiefs also were responsible for organizing labor and appointing water chiefs to maintain the flumes and ditches needed for irrigation. The chief often negotiated with the DIA agent to obtain food and wages for these irrigation workers. In 1929, for example, Chief Pierrish asked agent Ewen MacLeod for food and enough lumber to repair decaying flumes and ditches.<sup>86</sup> In 1931, the Neskonlith Band Council under Pierrish unanimously decided to request that the DIA provide financial assistance for building an irrigation system to divert water from Bear Creek into Neskonlith Lake to increase the volume of water in the lake. An additional system of pipes and new ditches was proposed to redirect water from the lake to the Neskonlith Reserve and the neighboring Sahhalkum (Adams Lake) Reserve.<sup>87</sup> The chiefs considered this scheme essential to secure their water supply and harvests.



Federal officials looked into the matter, and the records they left reinforce the picture of Native livelihoods now inextricably linked with agriculture and water use. For example, E. H. Tredcroft of the Dominion Water Power and Hydrometric Bureau visited the Neskonlith Reserve in April 1931 to inspect the possible course of the requested irrigation scheme. He noted that the Neskonlith and Adams Lake Secwepemc were in desperate need of sufficient water to offset the encroachments of settlers and ranchers. According to his report, the Secwepemc contended that their living conditions on the reserves were deteriorating because "the amount of water obtained by them for irrigation purposes during past years has been so small that they have been unable to cultivate their lands." Even though Tredcroft found that the Neskonlith people cultivated about 540 acres out of 1,165 acres of arable land, they told him that the water supply had not been sufficient to prevent crops from drying up. After talking to the Indian agent and others, Tredcroft concluded that "the large number of Indians resident thereon [were] dependent almost entirely upon agriculture for their livelihood, and the totally inadequate supply of water for irrigation purposes."<sup>88</sup>

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

Personally, I feel very strongly and do protest against the expenditure of moneys on domestic water supplies, schools, or anything else, until such time as irrigation is installed for the lands of Sahhalktum and Neskonlith and Kamloops Bands. Large sums of money are spent annually on doctors, hospitals, and nurses for Indian treatment, when, undoubtedly, to my mind, after a long number of years' experience, the cause of most of the Indian diseases in the interior of British Columbia Dry Belt, is caused [sic] by malnutrition. Lack of water to raise crops on their lands is the primary cause.<sup>89</sup>

The Neskonlith people had maintained their reclamation interests at Neskonlith Lake since 1898, when they had built a storage facility and diverted water from the lake. During the years between 1931 and 1932, they rebuilt this facility by improving the structure and adding a spillway to control the water level in the lake more easily. The chiefs recruited the



labor for and supervised most of the construction. In addition to the new storage dam, the Neskonalith people hoped that the Bear Creek diversion would remedy the water shortages caused by the diversion of water by non-Natives who held superior provincial water records. Throughout the 1930s, the DIA hired a solicitor from Kamloops to negotiate agreements with these prior record holders. Similar to the agreement between the Kamloops Secwepemc and the Western Canadian Ranching Company, the purpose was to increase the water supply for the Secwepemc in exchange for DIA financial assistance in maintaining ditches and repairing seepage problems. Despite many meetings and discussions, these efforts to produce an agreement failed because of settlers' outright demands and opposition. George Hoffman, for example, who held the crucial 1869 water record from Neskonalith Creek, having taken over his father-in-law's ranch in 1907, strenuously objected to the proposed agreement. He demanded more benefits.<sup>90</sup>

In addition to Hoffman's objection to the proposed agreement, another speculator living on the shores of Neskonalith Lake attempted to bar the DIA's storage works project. In the spring of 1932, the Chinese Canadian owner of the Chue Ah Louie Estate in the west shore of Neskonalith Lake (today a provincial campground) complained that the new DIA dam flooded part of his land along the Neskonalith Lake shoreline. He demanded \$900 in compensation for 8.5 acres of beach land, which he had preempted in 1903 for \$5 per acre.<sup>91</sup> The DIA disagreed with Louie's contention, arguing that the new dam was no higher than the previous one. According to its investigation, the flooding had not damaged Louie's relatively valueless land. Government officials noted that the new spillway and the Neskonalith watchman, who monitored and controlled it, made the dam less likely to cause flooding. In addition, as the DIA officials discovered later, Louie's estate had been for a long time in arrears in payment for preemption; Louie was hoping to obtain the money he needed to pay off his debt, for the payment that was in arrears of more than \$1,000.<sup>92</sup> DIA officials and engineers from the Dominion Water Power and Hydrometric Bureau who analyzed the impact of the dam on the Louie estate unanimously recommended buying the entire property to settle Louie's claim.<sup>93</sup> This was not accomplished until 1939 when Louie died.<sup>94</sup>

## CONCLUSION

These entangled stories of water conflicts among the Secwepemc people, settlers, federal officials, provincial judges, and provincial authorities have demonstrated the very complex relations of the four parties, each of which represented different interests. Together they show that the anatomy of Native water rights in this context defies a simple characterization of the nature of Native water struggles in the dry belt

of British Columbia. The anatomy also defies any winner-loser analogy. It was a complex episode in which the various parties advanced competing agendas, creating the localized and heterogeneous culture of Native water rights.<sup>95</sup> At one point, federal and provincial authorities had reached common ground in recognizing the priority rights of the Kamloops Secwepemc, but the ranching company and the provincial court rejected it. We also have seen the strange alliance that the ranching company and the DIA officials forged, even though the Secwepemc people persistently expressed their opposition to the use of their water by the company. Meanwhile, the Kamloops and Neskonlith people actively pursued their interests under the strong leadership of band chiefs. They sought to retain control of irrigation matters in order to maintain their self-governing rights.

After World War II, agricultural life on reserves underwent a gradual transition. By the end of the 1940s, many Neskonlith and Kamloops people had stopped using the ditches they had constructed during the 1920s and 1930s. Although William Pierrish vigorously led his people in the construction of the irrigation system connecting Bear Creek, Neskonlith Lake, and Adams Lake in the 1930s, the ditch soon fell into disuse. In 1949, George Manuel made an effort to restore it in order to reinvigorate farming on the reserve, but he could not interest his people in the idea. A key reason was that increasing industrial development, as well as expansion of neighboring towns, drew people away from the reserve.<sup>96</sup> Nevertheless, problems with water rights affect the Neskonlith people to this day.

In the meantime, the Western Canadian Ranching Company and Hoffman's ranch ceased operations. Soon after the death of George Hoffman in 1944, the Hoffmans sold their ranch. As of 2002, the current owner of the Hoffman ranch, which is located near the western boundary of the Neskonlith Reserve Number 1 across Neskonlith Creek, was still in conflict with the Neskonlith water users over their rights to the creek and Neskonlith Lake.<sup>97</sup> The Western Canadian Ranching Company sold its holding of the old Harper ranch in 1947. After various families briefly owned the Harper ranch during the latter half of the twentieth century, the Kamloops Band purchased 44,000 acres of the ranch for \$6.9 million in 1988. In 2000, the band acquired full ownership of the ranch and all of its assets.<sup>98</sup> In this way the Secwepemc people are now gradually "reclaiming" their rights, although the underlying legal rights issues pertaining to water on Native reserves remain unresolved.

#### N O T E S

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able comments on this article. Arthur Manuel of the Neskonlith Band also provided valuable insights on the manuscript. Elder Jones William Ignace and

Henry Saul gave me valuable information about the Chu Ah Louis Estate.

- 1 Chief Louis was a powerful figure and had been the chief of the band since 1862 or earlier. About two years after this commission hearing, he passed away. His death was reported as "one of the notable events of the year" by Indian agents in 1916 ("Annual Report of the Department of Indian Affairs," in Canada, Department of Indian Affairs, *Sessional Papers*, 1917, 108).
- 2 In 1914, the commissioners were Nathaniel W. White (chairman), James A. J. McKenna, Saumarez Carmichael, James P. Shaw, and Day H. Macdowall. For more detailed discussion of the commission and the history of its proceedings, see chapter 8 of Cole Harris's *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: University of British Columbia Press, 2002).
- 3 When Prime Minister Wilfred Laurier visited Kamloops in 1910, Native leaders from the interior of British Columbia submitted a memorial. This document clearly demonstrates their opposition to the reserve system as a means to solve land disputes between Natives and non-Natives.
- 4 Royal Commission on Indian Affairs for British Columbia, "Report re: Indian Water Rights and Records in B.C.," RG 10, vol. 11026, file WR 1, 74 and 76.
- 5 H. Gibbons's report is found in RG 10, vol. 11026, file WR 1. In 1914, William Pierrish's brother François had been elected chief of the Neskonlith Band since 1903. After returning from World War I, William became more committed than his brother to overseeing irrigation farming on the reserve. William soon became elected chief and increased his interests in irrigation farming. See Peter McFarlane, *Brotherhood to Nationhood: George Manuel and the Making of the Modern Indian Movement* (Toronto: Between the Lines, 1993), 26–27.
- 6 In doing so, the acts replaced the role of the commissioner of lands and works.
- 7 The British Columbia Railway Belt was created after British Columbia joined Confederation in 1871. British Columbia subsequently conveyed land to the Dominion government for the construction of the Canadian Pacific Railway, extending twenty miles from both sides of the line. The Dominion held the exclusive jurisdiction over the Belt, including rights to natural resources, until 1930. The Railway Belt Water Acts of 1912 and 1913, however, provided that the province had power to administer water rights within the Belt under the provincial Water Act. See *Railway Belt Water Act*, 1912, 2 Geo. 5, c. 47; *Railway Belt Water Act*, 1913, 3–4, Geo. 5, c. 45.
- 8 The history of the federal-provincial jurisdictional debate over Native water rights in British Columbia is one of the most important Native water-rights issues. Legal scholar Nigel Bankes discusses the roles of the Board of Investigation in these issues. See Bankes, "The Board of Investigation and the Water Rights of Indian Reserves in British Columbia, 1909 to 1926," in *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, ed. Kerry Abel and Jean Friesen (Winnipeg: University of Manitoba Press, 1991), 219–45. I have dealt with this history with more detail and historical emphasis in chapter 3 of my PhD dissertation, "Reclaiming Indian Water Rights: Dams, Irrigation, and Indian Water Rights in Western Canada, 1858–1930"

- (University of British Columbia, 2003).
- 9 J. N. Ellis to Duncan Campbell Scott, 14 October 1919; Ellis to Scott, 9 December 1919; Ellis to Scott, 15 June 1920, RG 10, vol. 3660, file 9755-4.
  - 10 A. S. Williams to Duncan Campbell Scott, 27 July 1920, RG 10, vol. 3660, file 9755-4.
  - 11 W. E. Ditchburn to T. D. Pattullo, 10 October 1921, RG 10, vol. 3660, file 9755-5.
  - 12 *Statutes of British Columbia*, 1921, 12 Geo. 5, c. 19. See also Bankes, "The Board of Investigation and the Water Rights of Indian Reserves in British Columbia, 1909–1926" and Union of British Columbia Indian Chiefs, *Indian Water Rights in British Columbia: A Handbook* (Vancouver: Union of British Columbia Indian Chiefs, 1991).
  - 13 Sarah Carter, "Two Acres and a Cow: 'Peasant' Farming for the Indians of the Northwest, 1889–1897," in *Sweet Promises: A Reader in Indian-White Relations in Canada*, ed. J. R. Miller, 353–77 (Toronto: University of Toronto Press, 1991).
  - 14 See, for example, John Shurts, *Indian Reserved Water Rights: The Winters Doctrine in Its Social and Legal Context, 1880s–1930s* (Norman: University of Oklahoma Press, 2000); Michael Massie, "The Defeat of Assimilation and the Rise of Colonialism on the Fort Belknap Indian Reservation, 1873–1925," *American Indian Culture and Research Journal* 7, no. 4 (1984): 33–49.
  - 15 See, for example, Bain Attwood, *The Making of the Aborigines* (Sydney, Australia: Allen and Unwin, 1989), 81–103.
  - 16 David L. Howell, "Making 'Useful Citizens' of Ainu Subjects in Early Twentieth-Century Japan," in *Journal of Asian Studies* 63, no. 1 (February 2004): 5–29; and Richard Siddle, *Race, Resistance, and the Ainu of Japan* (London: Routledge, 1996), especially chapter 3.
  - 17 Legal scholar Richard Bartlett extensively wrote the possibility of extending the U.S. *Winters* decree to Canada's Native peoples in his *Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian Water Rights* (Calgary: Canadian Institute of Resources Law, 1988). However, his book is based mainly on case-law traditions and does not provide a detailed study on the history of Native water rights.
  - 18 Canada, Department of Indian Affairs, "Annual Report of the Department of Indian Affairs," *Sessional Papers*, 1898, 426–27.
  - 19 The word "Neskonlith" came from chief's name "Nisquamlth" or "Nas-canilth." The Department of Indian Affairs tended to write "Naskantlines" (in the late nineteenth century) or "Neskainlith" (in the early twentieth century), while officials in the Dominion Water Power Branch wrote "Neskonlith." In the late nineteenth century, the DIA also used "Halaut" for the Neskonlith Band. Today, the latter spelling is officially used.
  - 20 The other case, *Attorney General of Canada v. Louis Crosina*, initially started its water disputes in 1906. Nigel Bankes traces its litigation history in "The Board of Investigation and the Water Rights of Indian Reserves in British Columbia," in *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, ed. Kerry Able and Jean Friesen (Winnipeg: University of Manitoba Press, 1991), 235–39.
  - 21 The Secwepemc territory encompassed about 180,000 square kilometers of present-day British

- Columbia's southern interior. It included Ashcroft, Kamloops, and Windermere (in the Rockies) in the south, the Fraser River valley from Pavillion to Williams Lake–Soda Creek in the west, Quesnel Lake and Cariboo mountains in the north, and the Rocky Mountain ranges in the east (Marianne Boelscher Ignace, "Shuswap," in *Handbook of North American Indians: Plateau*, ed. Deward E. Walker [Washington, DC: Smithsonian Institution Press, 1998], 12:204).
- 22 Ibid., 206–9. The Secwepemc and other neighboring interior Natives traditionally harvested and ate local "Indian potatoes" or western spring beauties (*Claytonia lanceolata*). The taste of its corms, when cooked, resembled potatoes (Roberta Parish, Ray Coupé, and Dennis Lloyd, eds., *Plants of Southern Interior British Columbia* [Vancouver: British Columbia Ministry of Forests and Lone Pine Publishing, 1996], 258). Simon Fraser noted this root when descending the Fraser River in 1808 (W. Kaye Lamb, ed., *The Letters and Journals of Simon Fraser, 1806–1808* [Toronto: Macmillan Company of Canada, 1960], 83). Recognizing the strategic importance of the Kamloops area as a key location along the trade route connecting the Columbia and Fraser River basins, the Pacific Fur Company and the North West Company established She-waps post and Fort Kamloops in 1811 and 1812, respectively. Perhaps it was around this time that the fur traders or neighboring Native peoples from the Columbia River or the Okanagan valley introduced potatoes to them as part of trading goods, although the question as to where the Secwepemc people originally acquired them is not yet resolved. John Jacob Astor's Pacific Fur Company competed with the North West Company's Kamloops operation only for about a year. The North West Company, in turn, merged with the Hudson's Bay Company in 1821 (Richard Somerset Mackie, *Trading beyond the Mountains: The British Fur Trade on the Pacific, 1793–1843* [Vancouver: University of British Columbia Press, 1997], 329).
  - 23 Tod went to Fort Kamloops to take over the position of Samuel Black, who had been killed, allegedly by a Native person. Tod constantly pursued this suspect without success. Robin Fisher, *Contact and Conflict: Indian–European Relations in British Columbia, 1774–1890*, 2nd ed. (Vancouver: University of British Columbia Press, 1992), 38; John Tod, "Trading Experiences on the Thompson River, 1841–1843," University of British Columbia Special Collections.
  - 24 Tod, "Trading Experiences."
  - 25 Walter Moberly to Joseph Trutch, 22 December 1865, in British Columbia, *Papers Connected with the Indian Land Question, 1850–1875* (hereafter *PILQ*) (Victoria: Government Printer, 1875), 33.
  - 26 According to Marianne Ignace, the population of the Secwepemc before 1862 was between seven thousand and nine thousand. After the outbreak of the small-pox epidemic, the population constantly declined and had fallen to about two thousand by 1900. The number of bands decreased from twenty-five to seventeen. Ignace, "Shuswap," 216.
  - 27 R. C. Moody to W. G. Cox, 6 March 1861, *PILQ*, 21.
  - 28 Cox later found out that when these chiefs placed stakes themselves they claimed more area for their reserves than what Cox marked out in 1862 (Cox to Nind, 16 July 1865, *PILQ*, 31; Moberly to Trutch, 22 December 1865, *PILQ*, 33).
  - 29 "Copy of paper given by Mr. Cox to Gregoire and son, Nisquamilth,"

- 31 October 1862 and "Copy of Notice in possession of Petite Louis, Chief of Kamloops Indians," 31 October 1862, both in *PILQ*, 32.
- 30 Phillip Henry Nind in Lytton to the colonial secretary, 17 July 1865, *PILQ*, 29.
- 31 *Ibid.*
- 32 Trutch to the colonial secretary, 20 September 1865, *PILQ*, 30.
- 33 For example, see Olive Patricia Dickason, *The Myth of the Savage and the Beginning of French Colonialism in the Americas* (Edmonton: University of Alberta Press, 1984); Richard Drinnon, *Facing West: The Metaphysics of Indian-Hating and Empire-Building* (Minneapolis: University of Minnesota Press, 1980); Richard Slotkin, *Regeneration through Violence: The Mythology of the American Frontier, 1600–1860* (Hanover, NH: Wesleyan University Press, 1973).
- 34 Harris, *Making Native Space*, 45–46; James A. Montmarquet, *The Idea of Agrarianism: From Hunter-Gatherer to Agrarian Radical in Western Culture* (Moscow: University of Idaho Press, 1989), 6–12; Richard Pipes, *Property and Freedom: The Story of How through the Centuries Private Ownership Has Promoted Liberty and the Rule of Law* (New York: Alfred A. Knopf, 1999), 5; and Barbara Arneil, *John Locke and America: The Defense of English Colonialism* (Oxford: Clarendon Press, 1996), 1–19.
- 35 Trutch to the colonial secretary, 17 January 1866, *PILQ*, 32–33. Contrary to Trutch's idea, Douglas believed that the colonial government should have provided Native people an equal opportunity to agriculture and other economic activities (Harris, *Making Native Space*, 30–44).
- 36 Moberly to Trutch, 22 December 1865, *PILQ*, 34.
- 37 Edgar Dewdney to the chief commissioner of lands and works, 8 November 1866, *PILQ*, 37–38. Dewdney would later become a member of the House of Commons, Indian commissioner, the first governor of the North-West Territories, and the superintendent general of Indian affairs.
- 38 From 1879 to 1888, Dewdney served as Indian commissioner for Manitoba and the North-West Territories and became largely involved in treaty-making processes. See Arthur J. Ray, *I Have Lived Here since the World Began: An Illustrated History of Canada's Native People* (Toronto: Lester Publishing and Key Porter Books, 1996), 215–17; Margaret A. Ormsby, *British Columbia: A History* (Toronto: Macmillan of Canada, 1958), 538.
- 39 Trutch initially believed that the Natives would not be able to use land for agriculture or any other industrial purposes. For example, commenting on the reduction of reserves for the Secwepemc and other Natives, he wrote to the colonial secretary in 1867: "The Indians have really no right to the lands they claim, nor are they of any actual value or utility to them, and I cannot see why they should either retain these lands to the prejudice of the general interests of the Colony, or be allowed to make a market of them either to Government or to individuals," *PILQ*, 42.
- 40 Randy Bouchard and Dorothy Kennedy, eds., *Shuswap Stories* (Vancouver: CommCept Publishing, 1979); and James A. Teit, *The Shuswap*, vol. 2 of the *Jesup North Pacific Expedition: Memoir of the American Museum of Natural History*, New York, ed. Franz Boas (Leiden and New York: E. J. Brill and G. E. Stechert, 1909), 598–99.
- 41 On 8 July 2001, the Council of Canadians organized the Inter-

- national Conference on Water for People and Nature. It endorsed the Indigenous Declaration on Water. The document was circulated by the Shuswap Nation Tribal Council.
- 42 Chief Loon died in 1903. He had been chief since 1880. Under his leadership, the Neskonlith people had expanded agricultural production. See "Annual Report of the Department of Indian Affairs," in Canada, Department of Indian Affairs, *Sessional Papers*, 1904, 280.
- 43 "Report of the Superintendent of Indian Affairs," in Canada, Department of Indian Affairs, *Sessional Papers*, 1873, 6.
- 44 In July 1877, Lenihan supplied eighteen packages of assorted seeds to the "Naskantlines" people and forty-eight packages to the Kamloops people ("Annual Report of the Department of Indian Affairs in Canada," in Canada, Department of Indian Affairs, *Sessional Papers*, 1878, 51, 160–61; and *Ibid.*, 1879, 78.
- 45 "Annual Report of the Department of Indian Affairs," in Canada, Department of Indian Affairs, *Sessional Papers*, 1898, 431–32.
- 46 *Ibid.*, 1899, 592–93.
- 47 According to DIA records, James Ross and George Hoffman each held a water record dated in 1869. Ross came to the area in the mid-1860s, but Hoffman obtained the record in the beginning of the twentieth century (possibly 1907) when he took over the ranch on the north side of the South Thompson owned by his father-in-law, Thomas Woodside Graham. See E. H. Tredcroft, "Report re: Additional Irrigation Supply for Niskonlith Indian Reserve No. 1 and Adams Lake Indian Reserves Nos. 4 and 4A," RG 10, vol. 7605, file 12154-10, pt. 1; and Joyce Dunn, *A Town Called Chase* (Penticton, BC: Theytus Books, 1986), 60–66.
- 48 Although there is no record of the Kamloops Natives objecting to the water records, it was a highly possible scenario that under the leadership of Chiefs Louis and Nesquamlth they would have vehemently resisted such grants had they known of them. In 1868, the Secwepemc on the Soda Creek Reserve near Williams Lake were strongly determined to fight against claims by John Adams, who had posted his notices to claim Native lands. Observing the increasing tension among the Secwepemc people at St. Joseph's Mission, the Rev. McGucking warned Trutch, "I already see that the Indians of Soda Creek would sooner risk their lives than abandon their native soil" (The Rev. McGucking to Trutch, 12 May 1868, *PILQ*, 48).
- 49 Ashdown H. Green's report on the water records related to Paul Creek, 10 May 1906, RG 10, vol. 7606, file 12154-12, pt. 1.
- 50 W. E. Ditchburn to D. C. Scott, 2 May 1921, RG 10, vol. 3660, file 9755-4; and *PILQ*, 38–39.
- 51 *Western Canadian Ranching Co. v. Department of Indian Affairs*, 29 April 1921, RG 10, vol. 3660, file 9755-4.
- 52 In order to allow Natives to hold land under preemption, Douglas spelled out four major conditions. First, Native individuals must reside continuously on their farms. Second, they must build a house of squared logs with shingled roofs, not less than thirty feet by twenty feet, with side walls ten feet high. Third, they must clear, enclose, and cultivate in the first year two acres of woodland or five acres of prairie land. Until the end of the fifth year, they must cultivate three acres of woodland or six acres of prairie land. Finally,



these Natives must obtain consent of the governor to convey such land (William A. G. Young to R. C. Moody, 2 July 1862, *PILQ*, 25).

- 53 Under section 2 of the Gold Fields Act (1858) and later under the Ordinance to amend the Laws relating to Gold Mining (1867), the governor of British Columbia appointed chief gold commissioner and gold commissioners, who assumed jurisdiction over mining and possessed power as judges of the Mining Court to resolve disputes over land and water or regulate mining operations. See *Ordinances and Proclamations of the Colony of British Columbia*, 1867, 30 Vict., c. 123.
- 54 For example, the 1870 Land Ordinance has no provision related to the Natives (*ibid.*, 1870, 33 Vict., no. 144, "An Ordinance to Amend and Consolidate the Laws Affecting Crown Lands in British Columbia," sections 30–37).
- 55 *Western Canadian Ranching Co. v. Department of Indian Affairs*, D.L.R. 361, W.W.R., 835. See also RG 10, vol. 3660, file 9755-4. The case report was included in this file.
- 56 Diana Jolly, ed., *First Nations' Water Rights in British Columbia: A Historical Summary of the Rights of the Neskonalith First Nation* (Victoria: British Columbia Ministry of Environment, Lands, and Parks; Water Management Branch, 2001), 3.
- 57 Until the implementation of the Water Act of 1914, officials had used three systems almost interchangeably in measuring the quantity of water in British Columbia. The miner's inch system originated with the ditch diversion of water for mining purposes. The miners measured the rate of discharge of water running through an orifice one inch square under a standard head. A flow of 0.028 cubic feet per second is equal to one miner's inch. The other two systems were cubic foot per second (374 gallons per minute) and acre-foot per annum. For the first time, the Water Act distinguished the different uses of these systems for specific purposes. The former system was used to measure domestic supply, while the latter became the indication for irrigation supply. One acre-foot is equal to the quantity of water sufficient to cover one acre of land to the depth of one foot (*Water Act*, 1914, 4 Geo. 5, c. 81).
- 58 *Western Canadian Ranching Company v. Department of Indian Affairs*, (1921) 2 W.W.R. 834-5.
- 59 Jolly, ed., *First Nations Water Rights in British Columbia*, 3–4.
- 60 Because of their earliest use of gang ploughs, Harper's ranch became known as the Gang Ranch. This extended to substantial areas of the Secwepemc territory (<http://wlake.com/genweb/gang.html>).
- 61 J. W. MacKay to A. W. Vowell, 13 July 1891, RG 10, vol. 7606, file 12154-12, pt. 1.
- 62 *Ibid.*
- 63 *Ibid.*
- 64 *Ibid.*
- 65 *Ibid.*
- 66 *Ibid.*
- 67 According to "Consumer Price Index for Canada, classified by main components, 1913 to 1975," the general consumer price for \$1 in 1913 is approximately \$4.83 in 1975. The rough estimate of \$2,500 in 1913 is equivalent to \$12,075 in 1975. In 1905, the average annual earnings for supervisory and office employees in Canada was \$846. See F. H. Leacy, M. C. Urquhart, and K. A. H. Buckley, eds., *Historical Statistics of Canada* (Ottawa:



- Canadian Government Publishing Centre, 1983), D 280–87, K8–18.
- 68 C. A. Holland to A. W. Vowell, 9 February 1906, RG 10, vol. 7606, file 12154-12, pt. 1.
- 69 Ashdown H. Green to Vowell, 29 May 1906, RG 10, vol. 7606, file 12154-12, pt. 1.
- 70 Vowell to Pemberton, 16 June 1906, RG 10, vol. 1282 N.A.C.
- 71 MacKay to Vowell, 13 July 1891, RG 10, vol. 7606, file 12154-12, pt. 1.
- 72 Williams Lake Indian Reserve Number 1 or Sugarcane Reserve had used water from Five Mile Creek (south of 150 Mile House) by using a water record dated 1870. Crosina argued that the Indian record was null and void because it had never been authorized by the lieutenant governor in council, although the assistant water commissioner recognized it. In 1906, the county court in Ashcroft ruled against the Sugarcane people, allowing Crosina to keep two storage dams while also allowing the Natives to keep one. The dispute did not end there. The Crosina case continued to affect the Secwepemc people at Sugarcane in the 1920s ("Louis Crosina dispute PTA," RG 10, vol. 11301, series C-II-4). According to this author's informant, even in the 1980s the use of water from the same creek again became the focus of a water dispute between the Indians and the 153 Mile Ranch.
- 73 "Report re: Indian Water Rights and Records in B.C.," RG 10, vol. 11026, WR 1, 78–80, 111–12; Smith to Assistant Deputy and Secretary of the DIA, 27 February 1918, and "Kamloops Indians issued their resolution," 5 December 1924, RG 10, vol. 7606, file 12154-12, pt. 2. Another important cause of the water shortage for the Kamloops Natives from Paul Creek was the seepage problem. The earthen ditches, which diverted water from Paul Creek, were constructed without a proper survey by engineers. In addition to seepage, those ditches often could not hold water, losing considerable amounts. Major A. McGraw, inspector of Indian Agencies in Vernon, to Duncan C. Scott, 22 February 1918, RG 10, vol. 7606, file 12154-12, pt. 2.
- 74 John F. Smith to the secretary of the DIA, 9 August 1920, RG 10, vol. 7606, file 12154-12, pt. 2.
- 75 British Columbia Water Rights Branch, "Determination and Order for a Conditional License for Irrigation Purposes," RG 10, vol. 3660, file 9755-4.
- 76 *Western Canadian Ranching Co. v. Department of Indian Affairs*, 60 D.L.R. 360–63. The case was also reported in 2 W.W.R. (1921) 834. Frederick J. Fulton of Kamloops represented the company. His role in this case might have been important. Having led the provincial Irrigation Commission in 1907, Fulton had influential roles in forming provincial water laws and establishing the Board of Investigation. Similar to J. E. Lane, solicitor for the Board of Investigation, Fulton's position was to nullify the Indian Reserve commissioners' power to grant water rights to the Natives (W. E. Ditchburn to D. C. Scott, 2 May 1921, RG 10, vol. 3660, file 9755-4).
- 77 From Ditchburn to Pattullo, 28 August 1923, RG 10, vol. 3660, file 9755-4.
- 78 Ibid.
- 79 Dominion Water Power Branch, "Progress Report July 1st to December 31st, 1923: Indian Water Rights Investigation," RG 10, vol. 3661, file 9755-7.

- 80 Petition, 8 February 1920, RG 10, vol. 7606, file 12154-12, pt. 2.
- 81 According to "Consumer Price Index for Canada, classified by main components, 1913 to 1975," the general consumer price for \$1 in 1922 is approximately \$3.162 in 1975. The rough estimate of \$20,000 in 1922 is equivalent to \$63,240 in 1975. See Leacy, Urquhart, and Buckley, eds., *Historical Statistics of Canada*, K8-18.
- 82 Mathew Balls, assistant engineer, to R. G. Swan, chief engineer, Dominion Water and Power Branch, 27 May 1924, RG 10, vol. 7606, file 12154-12, pt. 2.
- 83 "Brief Prepared by the Aboriginal Native Rights Regional Committee of the Interior Tribes of British Columbia," Joint Committee of the Senate and the House of Commons on Indian Affairs, *Minutes of Proceedings and Evidence*, no. 1, 1 April and 4 May (Ottawa 1960), 600.
- 84 McFarlane, *Brotherhood to Nationhood*, 25.
- 85 "Annual Report of the Department of Indian Affairs," in Canada, Department of Indian Affairs, *Sessional Papers*, 1923, 38.
- 86 The Neskonalith chiefs had made this type of request several times as early as 1911. See Indian Agent W. Neild to Assistant Deputy and Secretary of the DIA J. D. McLean, 2 September 1911; and Ewen MacLeod to W. E. Ditchburn, 22 October 1929, RG 10, vol. 7605, file 12154-10, pt. 1.
- 87 Chief Etienne Narcisse of the Sahhaltkum Band, Band councillor, and many of the Band members later held a meeting and strongly endorsed Neskonalith's request.
- 88 E. H. Tredcroft, "Report re: Additional Irrigation Supply for Niskonalith Indian Reserve No. 1 and Adams Lake Indian Reserves Nos. 4 and 4A," 2 April 1931, 21, RG 10, vol. 7605, file 12154-10, pt. 1.
- 89 Ewen MacLeod to secretary of the DIA, 23 January 1931, RG 10, vol. 7605, file 12154-10, pt. 1.
- 90 DIA engineer to Duncan Scott, 16 October 1931; agent W. J. Ferguson to W. E. Ditchburn, 21 December 1931; Ferguson to Ditchburn, 1 June 1932; G. W. Black, barrister-at-law, to the Indian commissioner for British Columbia, 19 October 1933; RG 10, vol. 7605, file 12154-10, pt. 2.
- 91 Although DIA records persistently show that William Louie was the major contestant of the issue, Joyce Dunn's book *A Town Called Chase* shows William Louie was the son of Ah Louie who passed away in 1956. This date is much later than what the DIA records say (1939). If Dunn's information is right, the major contestant could have been Ah Louie. William Louie operated a stern-wheeler from Savona on Kamloops Lake to Enderby on Spallumcheen River for many years (Dunn, *A Town Called Chase*, 61).
- 92 Cornwall and Archibald Barristers, etc., to G. S. Pragnell, inspector of Indian Agencies, 7 December 1932; Ferguson to Ditchburn, 20 May 1932; Ditchburn to Ferguson, 23 May 1932; Chas. C. Perry, assistant Indian commissioner for British Columbia, to DIA, 26 January 1933; C. E. Webb, district chief engineer of the Dominion Water Power and Hydrometric Bureau, to J. T. Johnston, director of the Bureau, 3 February 1934, RG 10, vol. 7605, file 12154-10, pt. 2.
- 93 The question remains today why this piece of land or the former Chu Ah Louis Estate is the off-reserve non-Native campground. One Neskonalith man was arrested on this campground in 2003 for

- "illegally" occupying this land without payment. His driver's license was confiscated.
- 94 In this dispute, Frederick Fulton represented Louie's interests and argued that the DIA raised the height of its dam, which caused the flood of Louie's estate. The comptroller of water rights did not accept this case, ruling against Louie and Fulton in 1937. See Fulton and Morley, barristers, to comptroller of water rights, the Board of Investigation, 5 May 1937; Webb to Johnston, 31 May 1937; "The Statement re: Claim of William Louie et al. for alleged flooding of lands on Niskonlith Lake, B.C.," 10 February 1938; Webb to Johnston, 10 March 1938; W. J. F. Pratt, private secretary to T. J. O'Neill, MP, House of Commons, 30 March 1938; Webb to Newman Taylor, superintendent of lands, 8 June 1939; Webb to T. S. Mills, chief engineer of the Surveys and Engineering Branch, Department of Mines and Resources in Ottawa, 13 June 1939; RG 10, vol. 7606, file 1254-10, pt. 3.
- 95 My conclusion corresponds with the colonial discourses of Edward Said, Nicholas Thomas, and Homi Bhabha. See Edward Said, *Culture and Imperialism* (New York: Vintage, 1994); Nicholas Thomas, *Entangled Objects: Exchange, Material Culture, and Colonialism in the Pacific* (Cambridge, MA: Harvard University Press, 1991) and *Colonialism's Culture: Anthropology, Travel, and Government* (Princeton, NJ: Princeton University Press, 1994); Homi K. Bhabha, *The Location of Culture* (London: Routledge, 1994).
- 96 McFarlane, *Brotherhood to Nationhood*, 40–41. According to my personal conversation with Arthur Manuel, the second son of George, Anthony August and George Manuel remained to be productive farmers on the Neskonlith Reserve in the 1950s.
- 97 In August 2002, Janice Billy, Ska-hiish Manuel, and Jennifer Dick of the Neskonlith Band kindly helped me examine the contested diversion sites at both Neskonlith Creek and Neskonlith Lake dam. The current shortage of rain, logging operations in the mountains through which Neskonlith Creek runs, and above all, the large amount of water diversion by the current ranch owner have all contributed to the dramatic depletion of creek water available on the reserve for growing organic vegetables.
- 98 Keith Matthew, "Kamloops Indian Band Purchases Historic Harper Ranch," *Aboriginal Newspaper of British Columbia and Yukon*, November 14, 1999, <http://www.ammsa.com/raven/NOV99.html#anchor3320823>.