

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

?a?am

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	January 6, 2017	D E P O S E
David Burnside		
Ottawa, ON	46	

Claimant

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Indian Affairs and Northern Development

Respondent

**NOTICE OF APPLICATION OF THE RESPONDENT REGARDING THE
ADMISSIBILITY OF EXPERT EVIDENCE OF RYAN BLAAK**

BY: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
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RELIEF SOUGHT:

TAKE NOTICE THAT, pursuant to the Endorsement of the Tribunal dated January 3, 2017, an application will be made on behalf of the Respondent (Applicant, Her Majesty the Queen in Right of Canada) ("Canada"), before the Specific Claims Tribunal at a date to be scheduled for the following relief:

1. An Order, pursuant to Rule 29 of the *Specific Claims Rules of Practice and Procedure*, that the expert report, "History of the St. Eugene Mission Farm Lands", prepared by Ryan Blaak, dated September 22, 2016, (the "Blaak Report") is not admissible as expert evidence in this proceeding; and
2. In the alternative, an Order pursuant to section 13(b) of the *Specific Claims Tribunal Act*, striking the following from the Blaak Report:
 - a. Any analysis and conclusions beyond Mr. Blaak's scope of expertise, including opinions on archaeology, case law, or the adequacy of the pre-emption land descriptions and land survey process;
 - b. Any conclusions of fact or law or both;
 - c. Any conclusions on the issues to be decided by the Tribunal;
 - d. Any conclusions based on unreliable, non-expert hearsay sources; and
 - e. Any conclusions based on the selective adoption of analysis and conclusions from secondary sources where Mr. Blaak has not independently researched the underlying historical documents;

as set out in proposed redacted red-lined Blaak Report, attached hereto as Appendix "A" and as otherwise redacted by the Tribunal.

FOUNDATIONS:

1. See Respondent's (Applicant's) Memorandum of Fact and Law.

LEAVE:

1. Leave to file the application was granted by the Tribunal pursuant to paragraph 6 of the Endorsement dated January 3, 2017.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIALS:

1. This Notice of Application and the Respondent's (Applicant's) Memorandum of Fact and Law dated January 6, 2017;
2. The pleadings and proceedings had and taken herein; and
3. Such further and other materials as counsel may advise and the Tribunal permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: Jan. 6, 2017


ATTORNEY GENERAL OF CANADA

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Per: James M. Mackenzie
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Solicitor/counsel for Her Majesty the Queen
in right of Canada

APPENDIX A

EXPERT REPORT

History of the St. Eugene Mission Farm Lands

September 22, 2016

Submitted to:

**Callison & Hanna
Barristers & Solicitors
2784 Alamein Avenue
Vancouver, BC
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EXPERT REPORT

History of the St. Eugene Mission Farm Lands

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SUMMARY

This Expert Report had been prepared at the request of the ʔaąam¹ (formerly known as the St. Mary's Indian Band) and Callison & Hanna concerning:

ʔaąam's allegation that Canada failed to reserve lands for ʔaąam that ʔaąam habitually used and occupied prior to and during the establishment and operation of the St. Eugene Mission run by the Oblates (the "Mission Farm Lands"). The Mission Farm Lands consist of portions of [District] Lots 1, 2, 3 and 1063 [Kootenay District]. The Mission Farm Lands comprise the former farmlands portion of the St. Eugene Mission Residential School lands. ʔaąam asserts that Canada breached its common law fiduciary duty and legal obligation by failing to:

- a. challenge the pre-emptions of the Mission Farm Lands;
- b. complete the reserve creation process relating to the Mission Farm Lands
- c. ensure that the Mission Farm Lands were surveyed as an Indian reserve and protected for the exclusive use and benefit of the Band; and
- d. acquire the Mission Farm Lands as a reserve for the Band during the operations of the school and when the school closed in 1970.

In particular, ʔaąam and Callison & Hanna requested that I prepare an Expert Report that addresses the following:

1. The pre-emption history of the Mission Farm Lands;
2. The reserve creation history in the 19th century for ʔaąam within the historical context of reserve creation in British Columbia;
3. Your [my] opinion on whether ʔaąam habitually used and occupied the Mission Farm Lands prior to and during the reserve creation process for ʔaąam;
4. The reasons for each opinion expressed; and
5. Any materials specifically relied on in support of the opinions.

This Report has been constructed using historical and contemporary documents provided by both the claimant (ʔaąam) as well as the Government of Canada in the matter of the Specific Claim Tribunal's ʔaąam v. *Her Majesty the Queen in Right of Canada* (SCT-7007-13). Where necessary I have secured and utilized both more legible or complete copies of provided documents as well as additional documents that are relevant to the focus of this Report (referred to in Report as EXP-XXXXXX).

¹ On September 11, 2015, the St. Mary's Band (formerly the Upper Kootenay) changed its name to ʔaąam [Information provided by the ʔaąam]. ~~Historically, the ʔaąam have been known as the Kootenay, Upper Kootenay Tribe, and St. Mary's Band [See Document EXP-000001]. The ʔaąam are also part of the Ktunaxa Nation [See Documents EXP-000034, EXP-000036 to EXP-000037].~~

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My opinions are based on my review and analysis of these documents in light of my experiences over the past decade working on a wide-range of Specific Claim historical research projects. ~~My opinions were also constructed using key secondary academic sources utilized in the Specific Claim Tribunal's *Akisq'nuk First Nation v. Her Majesty the Queen in Right of Canada* (SCT-7006-12). These include:~~

- ~~• Robert E. Gail, *Land, Man, and the Law: The Disposal of Crown Lands in British Columbia, 1871-1913* (Vancouver: University of British Columbia Press, 1974).~~
- ~~• Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: University of British Columbia Press, 2002).~~

~~In understanding habitual use and occupation, a very important concept to this claim, I have relied upon the on the decision of the Specific Claims Tribunal in relation to the *Kitselas First Nation v. Canada*, 2013 SCTC 1 as well as its affirmation in 2014 by the Federal Court of Appeal in *Canada v. Kitselas First Nation* (2014 FCA 150).~~

The following outlines opinions expressed in this Report:

- ~~• Those opinions related to the pre-emption history of the Mission Farm Lands which includes the inadequacy of the larger pre-emption process in British Columbia for: the protection of First Nation lands; the description and sketching of lands to be pre-empted; and the ability of First Nations peoples to pre-empt lands. Further, several areas of concern, including alleged improper conduct at the time of pre-emption, were highlighted in regard to the pre-emption of the Mission Farm Lands.~~
- ~~• Those opinions related to the history of the Reserve creation process in the 19th Century for the ʔaǰam as well as the Kootenay peoples. This includes addressing: the impact of the delay in allotting Indian Reserves in the Kootenay District until 1884; that Peter O'Reilly, Indian Reserve Commissioner, failed to address the existence of the "principal" village of the ʔaǰam that was located on the Mission Farm Lands at the time of Reserve creation; that the Reserves O'Reilly allotted in the Kootenay District in 1884 did not meet their needs and additional Reserves were required to be allotted in 1887; and that Indian Reserve Commissioner O'Reilly was a proponent of British Columbia's settler society.~~
- ~~• Those opinions related to the habitual use and occupation of the Mission Farm Lands both prior to, during, and after, the Reserve creation process. In this regard, it was concluded that there existed a variety of "actual land uses," as defined by the *Kitselas* decision, by the Ktunaxa or Kootenay peoples (which includes the ʔaǰam) in the Kootenay District, which includes the Mission Farm Lands. Further shown was that the Ktunaxa, including the ʔaǰam, used and occupied lands at the St. Eugene Mission in a historical sense as well as in the years prior to, during, and after, the establishment of the Mission. Lastly, it was established that the Ktunaxa, including the ʔaǰam, used and occupied the~~

EXPERT REPORT

History of the St. Eugene Mission Farm Lands

~~Mission Farm Lands, most notably in the existence of a “principal” village, after the St. Eugene Mission was established. In sum, this Expert Report determined that the Ktunaxa, which include the ʔaʔam, used and occupied the Mission Farms Lands and surrounding areas prior to and during the Reserve Creation process.~~

I was provided with a copy of the Code of Conduct for Expert Witnesses, as set out in the Schedule to the Federal Court Rules. I have read the Code of Conduct for Expert Witness, and I agree to be bound by (as set out in the Certificate attached to this Report in **Appendix B**).

I have read a copy of Section 88 of the Specific Claims Tribunal Rules of Practice and Procedure that sets out the information and documents required for an Expert Report.

This Expert Report has not been prepared in response or in reply to another Expert's Report.

Best Regards,



Signed: _____

Dated: September 22, 2016

Ryan Blaak

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EXPERT REPORT

History of the St. Eugene Mission Farm Lands

STATEMENT OF QUALIFICATIONS

I, Ryan Blaak, am qualified to provide this Expert Report based on my standing as a practicing historian as well as my experience conducting Aboriginal research for the past decade. In particular, this experience includes:

- My continuing work as an independent Historical Research Specialist with extensive experience (going back for over a decade) in Aboriginal research (both historical and contemporary) including those areas related to numerous land issues including, but not limited to:
 - Indian Reserves,
 - Reserve allotments [colonial and post-confederation BC],
 - Treaty entitlements,
 - Reserve Land encroachments i.e. rights-of-way [roads, railways, transmission lines, pipelines, etc.], leasing, timber extraction, flood and water control, environmental issues,
 - The history of Indian Residential Schools, and
 - The history of the Department of Indian Affairs.
- Researching and writing more than forty plus Specific Claims Historical Reports and working on various parts of sixty or more Specific Claims projects. I have also written several Schools Narratives for the Indian Residential Schools Settlement Agreement as well as for ongoing Day Schools research.
- Teaching a wide-range of university history courses over more than a decade – many of which address matters related to Aboriginal issues in Canada. In particular, I developed and taught a course on the “History of the Department of Indian Affairs” which explored issues like: the Indian Act, the Indian Reserve, the Indian Agent, Treaties (both historical and contemporary), Indian Residential Schools, the White Paper, Specific Claims, Comprehensive Claims, and Contemporary Issues.

My formal qualifications include:

- **Master of Arts, History**, University of British Columbia, November 2003
- **Bachelor of Arts, Honours History (Major)**, Trinity Western University, September 2002

For full details on my experience and qualifications please refer to my attached Curriculum Vitae (**Appendix A**).

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DESCRIPTION OF THE ST. EUGENE MISSION FARM LANDS

This Expert Report focuses on the St. Eugene Mission Farm Lands (“Mission Farm Lands”) which, for the purposes of this Report, entails District Lots 1, 2, 3, and 1063 (hereafter referred to as Lot 1, Lot 2, Lot 3, and Lot 1063). As such, any references to “Mission Farm Lands” in this Report is a reference to Lots 1, 2, 3, and 1063, in part, or in whole [Figure 1]. As will be shown in this Report, the Mission Farm Lands were acquired as follows:

- Lot 1 (160 acres): Pre-empted in 1868²; Crown Granted in 1881³
- Lot 2 (320 acres): Pre-empted in 1877⁴; Crown Granted in 1880⁵
- Lot 3 (72 acres): Pre-empted in 1878⁶; Crown Granted in 1880⁷
- Lot 1063 (208 acres): Pre-empted in 1890⁸; Crown Granted in 1896.⁹

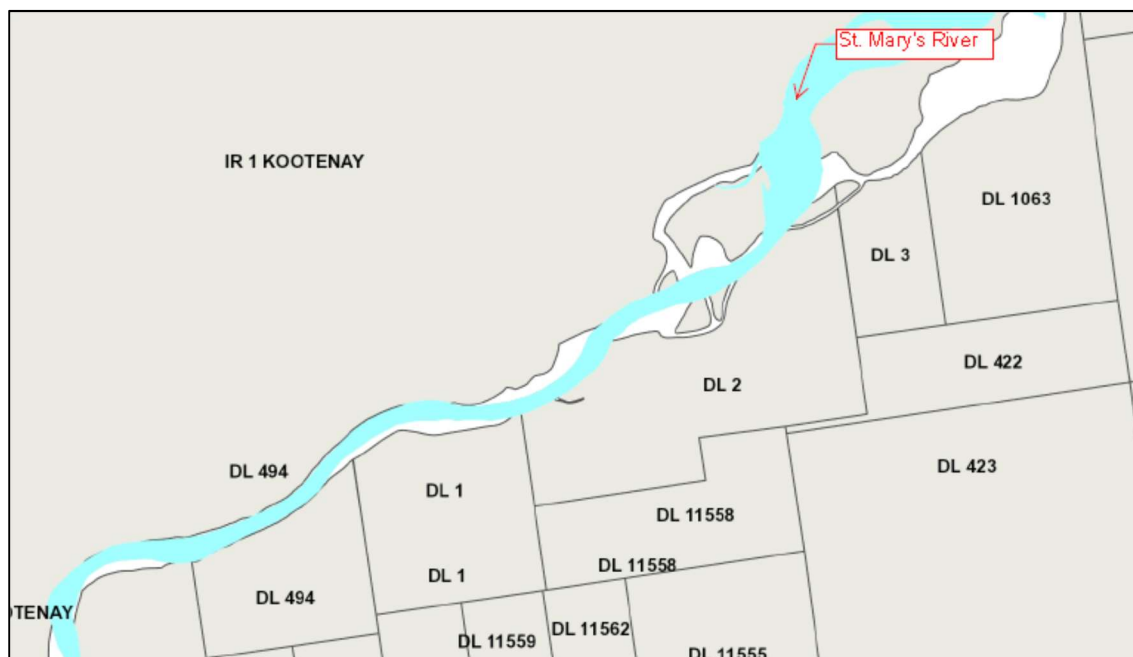


Figure 1 – Map showing lands comprising Mission Farms Lands (Lots 1, 2, 3, and 1063), dated August 2016¹⁰

² See Document CAN000713; CAN000712.

³ See Document DLSC 1-A (Tab 2 – Claimant’s First Supplemental LOD). For better copy of Sketch see Document CAN000474.

⁴ See Document EXP-000012, p. 1; and EXP-000014.

⁵ See Document ND 5 (Tab 1 – Claimant’s First Supplemental LOD). For better copy of Sketch see Document CAN000475.

⁶ See Document CAN000794; EXP-000017.

⁷ See Document CAN000507; CAN000806. For better copy of Sketch see Document CAN000476.

⁸ See Document SMT 13 (Tab 46 – Claimant’s Amended List of Documents, July 24, 2014).

⁹ See Document CAN000578 [Crown Grant]; CAN000473 [Sketch]; or SMT 14 (Tab 47 – Claimant’s Amended List of Documents, July 24, 2014).

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This definition of the “Mission Farm Lands” as comprising Lots 1, 2, 3, and 1063 was ~~also accepted by Canada in its Amended Response, dated September 26, 2014 (para. 9), as well as being~~ defined as such by ʔaǰam¹¹ (formerly known as the St. Mary’s Indian Band) and Callison & Hanna in their instructions for the creation of this Expert Report (see Summary section of the Report for further details).

Please also note that the Sisters of Providence held lands (Lots 494 and 1758) that while part of the larger St. Eugene Mission are not considered part of the “Mission Farms Lands” (Lots 1, 2, 3, and 1063) that are the focus of this Report (see section titled “Mission Lands held by Sisters of Providence” for further details).

¹⁰ See Document EXP-000035.

¹¹ ~~On September 11, 2015, the St. Mary’s Band (formerly the Upper Kootenay) changed its name to ʔaǰam [Information provided by the ʔaǰam]. Historically, the ʔaǰam have been known as the Kootenay, Upper Kootenay Tribe, and St. Mary’s Band [See Document EXP-000002]. The ʔaǰam are also part of the Ktunaxa Nation [See Documents EXP-000034, EXP-000036 to EXP-000037].~~

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History of the St. Eugene Mission Farm Lands

RESEARCH FINDINGS

1. THE PRE-EMPTION HISTORY OF THE MISSION FARM LANDS

BRITISH COLUMBIA'S POLICY REGARDING PRE-EMPTIONS

British Columbia's Policy regarding Pre-emptions and "Indian"¹² Lands

The pre-emption process, largely created by Governor James Douglas, was the result of British Columbia's need, both colonially and provincially, for settlers and the ever important revenues that they generated. ~~As such, the pre-emption was geared to settlers in order to increase the settler population by giving access to lands "on the most liberal terms" possible.¹³ Also key was the idea of "beneficial use" meaning that one had to improve or better one's claim or abandon it. With pre-emption, British Columbia "hoped to settle the country with people who would develop the natural resources to benefit themselves and to contribute indirectly to the government's income through duties, taxes, and royalties."¹⁴ British Columbia's pre-emption legislation would remain largely the same, with a few changes to be noted subsequently, from the first Colonial Proclamation in 1860 to when British Columbia joined Confederation in 1871.¹⁵~~

~~One important aspect of the British Columbia's pre-emption legislation from 1860 onward was that it did not allow the pre-emption of lands being "an Indian Reserve or Settlements." As Robert Cail contends in *Land, Man, and the Law*, this restriction would find itself in "every subsequent land law in British Columbia." An important limitation of this restriction, however, was that a formal definition of an "Indian settlement" was never provided in the context of the pre-emption of lands.¹⁶~~

~~This lack of definition is certainly problematic, though in looking at Douglas' views in relation how Reserves were to be set aside for Indians, a better understanding may be developed. As Cole Harris argued in *Making Native Space*, Douglas'~~

¹² This Report uses the word "Indian" where the historical context also utilizes it. In some cases the term "savage" is also shown as it appears in direct quotations. For current matters, the word "First Nation" is employed.

¹³ ~~See Document EXP-000029, Robert Cail, *Land, Man, and the Law: The Disposal of Crown Lands in British Columbia, 1871-1913* (Vancouver: University of British Columbia Press, 1974), pp. 1-17 [quotation from p. 17].~~

¹⁴ ~~See Document EXP-000029, Cail, *Land, Man, and the Law*, p. 14.~~

¹⁵ ~~See Document EXP-000029, Cail, *Land, Man, and the Law*, p. 17.~~

¹⁶ ~~See Document EXP-000029, Cail, *Land, Man, and the Law*, p. 176, footnote 14. Note: Cail incorrectly states that the first appearance of the clause restricting the pre-emption of "Indian settlements" was in 1865. In fact, this clause appeared from the very first Colonial Proclamation or Land Act regarding pre-emption in January 1860.~~

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~~Indian Reserve policy was liberal seeking to create “generous reserves” for the Indians of British Columbia.¹⁷~~

~~In 1858, Douglas outlined his policy for the establishment of Indian Reserves, stating that they should “in all cases include their cultivated fields and village sites, for which from habit and association they invariably conceive a strong attachment, and prize more, for that reason, than for the extent or value of the land.”¹⁸~~

~~Douglas’ 1859 Indian policy for the mainland of British Columbia, sought to provide Indians with “generous reserves” that were to be “to the extent of several hundred acres round each village” with such land not open to pre-emption. By 1861, Douglas instructed that “the extent of the Indian Reserves...be defined as they may be severally pointed out by the Natives themselves.”¹⁹ In 1864, Douglas, confirmed that Reserves were to embrace “village sites, cultivated fields, and favorite places of resort of the several tribes, and thus securing them against the encroachment of settlers...”²⁰~~

On January 4, 1860, the Colony of British Columbia issued a Colonial Proclamation [Land Act, 1860²¹] “to provide means whereby unsurveyed agricultural lands may be lawfully acquired by pre-emption in British Columbia...” As already noted, lands not available for pre-emption were those “being the site of an existent or proposed town, or auriferous land available for mining purposes, or an Indian Reserve or settlement [emphasis added]...” Further stipulations, in order to pre-empt “any particular plot of land,” required one to:

2. ...enter into possession thereof and record his claim to any quantity of land not exceeding 160 acres thereof...paying...the sum of eight shillings for recording such claim. Such piece of land shall be of a rectangular form, and the shortest side of the rectangle shall be at least two-thirds of the longest side. The claimant shall give the best possible description thereof to the magistrate with whom the claim is recorded, together with a rough plan thereof, and identify the plot in question by placing at the corners of the land four posts, and by stating in his description any other land marks on the said 160 acres, which he may consider of a noticeable character.
3. Whenever the Government survey shall extend to the land claims, the claimant who has recorded his claim as aforesaid, or his heirs or in case of the grant of certificate of improvement hereinafter mentioned, the assigns of such

~~¹⁷ See Document EXP 000032, Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: University of British Columbia Press, 2002), p. 34.~~

~~¹⁸ See Document EXP 000029, Cail, *Land, Man, and the Law*, p. 174. Cail quotes Douglas directly.~~

~~¹⁹ See Document EXP-000032, Harris, *Making Native Space*, pp. 34-35.~~

~~²⁰ See Document CAN000727, p. 12.~~

~~²¹ Various manifestations of such colonial/provincial Land Acts referenced in this Report were referred to, at different times, as Proclamations, Ordinances, and Acts.~~

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claimant shall, if he or they shall have been in continuous occupation of the same land from the date of the record aforesaid, be entitled to purchase the land so pre-empted at such rate as may for the time being be fixed by the Government of British Columbia, not exceeding the sum of 10s. [Shillings] per acre.

4. No interest in any plot of land required as aforesaid, shall before payment of the purchase money, be capable of passing to a purchaser unless the vendor shall have obtained a certificate from the nearest magistrate that has made permanent improvements on the said plot value 10s.

5. Upon payment of the purchase money, a conveyance of the land purchased shall be executed in favor of the purchaser, reserving the precious minerals with a right to enter and work the same in favor of the Crown, its assignees and licensees.

6. Priority of title shall be obtained by the person first in occupation, who shall first record his claim in manner aforesaid.

7. Any person authorized to acquire land under the provisions of this Proclamation, may purchase in addition to the land pre-empted...any number of acres not otherwise appropriated, at such rates as may be fixed by the Government, at the time when such land shall come to be surveyed, not to exceed 10 shillings per acre; five shillings to be paid down, and the residue at the time of survey...²²

In the coming years and decades, the rules for pre-empting would remain largely the same (key alterations will be noted subsequently). Of particular interest to this Report, in regard to the rules of pre-emption, was the requirement that pre-emptors provide a full description and sketch or plan of the land desired. ~~As Cole Harris notes, pre-emption was “a process launched with little more than a few scratched lines on a slip of paper...that, in the eyes of the settler who happened along and of the law that backed him, created enduring property rights.”²³~~

The following year, on August 27, 1861, the Colony of British Columbia issued Proclamation No. 9 known as the Pre-emption Consolidation Act [Land Act, 1861]. This Proclamation continued to restrict pre-emption to “unoccupied and unsurveyed and unreserved Crown Lands in British Columbia” with unavailable lands “being the site of an existent or proposed Town, or auriferous land available for mining purposes, or an Indian Reserve or settlement...” In comparison to 1860, the rules for pre-empting land remained largely the same in 1861, with exceptions being the reduction in the per acre price of lands to 4 shillings and 2 pence²⁴ as well as the right to pre-empt additional lands being now limited to lands “contiguous” to your original pre-emption.²⁵

²² See Document SCB 1 (Tab 1 – Claimant’s Amended List of Documents, July 24, 2014). For a complete list of all pre-emption requirements please review the full Proclamation.

²³ See Document EXP-000032, Harris, *Making Native Space*, p. 76.

²⁴ Proclamation No. 2, dated January 19, 1861, reduced the price of all unsurveyed country land to four shillings and two pence [See Document EXP-000003].

²⁵ See Document EXP-000004.

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Several years later, “An Ordinance for regulating the acquisition of land in British Columbia (No. 23), dated April 11, 1865 [Land Act, 1865], maintained that those lands not available for pre-emption were those “being the site of an existent or proposed town, or auriferous land available for gold or silver mining purposes, or an Indian Reserve or settlement...” In comparison to 1860 and 1861, the rules for pre-empting land remained largely the same with a few notable yet minor changes. The first being that the plan provided by the pre-emptor was to now be a “proper plan” (whereas before it was to be a “rough plan”). The second was that additional pre-emptions, while required to remain contiguous, were limited to 480 acres (except if one had special permission from the Governor).²⁶

On June 1, 1870, “An Ordinance to amend and consolidate the Laws affecting Crown lands in British Columbia” [Land Act, 1870], was passed by the colonial government of British Columbia. ~~This Ordinance, passed one year before BC’s entry into Confederation, was to be foundational to the next forty years of land laws in BC.~~²⁷ As with previous laws surrounding pre-emption, the 1870 Ordinance continued to limit pre-emption to “any tract of unoccupied, unsurveyed, and unreserved Crown Lands (not being an Indian settlement)...” In comparison to the Land Act, 1865, these rules for pre-empting land remained largely the same aside from the following notable alterations:

- Lands available for pre-emption were now to be limited to 320 acres in the portions of British Columbia northward and eastward of the Cascade or Coast Range of Mountains. This area included the Kootenay District of focus in this Report. In the rest of the colony 160 acres would remain the limit. Previously, all pre-emptions had been limited to a maximum of 160 acres;
- The description provided by the pre-emptor needed to be “fully described in writing” with a plan “deposited with the Commissioner [Chief Commissioner of Lands]”;
- Provided a formal definition of occupation as “a continuous bona fide personal residence of the pre-emption claim” for period of 4 years. Further, all pre-emptors were now permitted to be absent for up to 2 months per year with a special leave of up to 4 months with the permission from the Chief Commissioner of Lands and Works. A pre-emptor could also acquire a “Licence [sic] to Substitute” to allow a substitute person to act as continuous occupant for up to six months.
- Only one pre-emption claim could now be held at one time.²⁸

²⁶ See Document SCB 3 (Tab 3 – Claimant’s Amended List of Documents, July 24, 2014). For a complete list of all pre-emption requirements please review the full Ordinance.

²⁷ ~~See Document EXP-000029, *Civil, Land, Man, and the Law*, p. 19.~~

²⁸ See Document SCB 5 (Tab 6 – Claimant’s Amended List of Documents, July 24, 2014). For a complete list of all pre-emption requirements please review the full Ordinance.

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As in previous Land Acts, “An Ordinance to amend and consolidate the Laws affecting Crown Lands in British Columbia” (No. 5), dated April 22, 1875 [Land Act, 1875], continued to restrict pre-emption to “...any tract of unoccupied, unsurveyed, and unreserved Crown Lands (not being an Indian settlement)...” Section 36 of this Ordinance stated that aside from the payment of a fee, Crown Grants for pre-empted lands would not require “any payment for the land...” This was because the 1875 Land Act fell within the “Free Grant” era in British Columbia when pre-empted lands were now effectively free – attainable simply by residence and improvement.”²⁹ Aside from its place within the “Free Grant” era, the rules for pre-empting land were only slightly altered from 1870, including:

- The description provided by the pre-emptor needed to be a “full description of the land intended to be recorded” along with a “sketch plan.” In regard to both of these, the pre-emptor was to make a formal Declaration supporting their description and plan;
- In regard to the ability to have a substitute act as a continuous occupant, “Indians or Chinamen” were not allowed to act in this capacity;
- Guidelines for “Pre-emption for partnership purposes” were also now provided, stipulating:

Any number of persons, not exceeding four, uniting in partnership for the purpose of pre-empting, holding, and working land, shall be eligible to pre-empt, as a firm, an area of land to the extent to each partner in the firm of one hundred and sixty acres west, and three hundred and twenty acres east, of the Cascades. Each partner in any such firm shall, by himself or agent, represent his interest in the firm by actual residence upon some portion of the land so held by such firm; but it shall not be necessary in such case that each partner or his agent shall reside on his particular pre-emption. Partners in such firm, or their agents, may reside together on one homestead; provided such homestead be situated upon some portion of the land pre-empted and occupied by such firm. For the purpose of obtaining a Certificate of Improvement to land so pre-empted, it shall be sufficient to show to the Commissioner that improvements amounting in the aggregate to two dollars and fifty cents per acre on the whole land, has been made on some portion thereof.³⁰

“An Act to amend the ‘Land Act, 1875,’” dated April 29, 1879 and which updated Section 61, continued to affirm that the lands available for pre-emption were “Unappropriated, unoccupied and unreserved lands, the surveys of which have

²⁹ See EXP-000029, Cail, *Land, Man, and the Law*, pp. 29-30. The “Free Grant” system would be in effect from 1874 to 1879 [EXP-000029, Cail, *Land, Man, and the Law*, p. 34]. For example, Section 36 of the Land Act, 1875 stated Crown Grants would be recorded “without any payment for the land...” [See Document EXP-000009].

³⁰ See Document EXP-000009.

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been duly made and confirmed by notice in the British Columbia Gazette” with the exception of “sites of towns or the suburbs thereof, and not Indian settlements...”³¹

“An Act to amend and consolidate the Laws affecting the Crown Lands in British Columbia, dated February 18, 1884 [Land Act, 1884], maintained the restriction of pre-emption to “any tract of unoccupied and unreserved Crown lands (not being an Indian settlement).” As previously, the rule for pre-empting land remained largely the same in comparison to the 1875 Act with the major change that the “Free Grant” system was no longer in place and pre-empted lands, surveyed or unsurveyed, now cost \$2.50 per acre.³²

British Columbia’s Policy regarding Indian rights to Pre-empt Lands

The Colony of British Columbia’s Land Acts regarding pre-emption laws in 1860 and 1861 did not deny the right of pre-emption to the Indians of British Columbia. Pre-emption was open, generally, to British subjects and those taking the oath of loyalty to the Crown. Such persons could “acquire unoccupied and unreserved, and unsurveyed Crown land in British Columbia” except those, as previously noted, “being the site of an existent or proposed town, or auriferous land available for mining purposes, or an Indian Reserve or settlement...”³³

This right of Indians to pre-empt was affirmed in January 1864, when Governor Douglas, addressing the opening of the first Legislative Council, advised that Indians had “precisely the same rights of acquiring and possessing land in their individual capacity, either by purchase or by occupation under the Pre-emption Law, as other classes of Her Majesty’s subjects; provided they in all respects comply with the legal condition of tenure by which land is held in this colony.”³⁴

The 1865 Land Act continued to state that British subjects and those taking the oath of loyalty to the Crown could “acquire the right to pre-empt and hold in fee simple unoccupied and unsurveyed and unreserved Crown Lands” except those previously mentioned as restricted which included Indian Reserves or settlements.³⁵

³¹ See Document SCB 11 (Tab 20 – Claimant’s Amended List of Documents, July 24, 2014).

³² See Document SCB 14 (Tab 31 – Claimant’s Amended List of Documents, July 24, 2014).

³³ See Documents SCB 1 (Tab 1 – Claimant’s Amended List of Documents, July 24, 2014) and EXP-00004. See also EXP-000029, Cail, *Land, Man, and the Law*, pp. 177-178; and EXP-000032, Harris, *Making Native Space*, p. 36

³⁴ See Document CAN000727, p. 12.

³⁵ See Document SCB 3 (Tab 3 – Claimant’s Amended List of Documents, July 24, 2014).

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In 1866, however, “An Ordinance further to define the law regulating the acquisition of Land in British Columbia,” included a new restriction that the right to pre-empt did not extend to “Aborigines,” except with the “special permission...of the Governor...in writing.”³⁶

The 1870 Land Act, as with previous laws surrounding pre-emption, affirmed that British male subjects over eighteen could “acquire the right to pre-empt any tract of unoccupied, unsurveyed, and unreserved Crown Lands (not being an Indian settlement)...” As with the 1866 Ordinance, “Aborigines” continued to be barred from pre-empting unless they had “obtained the Governor’s special permission in writing...”³⁷

The 1875 Land Act continued to state that the right of pre-emption “shall not be held to extend to any of the Aborigines of this Continent, except to such as shall have obtained permission in writing to so record by a special order of the Lieutenant-Governor in Council.” Generally, however, the right to pre-empt was available to “[a]ny person being the head of a family, a widow, or single man over the age of eighteen years” who was a British subject or who declared the intention to become a British subject...³⁸ These restrictions on Indians ability to pre-empt would remain in effect until at least 1884.³⁹

While pre-emption was seemingly fully open to First Nations until 1866 and thereafter in a limited manner, the reality remains that it was indeed a process that was well out of the reach of the majority of First Nations in the nineteenth century. ~~As Cole Harris’ argues in *Making Native Space*, the requirements of pre-emption during the Douglas era and just beyond were “arduous,” as First Nations people faced:~~

~~...an eight shilling record fee, permanent occupation (allowing up to two months away each year), purchase after survey at a price not exceeding four shillings 2 pence an acre (not exceeding 10 shillings an acre before 19 January 1861), and improvements to the extent of ten shillings an acre (i.e., of £80 on a 160 acre pre-emption) before a certificate of improvement would be issued and a deed of conveyance obtained. More than this, Natives taking out pre-emptions were suddenly in a bureaucratic environment that assumed English language literacy, paperwork, and the rudiments of Cartesian geometry. There were descriptions to write of proposed pre-emptions, rough maps to prepare, and boundaries (laid out in straight lines oriented as closely as possible to the “cardinal points of the compass”) to indicate with marked corner posts. In the early 1860s, this was not a world that Native people could enter on their own, even were they prepared to replace traditional seasonal rounds with sedentary farming...~~

³⁶ See Document EXP-000005.

³⁷ See Document SCB 5 (Tab 6 – Claimant’s Amended List of Documents, July 24, 2014).

³⁸ See Document EXP-000009.

³⁹ See Document SCB 14 (Tab 31 – Claimant’s Amended List of Documents, July 24, 2014).

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~~For most Native people, pre-emption was still an unimaginable option...⁴⁰~~

~~Robert Cail, in his book *Land, Man and Law*, further asserted that First Nations peoples in the 1870s faced significant barriers to pre-empting from the provincial government. So while First Nations peoples were:~~

~~...also aware that under the 1870 Land Ordinance they themselves were at liberty to pre-empt large acreages after obtaining the written permission of the Lieutenant-Governor in Council. However, they also knew that the provincial government was not granting such permission, and had not been since 1872, pending location of the railway lands. Even if this had not been the case, they had a shrewd suspicion of the probable result if the chief-commissioner of lands and works received many applications for pre-emptions from Indians. Further, unless an Indian had money to purchase provisions and implements and to sustain himself over a long period of time, it is doubtful that he could have fulfilled the pre-emption residence requirements of ten months annually on the claim. In all likelihood, he would have found it necessary to work elsewhere to finance his holding. But he could not arrange for another Indian to live on his claim, since under the 1873 Land Amendment Act no one could engage an Indian to live on a pre-emption while he himself was absent.⁴¹~~

~~And as Cail further points out, though First Nations people were reportedly able to pre-empt lands, often with the help of missionaries, “all along the Fraser River up to Hope” in the early 1860s, such pre-emptions would, however, not led to concrete land ownership as no record of Crown Grants being provided to these First Nation pre-emptors were located.⁴²~~

THE PRE-EMPTION OF THE ST. EUGENE'S MISSION FARM LANDS

The Establishment and History of the St. Eugene Mission

A permanent mission in the Kootenays, St. Eugene Mission, was established in 1874 by the Order of the Oblates of Mary Immaculate and was situated on the south bank of the St. Mary's River about 6 miles from Cranbrook.⁴³

~~According to archaeological evidence, there are sites from 3000 to 5000 years old on the Mission Farm Lands.⁴⁴ Oral historical evidence states that the Mission~~

⁴⁰ See Document EXP-000032, Harris, *Making Native Space*, p. 36

⁴¹ See Document EXP-000029, Cail, *Land, Man, and the Law*, pp. 205-206.

⁴² See Document EXP-000029, Cail, *Land, Man, and the Law*, pp. 177-179.

⁴³ See Documents CAN000461, p. 1; CAN000468.

⁴⁴ See Document EXP-000031, pp. 5-6.

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Farm Lands contained permanent homes prior to the arrival of white settlers.⁴⁵ For further details on the habitual use and occupation of the Mission Farm Lands please refer to the section titled “History of Ktunaxa and ʔaʔam Use and Occupation of the Mission Farm Lands up to, and at, the establishment of the Mission,” later in this Report.

Prior to the establishment of the St. Eugene Mission by the Oblates, missionary contact with Kootenay Indians went back to 1838 when Jesuits De Mers and Blanchet met with and reportedly “baptized some of their children.” Thereafter, the Kootenay Indians continued to be visited by Jesuit Fathers from time to time and “when the first resident priests [Father Fouquet and Brother Burns] arrived among them,” reportedly “all the Indians had already been baptized into the Catholic Church.”⁴⁶ Effectively, then, prior to the establishment of the Mission, the Kootenay peoples had a well-established relationship with itinerant Catholic missionaries who did not permanently settle among their First Nation charges.

In a Letter from L. Fouquet, O.M.I., to the R. Rev. D’Herbomez, dated October 29, 1874, Fouquet advised that he had arrived in the Kootenay on October 3rd, 1874. Following a fifteen day period of information gathering and area visits, Fouquet “decided to purchase John Shaw’s farm” [for further details on Shaw’s acquisition of his farm please refer to section titled “Land Tenure History of Lot 1, Kootenay District”]. Fouquet noted that this area had been recommended as a suitable mission site by the “Jesuits, the white people, and especially the savages⁴⁷.” An attached Sketch showed Shaw’s farm as well as the surrounding lands. A list on this Sketch noted that there was: 1 current house, 2 hen houses, 3 barns, 4 new houses, and 5 barns. The lot itself, Fouquet stated, was almost entirely “fenced and cleared” and while the new house was “on the lot” the barns appear to have been outside the boundaries of Shaw’s farm. Fouquet also indicated that he planned “...to secure a further 620 acres besides the 160 that make up the [Shaw] claim” and inquired how D’Herbomez wanted him to proceed. Fouquet expressed uncertainty as to whether or not the 1865 pre-emption laws would apply to his desire to pre-empt further lands. Fouquet noted that he would pre-empt in his “name and that of Brother John [Burns]” and “would be compelled to move the new house onto our new claims.”⁴⁸

⁴⁵ See Documents EXP-000030, pp. 4-5; CAN000932, pp. 29, 38; CAN000927.

⁴⁶ See Documents CAN000461, p. 2; CAN000468. Mary Ann Michel’s oral history states that the Kootenay Indians first encountered missionaries around 1840 [CAN000932, p. 7].

⁴⁷ In regard to Fouquet’s assertion that the area was recommended “especially” by the Indians, subsequent documents suggest that there were few Indians there when Fouquet arrived – with the majority, including likely the Chief and leading men, on the buffalo and marten hunts. This is laid out more fully in the section titled, “The Semi-Nomadic Nature of the Ktunaxa,” pp. 95-96.

⁴⁸ See Document CAN000729; CAN000479.

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According to the 1865 Land Act (Sec. 20), a pre-emptor had the right to pre-empt up 480 acres of lands “contiguous” to his original pre-emption claim.⁴⁹ There is no record, however, of Fouquet pre-empting any further lands for the Mission. As is noted in subsequent sections, further lands for the Mission would be pre-empted by Brother Gregoire in 1877 (320 acres that would become Lot 2) and Brother Burns in 1878 (72 acres that would become Lot 3). For further details on land purchases by Fouquet, Gregoire, and Burns please refer to sections titled “Land Tenure History of Lot 1, Kootenay District”; “Land Tenure History of Lot 2, Kootenay District”; and “Land Tenure History of Lot 3, Kootenay District”.

Fouquet wrote again to D’Herbomez on November 20, 1874 in regard to his purchase of Shaw’s pre-emption and also requesting further instructions on the best way to proceed in regard to expanding beyond the Shaw’s 160 acres which he felt were insufficient. In regard to the lands west of Shaw claim,⁵⁰ Fouquet advised that a pre-emption of these lands “would have to be done irregularly” as it “would have to take the savage’s field.” According to Fouquet, the owner of the field had:

...not yet responded as to whether he would agree to remove his fence and leave his field so that we may pre-empt the other side (west) of Joseph Prairie Creek. The new claim would have the following form in order to use the plains on the west side of St. Joseph’s Creek. The field contains little arable soil, but could easily be watered to form grassland with a few arable parts.

In regard to the lands east of Shaw’s farm, which Fouquet described as a “plain” and including “40 to 60 acres of good land,”⁵¹ these too, he noted, had been chosen by the “savages.” Fouquet argued that he had allowed them this “choice” in light of his view that they were “so sensitive on the land issue...” Fouquet also advised that Shaw’s farm enclosed land that was cultivated but did “not belong to the claim” (although Fouquet did not specify who this land belonged to). Lastly, Fouquet again expressed uncertainty over the application of the pre-emption laws questioning if the 1865 Land Act would allow him to purchase more land in order to enlarge an existing pre-emption [presumably Shaw’s].⁵²

⁴⁹ See Document SCB 3 (Tab 3 – Claimant’s Amended List of Documents, July 24, 2014), Section 20. From 1870 onward, pre-emptors were only permitted to hold one pre-emption claim at a time [See Documents SCB 5 (Tab 6– Claimant’s Amended List of Documents, July 24, 2014); EXP-000009; and SCB 14 (Tab 31 – Claimant’s Amended List of Documents, July 24, 2014)].

⁵⁰ Ralph’s 1877 Survey Plan and related Field Notes of Lots 1, 2, and 3 shows an “Indian field” west of Lot 1 of the Mission Farm Lands [See Documents CAN000498 and CAN000494, pp. 21-24]

⁵¹ Ralph’s 1877 Survey Plan and related Field Notes of Lots 1, 2, and 3 shows an “Indian field” east of Lot 3 of the Mission Farm Lands [See Documents CAN000498 and CAN000494, pp. 21-24]

⁵² See Document CAN000732; CAN000480.

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A further Note by Fouquet, dated November 22, [1874], which followed the above Letter, noted Fouquet's discussions with the Indians about their lands, stated:

The savages have their land, and the priest must have his. I told them to tell me if they wanted us to have two lots for the schools, without which we will place the main building elsewhere. I still have not received an answer. The Chief talks as little as possible. He seems like a good man, but I still do not know him well enough. I have already managed to ensure that the savages not place their horses in our field without my permission. We have had in that unfortunate field over 700 horses or mules belonging to white people and savages...⁵³

In a further Letter from Fouquet to D'Herbomez, dated February 8, 1875, Fouquet discussed the nature of his and Burn's⁵⁴ pre-emptions noting that they had been authorized by D'Herbomez to pre-empt. Such authorization, however, assumed that they would live on their claims, "either each on his claim or both on the same claims as partners." Fouquet also discussed the location of the church suggesting that it might be located "on the land of the savages, etc. and built at their expense here as elsewhere?"⁵⁵ According to the 1870 Land Act (Secs. 15-19), and those prior to it, continuous residence (with some allowance for short absences or the short term use of an agent) on one's pre-emption was necessary in order to meet the government's requirements for land ownership.⁵⁶

In a March 30, 1875 Letter from Fouquet to D'Herbomez, Fouquet discussed the land situation for the Mission, noting that "it would be more advantageous" due to the cost of land taxes "to pre-empt just one claim and to purchase the 100 acres that lie between our current claim and the wooded hills that can never be irrigated." As far as Fouquet understood the pre-emption laws, he was not able to pre-empt Shaw's claim, which was under his name, or any other claim. As such, Fouquet suggested that perhaps Gregoire could pre-empt instead.⁵⁷ According to the 1870 and 1875 Land Acts only one pre-emption could be held at a time.⁵⁸

On July 10, 1875, Fouquet wrote to D'Herbomez in regard to the progress made at the St. Eugene Mission. In regard to the land, Fouquet noted difficulties with the Kootenay First Nations, stating:

⁵³ See Document CAN000732; CAN000480.

⁵⁴ There is no record of a pre-emption by Burns in 1875. As will be discussed subsequently, in 1877, Burns pre-empted and then subsequently abandoned claims on two pieces of land in the vicinity of the Mission. Later, in 1878, Burns would pre-empt the 72 acres that would become Lot 3 of the St. Eugene Mission Farm Lands.

⁵⁵ See Documents CAN000734; CAN000482.

⁵⁶ See Document SCB 5 (Tab 6– Claimant's Amended List of Documents, July 24, 2014).

⁵⁷ See Document CAN000943; CAN000485.

⁵⁸ See Documents SCB 5 (Tab 6– Claimant's Amended List of Documents, July 24, 2014); EXP-000009.

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I had [illegible] placed on our fences (over a mile in length) to prevent the savages from throwing them to the ground, placing their horses in our fields, and leaving our fields open to animals because they are too lazy to pick the fences back up. This should avoid the need to continually quarrel with them. I am also placing a new fence on R.F. Gregoire's⁵⁹ claim to protect our other fields and fences and to keep an eye on the savages, show them where our land is before they settle in as they see fit, and protect our water ditches.

Fouquet further advised that, in regard to the Shaw's claim, the local Government Agent had indicated that Shaw could not sell his land to Fouquet. In response, Fouquet suggested proceeding with his own pre-emption or perhaps having Gregoire (or Burns) pre-empt lands. In regard to the latter, Fouquet again voiced concern about the continuous residence requirements noting that the government would "be less likely to deny R.F. Gregoire permission to pre-empt if limits are used that are inconsistent with the law, otherwise we will have to go live a mile away." Fouquet also spoke about his building plan for the Mission, noting:

...After much reluctance, I have left in place the house begun by Manley. The church will be on our land because of the white people who will write to you. It will be visible for two miles, from one end of the plain to the other. I have also left land for the savages to camp or even build on. These houses (which we can later use as service buildings if we wish) will be on the same side as the barn and around our house...⁶⁰

Fouquet appears to have been unaware of the 1875 Land Act included a new provision for pre-empting for partnership purposes (Sec. 32). Under this section, it was not necessary for each partner to live on his particular pre-emption. Instead, partners could "reside together on one homestead."⁶¹

In a February 3, 1876 Letter Gregoire noted that for a second time his application for pre-emption had been denied by the Lands and Works Commissioner for the Kootenay because it did not conform to the legislation. Gregoire requested that the Letter's recipient (who is not known) review the legislation. Fouquet, Gregoire stated, wanted Gregoire to pre-empt "two legal claims and then fill out the residence requirement on only one."⁶² As previously noted, the 1875 Land Act, which would have been in force at this time, allowed only one pre-emption at a time. Further, as will be shown, Gregoire will eventually pre-empt just one claim.

⁵⁹ There is no record of a pre-emption by Gregoire in 1875. As will be discussed subsequently, in 1877 Gregoire pre-empted the 320 acres that would become Lot 2 of the St. Eugene Mission Farm Lands.

⁶⁰ See Document CAN000738; CAN000487.

⁶¹ See Document EXP-000009.

⁶² See Documents CAN000945; CAN000490.

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Fouquet wrote to Gregoire on November 23, 1876 discussing his belief that the Vicariate Administration did “not appear to believe in the efforts I’ve made to have you pre-empt.” As such, Fouquet asked that Gregoire “certify that together we have surveyed the [claim?] to be pre-empted by putting up corner-posts in accordance with the law” though “without following the legally prescribed rectangular shape, but which we believe the land commissioner could give to us...” Nonetheless, the pre-emption claim had been denied by Victoria though Fouquet was hopeful that a renewed pre-emption request would be successful. In a Note at the end of this Letter, Gregoire would certify that the claim had been surveyed with corner-posts.⁶³

On November 24, 1876, Fouquet wrote again to D’Herbomez discussing the challenges in attempting to pre-empt additional lands for the mission. In particular, Fouquet had attempted to pre-empt 320 acres on behalf of Gregoire (as previously noted Gregoire did not pre-empt his 320 acres (Lot 2) until 1877). But Gregoire’s application for pre-emption had been refused (as apparently Fouquet had applied for a pre-emption using the incorrect law). In fact, Fouquet argued, the manner in which he wished to pre-empt the additional 320 acres was “not found in the regular form prescribed by law.” As such, Fouquet suggest three possible options for moving forward:

1. Resubmit or renew the above noted pre-emption that had been refused. This option, Fouquet suggested, was highly unlikely to succeed.
2. Have Gregoire pre-empt the lot east of Shaw’s farm and then build a residence that could be lived at by another person. This option, however, would cost a great deal and still did not “not secure the strip to the south between my claim and the hills on which my predecessor (Shaw) built a barn, the battery and the stable.” In contrast, pre-empting that southern strip and not the lot east of Shaw’s farm, “while leaving the east prairie to the savages and white people,” would not provide the Mission with enough land – not even “200 acres for our crop fields or grazing prairies.” This option was not, however, considered a viable long term solution.
3. For Gregoire and Burns “to pre-empt two claims as partners and live on the one adjacent to our buildings (the claim to the prairie to the east, and the claim to the strip and hills to the south).” This option would give the Mission “three claims to work, including mine [Fouquet’s] from Shaw.” This option would require that when there were “no white or Metis workers, two should be lodged (at least at night) in the residence of the two claims, since each partner must be represented.”

Fouquet requested that D’Herbomez advise as to which option he wanted Fouquet to proceed with.⁶⁴ In a further note written following the above letter, Fouquet also discussed the government agent’s view that Shaw did not have the

⁶³ See Documents CAN000946; CAN000492.

⁶⁴ See Document CAN000743; CAN000493.

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right to sell his claim but only to transfer it to Fouquet. As a result, Fouquet could “pre-empt no other claim but that of Shaw” which was why Gregoire had been asked to pre-empt.⁶⁵

On March 24, 1877, Napoleon Gregoire pre-empted the 320 acres that would become Lot 2 of the St. Eugene Mission Farm Lands [For further details please refer to sections titled “Land Tenure History of Lot 2, Kootenay District”].⁶⁶

On April 3, 1877, Fouquet advised A.C. Elliot, the Premier and Attorney General of BC, that on March 23rd Fouquet, Gregoire and Burns had “made a deed of partnership for holding and working land preempted and to be preempted.” The following day, Gregoire pre-empted 320 acres and Burns 160 acres.⁶⁷ A few years prior, Fouquet advised that he had secured a “preemption claim transferred to me by its first preemptor J. Shaw” but that he was unsure as to the standing of the transfer of deed, noting:

...I fear our title, as it stands, is not good and that any newcomer might say to either of the late preemptors who reside at the mission on my own claim: you are bound by the Law to reside on your preemption, and that is what I dread, the Law say: partners may preempt...

We have made several fruitless attempts to secure the law necessary for a model farm and the support of Indian children at schools without members of the Mission being compelled to reside outside of the establishment, which we succeeded at last in getting the affair settled in this manner.

I beg as a personal favor you would kindly have me informed if we are secured in the possession of the Law; and if not how is that security to be obtained without having different members of the establishment residing in different places.⁶⁸

In a Letter from Fouquet to D’Herbomez, dated May 25, 1877, Fouquet advised that a response from Elliot had not been received. In regard to additional lands, Fouquet would “make no new request to secure land for the mission” unless instructions were received from D’Herbomez. Further, Fouquet noted that engineers would be coming to survey the land.⁶⁹ A Note at the bottom of this Letter stated that Elliot had informed of the need for Fouquet to survey the land himself.⁷⁰

⁶⁵ See Document CAN000743; CAN000493.

⁶⁶ See Documents EXP-000012, p. 1; EXP-000014.

⁶⁷ Previously, in March 1877, Burns has made application for 160 acres south of Shaw’s pre-emption (Lot 1). Burns, however, would later abandon this application [See New Document EXP-000015].

⁶⁸ See Document CAN000496.

⁶⁹ See Document CAN000759; CAN000497.

⁷⁰ See Document CAN000759; CAN000497.

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Surveyor William Ralph, in a December 10, 1877 Letter to the Chief Commissioner of Lands and Works, provided details on surveys completed earlier that year, including the “Roman Catholic Mission lands on the St. Marys [sic] river Kootenay District.” Ralph also outlined the status of the Mission, noting that the Mission Farm Lands belonging to Fouquet, Gregoire and Burns were to be part of a partnership:

...The first location here was made by John Shaw on December 4th 1868. He obtained a certificate of improvement on it, and sold to Leon Fouquet on Oct 28th 1874. Leon Fouquet built a dwelling house, church, barn &c on it, and has a large portion under fence and cultivation. It is called the R.C. Mission of St. Eugene.

On the 24th March 1877. Napoleon Gregoire RC Missionary of the same place preempted [sic] 320 acres on the east and John Burns a missionary of the same institution preempted 160 acres on the south of Leon Fouquet's land.⁷¹ The three parties agreed to hold this 640 acres in partnership if they could legally do so under clause 32 Land Act 1875 by one residence on the land that was located in 1868. None of these lands specify on the records that they [illegible] located in partnership but I was informed that they drew up a partnership agreement between themselves subsequently.

All this land is included for the use of the Mission and Leon Fouquet [sic] who is at the head of this institution wants to ascertain whether they can hold the land under this partnership arrangement. If they cannot do so then he wants to purchase Napoleon Gregoire's part under claim 61 Land Act 1875.

In surveying these claims they wanted their fences run on the same course as the valley, about N.E. & S.W. When I would not survey them in that way John Burns [Burns] abandoned his claim as the greater part would be hills.

At the request of Leon Fouquet I surveyed his lot 40^{chs} square instead of 20^{chs} by 80^{chs}. It fronts on the Rive[r] and the lines run to the cardinal points. This includes a strip of the land abandoned by John Burns and puts the Lot into a good shape.

With regard to the two Lots to the east of this one which you will see on the maps, if they cannot be [illegible] under partnership as before explained. Then Leon Fouquet wishes to purchase them and he will pay for the expenses of the survey.⁷²

⁷¹ Previously, in March 1877, Burns has made application for 160 acres south of Shaw's pre-emption (Lot 1). Burns, however, would later abandon this application [See New Document EXP-000015].

⁷² See Document SMT 6 (Tab 41 – Claimant's Amended List of Documents, July 24, 2014).

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On January 29, 1878, John Burns pre-empted 72 acres that would become Lot 3 of the St. Eugene Mission Farm Lands [For further details please refer to sections titled “Land Tenure History of Lot 3, Kootenay District”].⁷³

On November 2, 1880, Crown Grant No. 2259 was granted to Napoleon Gregoire for the 320 acres of Lot 2, Group 1, Kootenay District.⁷⁴ Also, on November 2, 1880, Crown Grant No. 2258 was granted to John Burns for the 72 acres of Lot 3, Group 1, Kootenay District.⁷⁵

On May 11, 1881, Crown Grant No. 2328 was granted to Leon Fouquet for the 160 acres of Lot 1, Group 1, Kootenay District.⁷⁶

In a Letter dated November 18, 1886, the Indian Commissioner for BC reported on his visit to the Kootenay District in August and September of 1886. In regard to the Roman Catholic [St. Eugene] Mission at St. Mary’s River, the Indian Commissioner stated:

...At the Mission Ranch, and on the land belonging to it, is the Indian Village – a collection of forty or fifty log huts. There most of the Kootenays spend the winter their numbers being considerably augmented at Xmas [sic] time, and Easter by neighboring Indians who, come to take part in devotionals exercises.

The Ranch itself consists of five hundred acres of land, possessing excellent soil and well watered [sic] – one hundred and fifty acres of which are under cultivation. The Revd Father Fouquet, who directs the farming operations, shewed [sic] us some fine samples of wheat, and flour manufactured at a small mill on the premises.

Besides the mill, there is a commodious dwelling house a church and a pretentious looking building, intended at a future period for a boarding school...The population at the Indian Village is about 200 so that altogether the settlement has an important and thriving appearance in approaching it....

The Indian Commissioner also included Chief Isadore’s⁷⁷ comments that former Chief Michel and Joseph had encouraged the “Fathers (R.C.)” “to take up and work it [the land].”⁷⁸

⁷³ See Documents CAN000794; EXP-000017.

⁷⁴ See Document ND 5 (Tab 1 – Claimant’s First Supplemental LOD). For better copy of Sketch see Document CAN000475.

⁷⁵ See Document CAN000507; CAN000806. For better copy of Sketch see Document CAN000476.

⁷⁶ See Document DLSC 1-A (Tab 2 – Claimant’s First Supplemental LOD). For better copy of Sketch see Document CAN000474.

⁷⁷ At the time Indian Reserves were allotted to the Upper Kootenay in the 1880s, Isadore or Isidore was the Chief of the Upper Kootenay and, as will be shown later in this Report, the key

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St. Eugene's Mission was described again in a Letter dated February 10, 1890 from the Deputy Superintendent General of Indian Affairs following his visit to a number of BC Reserves including those in the Kootenay. The Deputy Superintendent described the Mission property, part of which was to be transferred to the Department for a school, as being "situated at about four miles from Fort Steele." The portion of the Mission property to be transferred was described as:

I found the site to be suitable in every respect with the exception that a portion of the land is rather marshy, and I expressed an apprehension to the Rev. the Cure, who is in charge of the Mission that it might be productive of miasmatic influences and the health of the Indian children and other inmates of the Institution injuriously affected thereby. He however did not apparently consider such would be the case. I beg to report that an Indian Winter Village consisting of probably between 30 and 40 cottages, exists on the Mission property. These houses are very close to one another and I could not but feel that they were too close to be healthful. The Indians who inhabit these domiciles spend many months in them during the Winter and I assume that they have been induced to congregate there for the convenience of the Missionaries, in order to save them the trouble and expense of visiting them on the Reserves.⁷⁹

In 1887, Father Fouquet was replaced at the St. Eugene Mission by Father N. Coccola.⁸⁰

In 1890, an "Indian Industrial School" was opened by the Oblates at the St. Eugene Mission.⁸¹

On September 13, 1890, the Province would issue a "Certificate of Pre-emption Record" to John Burns for his pre-emption of 320 acres that would become Lot 1063 of the St. Eugene Mission Farm Lands [For further details please refer to sections titled "Land Tenure History of Lot 1063, Kootenay District"].⁸² On April 22, 1896, Crown Grant 2388/78 was granted to John Burns for the 208 acres of Lot 1063, Group 1, Kootenay District.⁸³

intermediary between the Upper Kootenay and government officials – most notably Indian Reserve Commissioner O'Reilly.

⁷⁸ See Document CAN000370, p. 14.

⁷⁹ See Document SMT 17 (Tab 45 – Claimant's Amended List of Documents, July 24, 2014).

⁸⁰ See Document CAN000468.

⁸¹ See Documents CAN000468, CAN000919, and CAN000921.

⁸² See Document SMT 13 (Tab 46 – Claimant's Amended List of Documents, July 24, 2014).

⁸³ See Document CAN000578 [Crown Grant]; CAN000473 [Sketch]; or SMT 14 (Tab 47 – Claimant's Amended List of Documents, July 24, 2014).

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On December 7, 1897, the Order of the Oblates of Mary [Immaculate], Province of BC, were shown to be the owner of Lots 1, 2, 3 (552 acres) and Lot 1063 (208 acres). The lands, totaling 760 acres, were noted to be worth \$2000.00.⁸⁴

In November 1898, the Government of Canada would be registered as the owner of 33 and 1/3 acres from Lot 1.⁸⁵ Around 1912, the Government of Canada funded and constructed an Indian Residential School that was situated on these 33 and 1/3 acres, as part of the St. Eugene Mission.⁸⁶

In August 1915, the Oblates sold 21.78 acres from the southwest corner of Lot 1 to the Sisters of Providence.⁸⁷ In 1930, Canada purchased these 21.78 acres from Lot 1 from the Sisters of Providence.⁸⁸

In December 1925, the Government of Canada also purchased 25.05 acres from Lot 1 from the Oblates.⁸⁹ In September 1951, these 25.05 acres were set aside as St. Mary's IR No. 1A for the use and benefit of the Lower Kootenay, Kinbasket, St. Mary's, Tobacco Plains, Lower Columbia Lake and Arrow Lake Bands.⁹⁰

The St. Eugene Mission, including the Indian Residential School, closed in June 1970.⁹¹

In June 1974, 320.71 acres, including parcels A and B from Lot 1 of the former Mission Farm Lands (as well as three other parcels), were transferred as an addition to St. Mary's IR No. 1A "for the use and benefit of the St. Mary's, Columbia Lake, Shuswap, Tobacco Plains and Lower Kootenay Bands."⁹²

On March 28, 1976, the Order of the Oblates of Mary Immaculate conveyed Lot 11558 as well as the remaining St. Eugene Mission Farm Lands, specifically Lots 1, 2, 3, and 1063 totaling 627.75 acres, to Ernest Pighin.⁹³

⁸⁴ See Document SMT 15 (Tab 48 – Claimant's Amended List of Documents, July 24, 2014).

⁸⁵ See Document SMT 20 (Tab 50 – Claimant's Amended List of Documents, July 24, 2014).

⁸⁶ See Documents SMT 27 A-5: 3, SMT 21, and SMT 22 A-11: 10 (Tabs 107, 172, and 262 – Claimant's Amended List of Documents, July 24, 2014).

⁸⁷ See Document DLSC 11 (Tab 14 – Claimant's Second Supplemental List of Documents).

⁸⁸ See Documents DLSC 62 and DLSC 63 (Tabs 32 and 33 – Claimant's Second Supplemental List of Documents).

⁸⁹ See Document SMT 34 (Tab 99 – Claimant's Amended List of Documents, July 24, 2014).

⁹⁰ See Document SMT 36 (Tab 122 – Claimant's Amended List of Documents, July 24, 2014).

⁹¹ See Documents CAN000919 to CAN000921.

⁹² See Document CAN000926.

⁹³ See Documents SMT 43 (Tab 208 – Claimant's Amended List of Documents, July 24, 2014); Amended Response from Canada, dated September 26, 2014, p. 12.

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History of the St. Eugene Mission Farm Lands

Mission Lands held by the Sisters of Providence

The Sisters of Providence also held lands that, while part of the larger St. Eugene Mission, are not considered part of the Mission Farms Lands (Lots 1, 2, 3, and 1063) that are the focus of this Report.

These non-Mission Farm Lands held by the Sisters included Lots 494 (116 acres) and 1758 (143 acres).⁹⁴ Lot 494 was Crown Granted to an Edward Kelly in March 1893 though it is not clear when Kelly conveyed it to the Sisters of Providence.⁹⁵ Lot 1758 was Crown Granted to Louisa Kratz (also known as Sister Conrad) in May 1897.⁹⁶ In July 1897, Lot 1758 was conveyed from Kratz (Sister Conrad) to the Sisters of Providence.⁹⁷

In 1930, the government of Canada purchased 280.78 from the Sisters of Providence which included Lots 494 and 1758.⁹⁸

In June 1974, Lots 494 and 1758, as well as three other parcels, were transferred as an addition to St. Mary's IR No. 1A "for the use and benefit of the St. Mary's, Columbia Lake, Shuswap, Tobacco Plains and Lower Kootenay Bands."⁹⁹

⁹⁴ See Document SMT 27 A-5: 3 (Tab 107 – Claimant's Amended List of Documents, July 24, 2014).

⁹⁵ See Document DLSC 1-B (Tab 3 – Claimant's Second Supplemental List of Documents).

⁹⁶ See Document DLSC 1-C (Tab 4 – Claimant's Second Supplemental List of Documents).

⁹⁷ See Document DLSC 6 (Tab 5 – Claimant's Second Supplemental List of Documents).

⁹⁸ See Documents DLSC 62 and DLSC 63 (Tabs 32 and 33 – Claimant's Second Supplemental List of Documents).

⁹⁹ See Document CAN000926.

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History of the St. Eugene Mission Farm Lands

LAND TENURE HISTORIES OF LOTS 1, 2, 3, AND 1063, KOOTENAY DISTRICT

Land Tenure History of Lot 1, Kootenay District

On December 4, 1868, John Shaw pre-empted 160 acres in the District of Kootenay. These 160 acres, which would later become Lot 1 of the St. Eugene Mission Farm Lands, were described and sketched as follows:

... [1]60 acres of Land situated about 4 ½ miles [from] the Kootenay Ferry commencing at a stake [at] the mouth of Joseph's Prairie Creek on the South [bank] of St. Mary's River and running down [said] river one mile, thence Southerly one quarter [of] a mile, thence Westerly one mile, thence Northerly [one] quarter of a mile along the bank of Joseph's Prairie [Creek] and closing on starting Point [Figure 2].

Shaw also applied for the right to divert water from Joseph's Prairie Creek for the purpose of irrigating the land. This application was signed by Justice of the Peace P. O'Reilly, the future Indian Reserve Commissioner who would allot the majority of Reserves in the Kootenay (as well as the province).¹⁰⁰ Shaw's pre-emption would have been subject to the rules of the 1865 Land Act.¹⁰¹

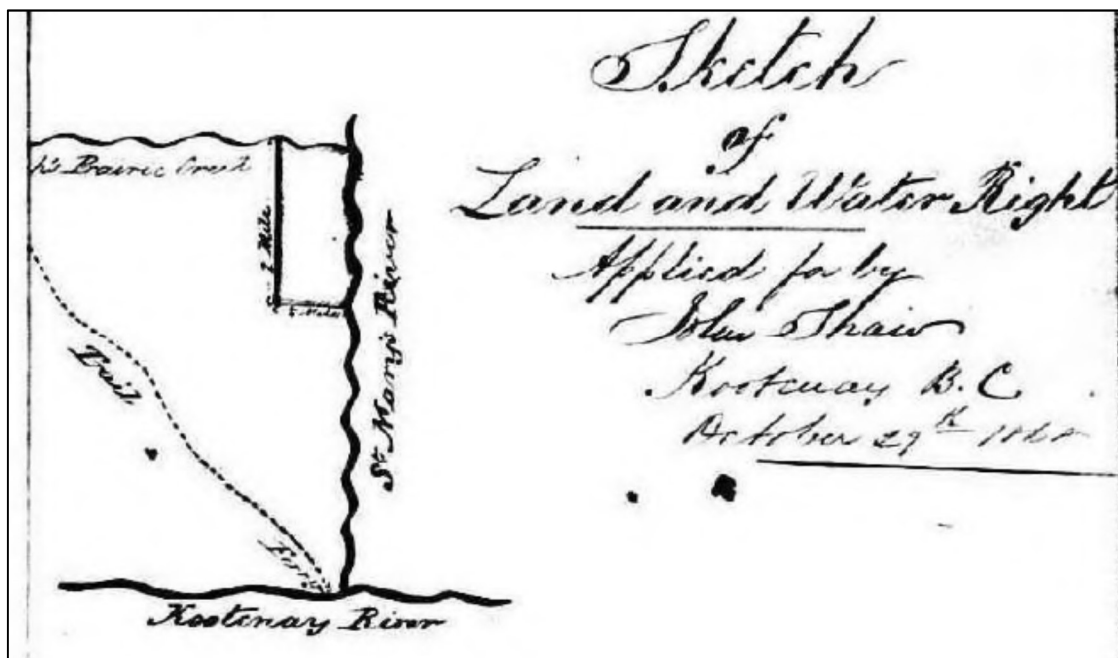


Figure 2 - Sketch of Land Water Right applied for by John Shaw, dated October 1868

¹⁰⁰ See Documents CAN000712.

¹⁰¹ See Document SCB 3 (Tab 3 – Claimant's Amended List of Documents, July 24, 2014).

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In 1976, Mary Ann Michel of the St. Mary's Band recounted the oral history of the St. Eugene's Mission stating that families lived on the Mission Farm Lands – described as “on the south side of the St. Mary's River” on the “land the missionaries have claimed.” Michel recounted how they used to live there “long before the white people ever laid their eyes” on it. Further, Michel told how there were permanent log houses on the Mission Farms Lands that were destroyed by a white pre-emptor [possibly John Shaw].¹⁰²

Later, in 1979, Michel's oral history account of the St. Eugene's Mission area again stated that it was the home of a permanent camp that included three houses that were set up in a tepee camp at Joseph's Creek. Michel also advised that there had been houses closer to the St. Mary's river. The establishment of this permanent camp had been in response to the buying up of land by settlers. Michel also recounted, in fuller detail, the story of the encounter with the white pre-emptor, noting:

There was one boy, he was playing around. He went running inside and said, "My Grandfather "There is a lot of smoke over there...

He was told, 'you run over there and take a look, there might be something burning [']. That boy went running over, there. He must have been.....Eight years old or nine...

He went running there and...Just as he got there, that man was just leaving. Who they call white people, people of fair skin. He was walking through the Bushes. His Uncle's house and the other houses were burned. Some of the teepees were already all burned but there were some that were just starting to burn. He saw everything and took in what he saw. Then he ran back to his home. When he got back to his grandfather's place he told him. The white man has burned down all the houses. . I had a good look at him, and he is leaving, through the back way. He is walking through the bush, carrying his axe. This is how the white man burned down those teepees. Today when someone burns a house down they are put in jail. They are in jail for a long time. And, what that white man did, burning those houses down that belonged to the Indians...

It was a while later, that...He said, "I have bought this land." He did not allow the Ktunaxa there at that land anymore. One man told him, this land is where I belong and live. The man showed him a piece of paper, and he told him. "It is only writing." There was a chief was hu ꞑ i ꞑna [sic]. It does not belong to the Chief, I said, "it is mine, I am the one living here." The man did not listen to him.

¹⁰² See Document EXP-000030, pp. 4-5 Michel further referenced the First Nation interest in the Mission Farms Lands when recounting Chief Isadore's comments to government officials (presumably Peter O'Reilly) where he said: “the flat between, along the two cliff [sic] where those missionaries make their home, my people have made their home for years, they even build their log houses there which was set to fire by your people which we told the law maker and nothing was done... it's one of the permanent home for my people for hundred [sic] of years” [See Document CAN000932, p. 38].

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He was told, "you [sic] no longer can liver [sic] here." He should have told him to pay him for it. Then that is when I will leave. After that, that man was never able to go back (to that place). The place they burned his house down...

This is one place that it happened where the land was stolen from the people. The people were never paid for it. I said, that this is where the people used to have their houses (teepees).

Michel also spoke to the later acquisition of these lands for the St. Eugene Mission, noting:

They knew. The Blackrobes, that this is where the people lived. That is why they chose this same place too, to live...

This is what they did when they moved into the area. (The Blackrobes). Here at Kamaquwuuski. They knew very well that this where the Indian people were living. They did not pay the Indian people when they took this land. Because of this, I say that this land is still ours. Kamaquwuuki. Over there at aqu ≠ aqa [sic], and, taxas tinwak, it is all our land.¹⁰³

Pre-emption Claim No. 55 was issued to John Shaw for these 160 acres of "Prairie Land, situated on the South bank of St. Mary's River" (Lot 1) by P. O'Reilly, now Assistant Commissioner of Lands, on March 22, 1869. A further comment stated that this land had previously been "recorded in favour of James W. Galbraith" on February 21, 1868 but had since been "abandoned."¹⁰⁴

Galbraith's pre-emption, dated February 21, 1868, also described the land as 160 acres, situated 4 ½ miles from the Kootenay Ferry. An attached Sketch showed these 160 acres as they were drawn in February 1868. Galbraith's pre-emption was also signed by P. O'Reilly. It is not known why Galbraith abandoned this pre-emption claim [**Figure 3**].¹⁰⁵

¹⁰³ See Document CAN000927.

¹⁰⁴ See Documents EXP-000008; CAN000719.

¹⁰⁵ See Documents EXP-000007; CAN000711; CAN000710.

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History of the St. Eugene Mission Farm Lands

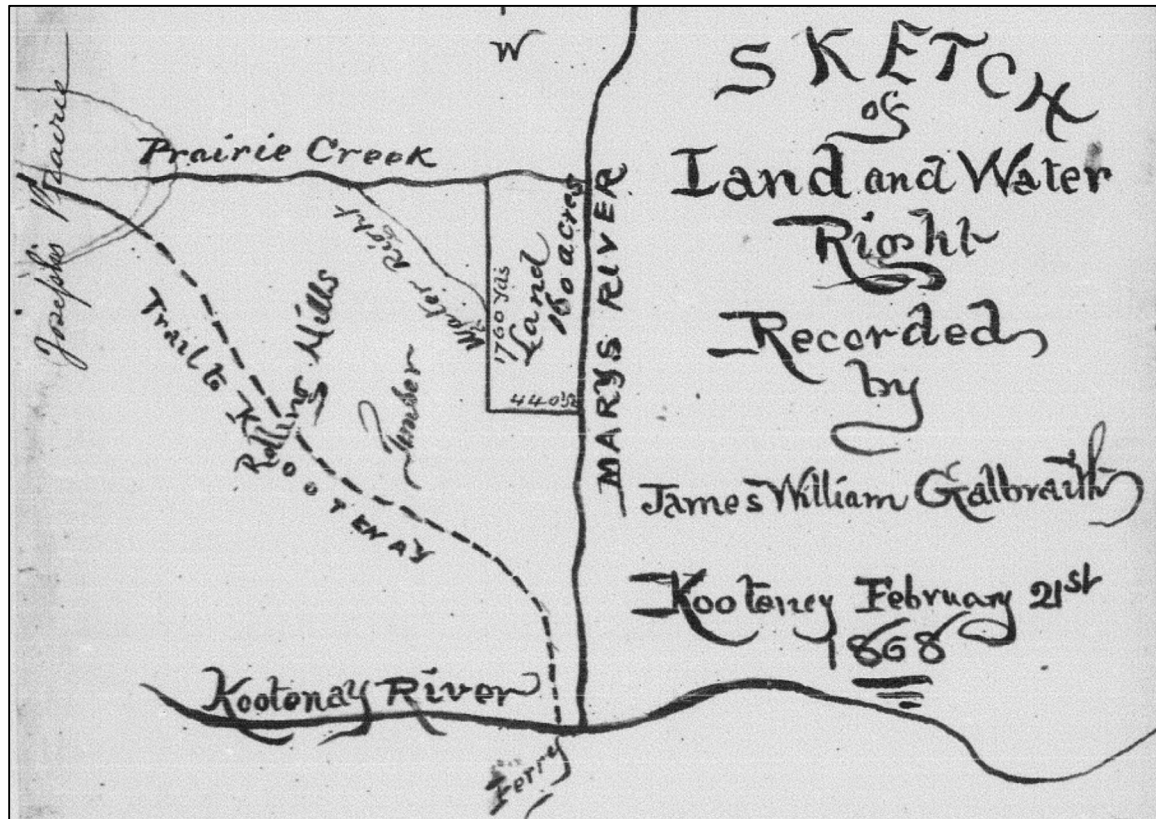


Figure 3 – Sketch of Land and Water Right by J.W. Galbraith, dated February 1868

A Certificate of Improvement was issued to Shaw for Lot 1 on April 29, 1869. Shaw's Certificate of Improvement was approved by P. O'Reilly in an April 29, 1869 Letter.¹⁰⁶

As previously noted, in a Letter from L. Fouquet, O.M.I., to the R. Rev. D'Herbomez, dated October 29, 1874, Fouquet advised that he had arrived in the Kootenay on October 3, 1874. Following a fifteen day period of information gathering and area visits, he had "decided to purchase John Shaw's farm." Fouquet stated that he paid a total of \$1100.00 for Lot 1 (\$250 cash down, a \$250 note payable in January 1875 and a \$600 note payable in July 1885). Fouquet considered this a good deal as Shaw has originally been asking \$2500 for the lot.¹⁰⁷

At this time, Fouquet also indicated that Shaw had gone outside of his pre-emption boundaries. Fouquet described this deviation from the claim's boundaries as including several barns as well as some enclosed cultivated land that did "not belong to the claim."¹⁰⁸

¹⁰⁶ See Documents EXP-000008, pp. 2-3; CAN-000721.

¹⁰⁷ See Document CAN-000729; CAN-000479.

¹⁰⁸ See Document CAN-000729; CAN-000479; CAN000732; CAN000480.

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Fouquet in writing to D'Herbomez on November 20, 1874 provided a copy of what he referred to as the "deed of sale" with Shaw advising that he was not certain the deed had been properly executed according to the laws of British Columbia. As such, Fouquet requested that the Procurator of the Vicariate determine if the "deed" was legal or not.¹⁰⁹

In spite of Fouquet's apparent purchase of Shaw's claim in October 1874, there appears to have been some delay in the transaction, which would not be finalized until May 19, 1875 when Shaw's pre-emption No. 55 was transferred – not sold – via a "Transfer of Interest" to Leon Fouquet, "Roman Catholic Missionary of Kootenai."¹¹⁰

In spite of this transfer, in a July 10, 1875 Letter, Fouquet informed D'Herbomez that the local government agent had advised that "Shaw could not sell me his land," and had provided Shaw with a "conveyance form."¹¹¹ The only conveyance type document located was the above "Transfer of Interest" completed by Shaw.

On November 24, 1876, Fouquet, writing again to D'Herbomez, advised on the local government agent's view that Shaw did not have the right to sell his claim but only to transfer it to Fouquet.¹¹² As noted above, Shaw's pre-emption claim was transferred to Fouquet in May 1875.

The following year, on April 3, 1877, Fouquet wrote to the A.C. Elliot, the Premier and Attorney General of British Columbia, advising that he was still "unsure as to the standing of the transfer of deed" between himself and Shaw and requested confirmation that the transfer was indeed in good standing.¹¹³ While a response from Elliot was not located; as mentioned, Shaw's pre-emption had already been transferred to Fouquet.

On July 17, 1877, Surveyor William Ralph would survey Lot 1 (as well as Lots 2 and 3).¹¹⁴ Ralph's resulting Survey Plan titled "Plan of Lots Nos 1, 2 and 3 on the St Marys River, Kootenay District" showed Lot 1 to be 160 acres with several trails crossing the Lot. This Survey Plan showed an "Indianfield [sic]" adjacent to, and west of, Lot 1. Within Lot 1, a "Grave yard" was also shown [Figure 4].¹¹⁵ Ralph's Field Notes stated that the southeast corner of Lot 1 touched an "Indian

¹⁰⁹ See Document CAN000732; CAN000480.

¹¹⁰ See Documents EXP-000008, p. 4; and CAN000737.

¹¹¹ See Document CAN000738; CAN000487.

¹¹² See Document CAN000743; CAN000493.

¹¹³ See Document CAN000496.

¹¹⁴ See Document CAN000494, pp. 21-24.

¹¹⁵ See Document CAN000498.

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field of 15 acres.” Ralph’s Field Notes do not specify, however, if the existing trails or Grave yard were First Nations in origin.¹¹⁶



Figure 4 – Lot 1 as it appears in Ralph’s Survey Plan, dated 1877

Surveyor William Ralph, in a December 10, 1877 Letter to the Chief Commissioner of Lands and Works, provided details on his aforementioned surveys completed regarding the “Roman Catholic Mission lands on the St. Marys river Kootenay District.” In regard to Lot 1, Ralph advised that he had altered the shape of the Shaw pre-emption from its original 20 chains by 80 chains to a newly configured 40 chains by 40 chains at the request of Fouquet. While this alteration maintained the original 160 acre size of the lot, it also allowed for the inclusion of “a strip of the land abandoned by John Burns¹¹⁷” putting “the Lot into a good shape.” Ralph also provided a brief history of the lot, noting:

...The first location here was made by John Shaw on December 4th 1868. He obtained a certificate of improvement on it, and sold to Leon Fouquet on Oct 28th 1874. Leon Fouquet built a dwelling house, church, barn &c on it, and has a

¹¹⁶ See Document CAN000494, pp. 21-24.

¹¹⁷ Previously, in March 1877, Burns has made application for 160 acres south of Shaw’s pre-emption (Lot 1). Burns, however, would later abandon this application [See New Document EXP-000015]. According to Surveyor William Ralph’s December 10, 1877 Letter, Burns abandoned his claim because: “In surveying these claims...they wanted their fences run on the same course as the valley, about N.E. & S.W. When I would not survey them in that way John Burns abandoned his claim as the greater part would be hills.” However, Burns’ abandoned claim would be alleviated, in part, when Ralph altered the shape of Lot 1 at Fouquet’s request, as previously noted [See Document SMT 6 (Tab 41 – Claimant’s Amended List of Documents, July 24, 2014)].

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large portion under fence and cultivation. It is called the R.C. Mission of St. Eugene...

As previously noted, Ralph advised that it was intended that Fouquet's land or Lot 1 as well as Gregoire's and Burns' lands would be held in partnership for the Mission.¹¹⁸

On October 11, 1880 and August 6, 1881, Certificates of Purchase were issued to Leon Fouquet for Lot 1. Fouquet paid a total of \$160.00 or \$1.00 per acre for Lot 1.¹¹⁹

On May 11, 1881, Crown Grant No. 2328 was granted to Leon Fouquet for the 160 acres of Lot 1, Group 1, Kootenay District.¹²⁰

Land Tenure History of Lot 2, Kootenay District

On March 24, 1877, Napoleon Gregoire pre-empted 320 acres (Lot 2) described as bounded: "On the N. by the St. Mary's River. W. by L. Fouquet's and J. Burns claims. S. and E. by waste lands" [Figure 5].¹²¹

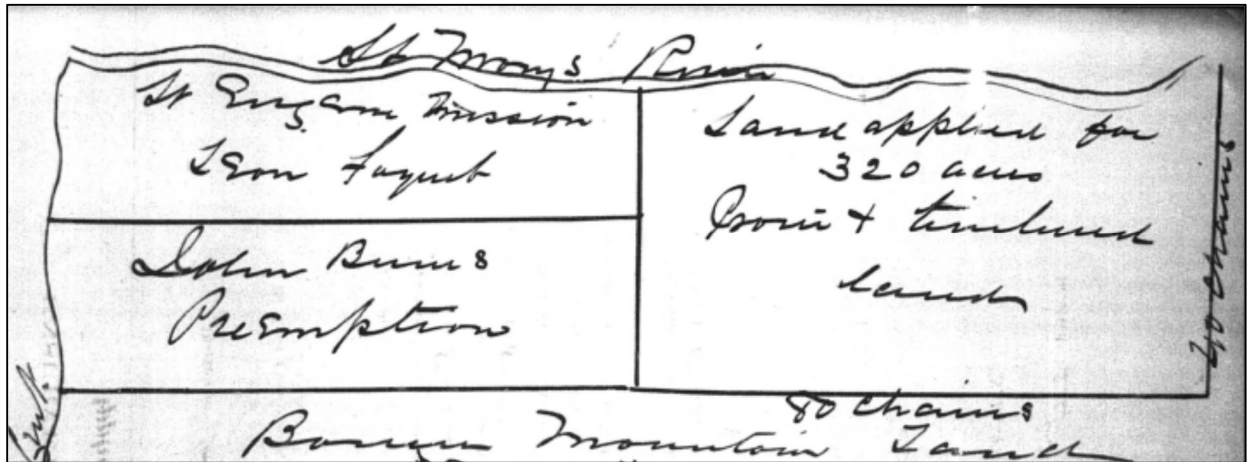


Figure 5 – Sketch of Gregoire's pre-emption of Lot 2, dated March 1877¹²²

In a March 24, 1877 Declaration, declared before Cornelius Booth, Assistant Commissioner of Lands and Works, Gregoire declared that these 320 acres were

¹¹⁸ See Document SMT 6 (Tab 41 – Claimant's Amended List of Documents, July 24, 2014).

¹¹⁹ See Document CAN000804.

¹²⁰ See Document DLSC 1-A (Tab 2 – Claimant's First Supplemental LOD). For better copy of Sketch see Document CAN000474.

¹²¹ See Documents EXP-000012; and EXP-000014.

¹²² See Document Sketch included with Application to Record [EXP-000014, p. 2].

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“unoccupied unsurveyed unreserved Crown land within the meaning of the ‘Land Act, 1875,’” and were “not an Indian Settlement, or any portion thereof...”¹²³

Thereafter, the Province of BC issued a “Certificate of Record of Unserved Land” to Napoleon Gregoire for his pre-emption of Lot 2, District of Kootenay, which was noted to be 320 acres and described as bounded: “...on the north by the St. Mary’s River – on the West by Leon Foquet [sic] and John Burns preemption claims and on the South and East by [waste] lands of the Crown.”¹²⁴

On November 14, 1879, a Certificate of Improvement for Surveyed Land, was issued to Gregoire for pre-empted Lot 2. This Certificate was based on evidence from Peter McClinchey and Henry Rogers on the “value of his improvements [“to the extent of two dollars and fifty cents an acre”] which consist of Buildings and fencing...”¹²⁵

In a later, further, Declaration, dated June 30, 1880, declared before the Commissioner of Lands and Works, Gregoire (“per” L. Fouquet) again declared that these 360 acres were “unoccupied and unreserved Crown land” and “not an Indian Settlement, or any portion thereof...”¹²⁶

Previously, on July 19, 1877, Surveyor William Ralph had surveyed Lot 2.¹²⁷ Ralph’s resulting Survey Plan titled “Plan of Lots Nos 1, 2 and 3 on the St Marys River, Kootenay District” showed Lot 2 to be 280 acres. Further, Lot 2 is shown to contain fencing as well as being crossed by the “Trail to Galbraiths” [**Figure 6**].¹²⁸ Ralph’s Field Notes do not specify, however, if the existing fencing or trail were First Nations in origin.¹²⁹

¹²³ See Document EXP-000012, p. 2.

¹²⁴ See Documents SMT 11 (Tab 17 – Claimant’s Amended List of Documents, July 24, 2014); CAN000753; and EXP-000013.

¹²⁵ See Documents EXP-000019; and CAN000786.

¹²⁶ See Document CAN000793.

¹²⁷ See Document CAN000494, pp. 25-30.

¹²⁸ See Document CAN000498.

¹²⁹ See Document CAN000494, pp. 21-24.

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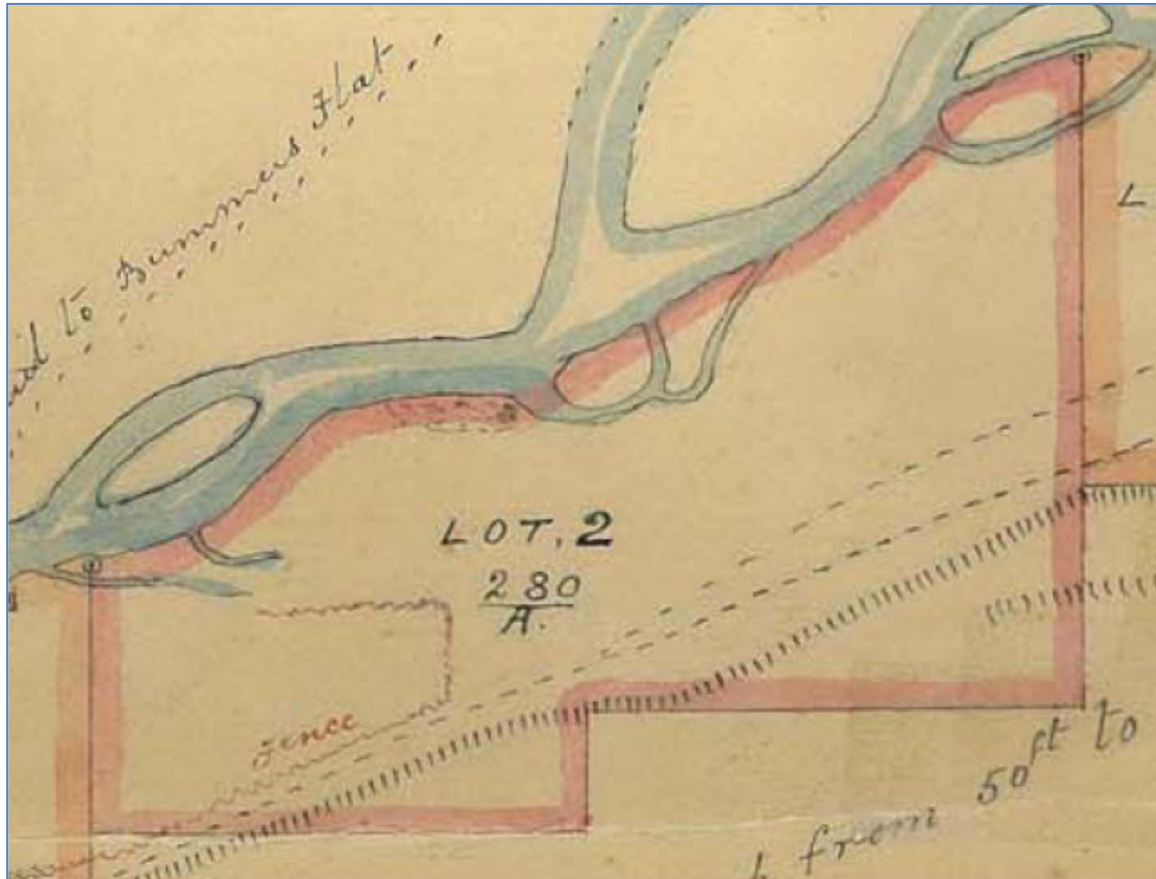


Figure 6 – Lot 2 as it appears in Ralph's Survey Plan, dated 1877

Surveyor William Ralph, in a December 10, 1877 Letter to the Chief Commissioner of Lands and Works, provided further details on his survey of Lot 2 of the “Roman Catholic Mission lands on the St. Marys river Kootenay District.” As previously noted, Ralph advised that it was intended that Gregoire’s land or Lot 2 as well as Fouquet’s and Burns’ lands would be held in partnership for the Mission.¹³⁰

On November 2, 1880, Crown Grant No. 2259 was granted to Napoleon Gregoire for the 320 acres of Lot 2, Group 1, Kootenay District. Gregoire paid \$5.00 for Lot 2.¹³¹

¹³⁰ See Document SMT 6 (Tab 41 – Claimant’s Amended List of Documents, July 24, 2014).

¹³¹ See Document ND 5 (Tab 1 – Claimant’s First Supplemental LOD). For better copy of Sketch see Document CAN000475.

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Land Tenure History of Lot 3, Kootenay District

On January 29, 1878, John Burns pre-empted 72 acres, Lot 3, situated on the St. Mary's River in the Kootenay District. These lands were described as: "On the N. by the St. Mary's River W. by N. Gregoire's preemption S. and E. by waste lands of the Crown."¹³²

Previously, on August 7, 1877, a "Certificate of Record of Unsurveyed [sic] Land" showed that Burns had applied for these same 72 acres. Burns' application would however be cancelled for unknown reasons.¹³³

Surveyor William Ralph, in a December 10, 1877 Letter to the Chief Commissioner of Lands and Works, provided details on surveys completed in 1877, including the "Roman Catholic Mission lands on the St. Marys river Kootenay District." As previously noted, it was intended that Gregoire's lands as well as Fouquet's and Burns' would be held in partnership for the Mission. If partnership was not possible, Fouquet was to "purchase them and...pay for the expenses of the survey."¹³⁴

The following year, on January 29, 1878, the Province of BC issued a "Certificate of Record of Unsurveyed Land" to John Burns for his pre-emption of Lot 3, District of Kootenay, which was noted to be 72 acres and described as bounded:

...on the north by the St. Marys [sic] River on the West by Napoleon Gregoire's pre-emption [sic] claim and on the South and East by [waste] lands of the Crown **[Figure 7]**.¹³⁵

¹³² See Documents EXP-000017; CAN000794.

¹³³ See Documents EXP-000016; CAN000763; and CAN000764.

¹³⁴ See Document SMT 6 (Tab 41 – Claimant's Amended List of Documents, July 24, 2014).

¹³⁵ See Document CAN000780.

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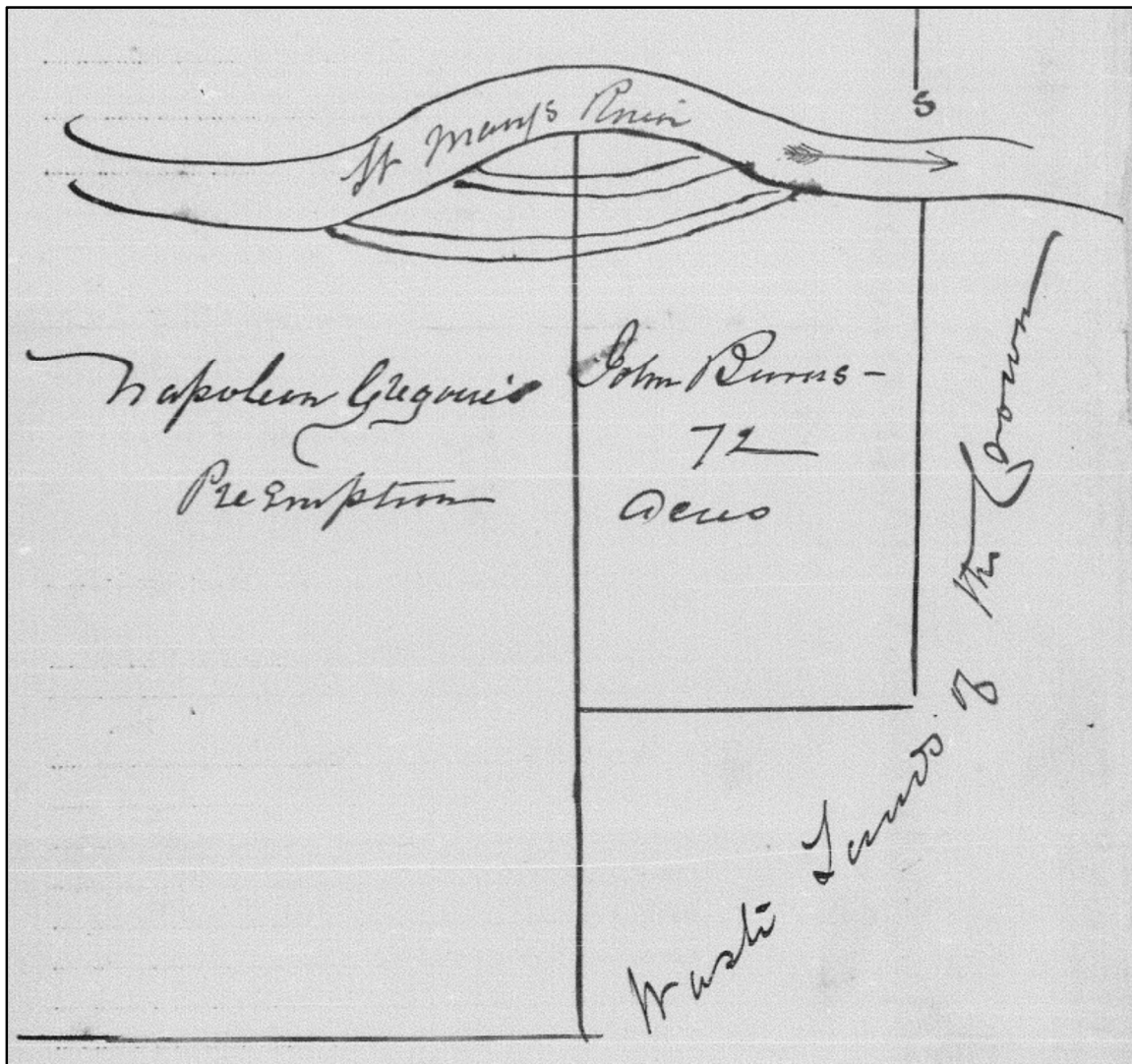


Figure 7 – Sketch of Burn's pre-emption of Lot 2, dated January 1878

On November 14, 1879, a Certificate of Improvement for Surveyed Land, was issued to John Burns for pre-empted Lot 3. This was based on evidence from Peter McClinchey and Henry Rodgers on the “value of the improvements on his land [“to the extent of two dollars and fifty cents an acre”] which consist of Buildings and fencing...”¹³⁶

In a Declaration, sworn before a W. Fernie on June 30, 1880, John Burns “per” L. Fouquet declared that these 72 acres were “unoccupied and unreserved Crown land” and “not an Indian Settlement, or any portion thereof...”¹³⁷

¹³⁶ See Documents EXP-000020; and CAN000787.

¹³⁷ See Document CAN000795.

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Lot 3 had previously been surveyed by Surveyor William Ralph on July 24, 1877 (when he was also surveying Lots 1 and 2).¹³⁸ Ralph's resulting Survey Plan titled "Plan of Lots Nos 1, 2 and 3 on the St Marys River, Kootenay District" showed Lot 3 to be 72 acres and crossed by the "Trail to Galbraiths." This Survey Plan showed an "Indian Field" adjacent to, and east of, Lot 3 [Figure 8].¹³⁹ Ralph's Field Notes further described the "Indian field" along the east boundary of Lot 3. These Field Notes do not specify, however, if the existing trail was First Nations in origin.¹⁴⁰



Figure 8 – Lot 3 as it appears in Ralph's Survey Plan, dated 1877

Surveyor William Ralph, in a December 10, 1877 Letter to the Chief Commissioner of Lands and Works, provided details on his survey of Lot 3 (72 acres) of the "Roman Catholic Mission lands on the St. Marys river Kootenay District." As previously noted, it was intended that Burns' land or Lot 3 as well as Fouquet's and Gregoire's lands would be held in partnership for the Mission.¹⁴¹

On November 2, 1880, Crown Grant No. 2258 was granted to John Burns for the 72 acres of Lot 3, Group 1, Kootenay District. Gregoire paid \$5.00 for Lot 3.¹⁴²

¹³⁸ See Document CAN000494, pp. 31-32.

¹³⁹ See Document CAN000498.

¹⁴⁰ See Document CAN000494, pp. 31-32.

¹⁴¹ See Document SMT 6 (Tab 41 – Claimant's Amended List of Documents, July 24, 2014).

¹⁴² See Document CAN000507. For better copy of Sketch see Document CAN000476.

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Land Tenure History of Lot 1063, Kootenay District

On September 13, 1890, the Province would issue a “Certificate of Pre-emption Record” to John Burns for his pre-emption of Lot 1063, District of East Kootenay, which was noted to be 320 acres.¹⁴³ Lot 1063 was adjacent to, and east of, Lot 3.

Prior to this, Lot 1063, had been surveyed from May 27 to 28, 1890 by Surveyor T.T. McVittie, as comprising 208 acres [Figure 9].¹⁴⁴ As previously referenced, Ralph’s 1877 Survey Plan and Field Notes showed an “Indian Field” adjacent to, and east of, Lot 3 where Lot 1063 was now located.¹⁴⁵ McVittie’s Survey Plan and Field Notes, however, did not show an Indian field or any other Indian interests in May 1890. In fact, it shows the area where the Indian field would have been as “open prairie.”¹⁴⁶

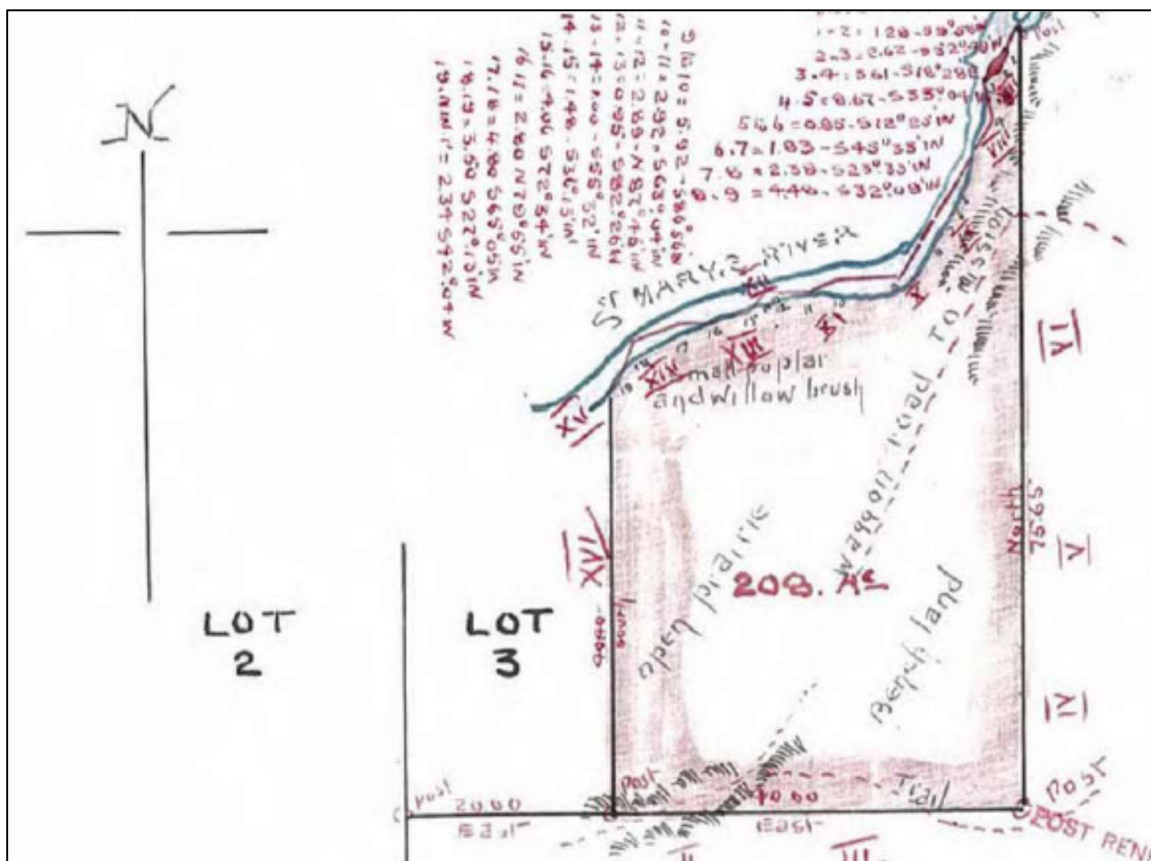


Figure 9 – Survey Plan of Lot 1063 R.C. Mission, by T.T. McVittie, dated May 1890

¹⁴³ See Document SMT 13 (Tab 46 – Claimant’s Amended List of Documents, July 24, 2014).

¹⁴⁴ See Document CAN000577 [Survey Plan located on p. 13].

¹⁴⁵ See Document CAN000498; CAN000494, pp. 31-32.

¹⁴⁶ See Document CAN000577 [Survey Plan located on p. 13].

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On April 22, 1896, Crown Grant 2388/78 was granted to John Burns for the 208 acres of Lot 1063, Group 1, Kootenay District. Burns paid \$208.00 for Lot 1063.¹⁴⁷

~~OPINIONS FORMED ON THE PRE-EMPTION HISTORY OF THE MISSION FARM LANDS~~

~~Opinion 1: The Inadequacy of the Pre-emption Process for First Nation Lands~~

~~A key aspect of British Columbia's pre-emption legislation in Land Acts from 1860 onward was that it did not allow the pre-emption of lands being "an Indian Reserve or Settlements." As Cail notes, however, an important limitation of this restriction was that a formal definition of an "Indian settlement" was never provided, in the context of the pre-emption of lands.¹⁴⁸~~

~~In an attempt to better understand what "Indian Settlement" might have entailed, this Report has examined the larger policy of Douglas, who crafted the pre-emption laws, on Reserves. In looking at this, it becomes clear that Governor Douglas had, as Cole Harris argues in *Making Native Space*, a liberal Indian Reserve policy that sought to create "generous reserves" for the Indians of British Columbia.¹⁴⁹ There is no evidence, however, that this translated into a generous view of Indian interests within the pre-emption process itself.~~

~~This is especially likely when realizing that though Douglas had "definite and coherent views" that lands were to be generously reserved for Indians, he left his successors with "a remarkably ill-defined position." In fact, as Harris points out, Douglas left "a frail legacy" in a colonial context that was "bent on development, disinclined to recognize any Native rights, and more than prepared to dismiss the Native land question altogether."¹⁵⁰ It seems reasonable then that the white settler population, the ones pre-empting lands, would also not have had a solid understanding of what an "Indian settlement" entailed.~~

~~Following Douglas' retirement in 1864 much of his generous Indian land policy would be abandoned in British Columbia. During this period from 1864 until British Columbia's entry into Confederation in 1871, the matter of Indian land~~

¹⁴⁷ See Document CAN000578 [Crown Grant]; CAN000473 [Sketch]; or SMT 14 (Tab 47 – Claimant's Amended List of Documents, July 24, 2014).

¹⁴⁸ See Document EXP-000029, Cail, *Land, Man, and the Law*, p. 176, footnote 14. Note: Cail incorrectly states that the first appearance of the clause restricting the pre-emption of "Indian settlements" was in 1865. In fact, this clause appeared from the very first Colonial Proclamation regarding pre-emption in January 1860.

¹⁴⁹ See Document EXP-000032, Harris, *Making Native Space*, p. 34.

¹⁵⁰ See Document EXP-000032, Harris, *Making Native Space*, p. 44.

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policy “quickly passed into the hands of local officials, all of whom broadly represented the aspirations and values of an incipient settler society.”¹⁵¹ Essentially, as Harris asserts, during this period British Columbia had “a Native policy run by settlers” that did not recognize Aboriginal title to lands.¹⁵²

Moreover, for the white settler population pre-empting lands, the government’s rejection of Douglas’ generous model would certainly have created an atmosphere that put settler interests above First Nation interests. It was during this concerted pre-settler period that John Shaw in 1868 would pre-empt what would become Lot 1 of the St. Eugene Mission Farm Lands.

Furthermore, when Lots 2 and 3 of the St. Eugene Mission Farm Lands were pre-empted in 1877 and 1878, respectively, the province of British Columbia continued to have a view of Reserves that was not generous (especially by the standards of Douglas or the federal government) [this is discussed in greater detail in the subsequent section “British Columbia’s Policy regarding Lands reserved for Indians at Confederation”].

Opinion 2: The Inadequacy of the Pre-emption Process in Describing and Sketching Lands

From the first pre-emption rules in 1860, it was required that the applicant for pre-emption provide a description and sketch of the desired lands. However, as Harris notes, this was an imperfect “process launched with little more than a few scratched lines on a slip of paper...that, in the eyes of the settler who happened along and of the law that backed him, created enduring property rights.”¹⁵³ Even, in 1875, with the further requirement that the pre-emptor make a Declaration confirming, among other things, that the lands to be pre-empted were not “not an Indian Settlement, or any portion thereof,” the process continued to be inadequate.

In looking at the descriptions and sketches related to the pre-emptions of Lots 1, 2, and 3 it is clear that these were brief and generally vague. For instance, the following are the descriptions and associated sketches (**Figures 1, 4 and 6**) for Lots 1, 2 and 3:

Lot 1: ...[1]60 acres of Land situated about 4 ½ miles [from] the Kootenay Ferry commencing at a stake [at] the mouth of Joseph’s Prairie Creek on the South [bank] of St. Mary’s River and running down [said] river one mile, thence Southerly one quarter [of] a mile, thence Westerly one mile, thence Northerly

¹⁵¹ See Document EXP-000032, Harris, *Making Native Space*, p. 45.

¹⁵² See Document EXP-000032, Harris, *Making Native Space*, p. 69.

¹⁵³ See Document EXP-000032, Harris, *Making Native Space*, p. 76.

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~~[one] quarter of a mile along the bank of Joseph's Prairie [Creek] and closing on starting Point [as shown in **Figure 1**].¹⁵⁴~~

~~**Lot 2:** "On the N. by the St. Mary's River. W. by L. Fouquet's and J. Burns claims. S. and E. by waste lands" [as shown in **Figure 4**].¹⁵⁵~~

~~**Lot 3:** "On the N. by the St. Mary's River W. by N. Gregoire's preemption S. and E. by waste lands of the Crown" [as shown in **Figure 6**].¹⁵⁶~~

~~Opinion 3: The Inadequacy of the Pre-emption Process for First Nations Pre-emptors~~

~~From 1860 to 1865, British Columbia's pre-emption legislation did not deny the right of pre-emption to the First Nations of British Columbia. Instead, pre-emption was open, generally, to all British subjects and those taking the oath of loyalty to the Crown. Such persons could "acquire unoccupied and unreserved, and unsurveyed Crown land in British Columbia" except those, as previously noted, "being the site of an existent or proposed town, or auriferous land available for mining purposes, or an Indian Reserve or settlement..."¹⁵⁷~~

~~In 1866, however, the right of First Nations peoples to pre-empt would be restricted as the right to pre-empt would no longer extend to "Aborigines," except with the "special permission...of the Governor...in writing."¹⁵⁸~~

~~While pre-emption was seemingly fully open to First Nations until 1866 and thereafter in a limited manner, the reality remains that it was indeed a process that was well out of the reach of the majority of First Nations in the nineteenth century. As Harris argues, the requirements of pre-emption during the Douglas era and just beyond were "arduous," as First Nations people faced:~~

~~...an eight shilling record fee, permanent occupation (allowing up to two months away each year), purchase after survey at a price not exceeding four shillings 2 pence an acre (not exceeding 10 shillings an acre before 19 January 1861), and improvements to the extent of ten shillings an acre (i.e., of £80 on a 160 acre pre-emption) before a certificate of improvement would be issued and a deed of conveyance obtained. More than this, Natives taking out pre-emptions were suddenly in a bureaucratic environment that assumed English language literacy, paperwork, and the rudiments of Cartesian geometry. There were descriptions to~~

¹⁵⁴ See Document CAN000712.

¹⁵⁵ See Documents EXP-000012; EXP-000014

¹⁵⁶ See Documents EXP-000017; CAN000794.

¹⁵⁷ See Documents SCB 1, SCB 2, and SCB 3 (Tabs 1, 2 and 3 – Claimant's Amended List of Documents, July 24, 2014). See also EXP-000029, *Cail, Land, Man, and the Law*, pp. 177-178; and EXP-000032, Harris, *Making Native Space*, p. 36

¹⁵⁸ See Document EXP-000005.

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~~write of proposed pre-emptions, rough maps to prepare, and boundaries (laid out in straight lines oriented as closely as possible to the “cardinal points of the compass”) to indicate with marked corner posts. In the early 1860s, this was not a world that Native people could enter on their own, even were they prepared to replace traditional seasonal rounds with sedentary farming...~~

~~For most Native people, pre-emption was still an unimaginable option...¹⁵⁹~~

~~Robert Cail, in his book *Land, Man and Law*, further asserted that First Nations peoples in the 1870s faced significant barriers to pre-empting from the provincial government. So while First Nations peoples were:~~

~~...also aware that under the 1870 Land Ordinance they themselves were at liberty to pre-empt large acreages after obtaining the written permission of the Lieutenant Governor in Council. However, they also knew that the provincial government was not granting such permission, and had not been since 1872, pending location of the railway lands. Even if this had not been the case, they had a shrewd suspicion of the probable result if the chief commissioner of lands and works received many applications for pre-emptions from Indians. Further, unless an Indian had money to purchase provisions and implements and to sustain himself over a long period of time, it is doubtful that he could have fulfilled the pre-emption residence requirements of ten months annually on the claim. In all likelihood, he would have found it necessary to work elsewhere to finance his holding. But he could not arrange for another Indian to live on his claim, since under the 1873 Land Amendment Act no one could engage an Indian to live on a pre-emption while he himself was absent.¹⁶⁰~~

~~And as Cail points out, First Nations people were reportedly able to pre-empt lands, often with the help of missionaries, “all along the Fraser River up to Hope” in the early 1860s. Such pre-emptions would, however, not lead to concrete land ownership as Cail was not able to locate any record of Crown Grants (full ownership) being provided to these First Nation pre-emptors.¹⁶¹~~

~~As such, there was little chance that the ʔaḡam people would have been able to pre-empt the lands that would become the St. Eugene Mission Farm Lands. The pre-emption was process, as Harris and Cail assert, an inaccessible and unattainable right in the 1860s and 1870s for First Nations peoples. Further, even had the ʔaḡam successfully pre-empted, the possibility of securing a Crown Grant to the land was equally as unlikely. Another point to consider is that those First Nations who were able to pre-empt often did so with the assistance of missionaries. In the case of St. Eugene Mission Farm Lands, however, the very~~

¹⁵⁹ See Document EXP-000032, Harris, *Making Native Space*, p. 36

¹⁶⁰ See Document EXP-000029, Cail, *Land, Man, and the Law*, pp. 205-206.

¹⁶¹ See Document EXP-000029, Cail, *Land, Man, and the Law*, pp. 177-179.

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~~missionaries who might have assisted them were the ones pre-empting their lands.~~

Opinion 4: Areas of Concern regarding the Pre-emption of the Mission Farm Lands

A number of sources including oral history recounted by Elder Mary Ann Michel, documentation by Father Fouquet, information related to survey of the Mission Farm Lands, and correspondence from the Department of Indian Affairs suggests some important areas of concern regarding the pre-emption of the St. Eugene Mission Farm Lands.

First, the oral history of Elder Maryanne Michel suggests that a white pre-emptor, possibly Shaw, acted improperly in securing the lands that would become the Mission Farm Lands. In particular, Michel recounted that a white pre-emptor burned a number of permanent houses or tepees and displaced a Ktunaxa family off of the land.¹⁶²

Second, according to Fouquet in 1874, Shaw's claim had gone outside of his pre-emption boundaries. Fouquet described this deviation from the claim's boundaries as including several barns as well some enclosed cultivated land that did "not belong to the claim."¹⁶³

Third, Fouquet, in 1874, acknowledged the existence of Indian fields to the west and east of Shaw's claim.¹⁶⁴ Later, when Surveyor William Ralph surveyed Lot 1 in 1877 he showed a 15 acre "Indianfield [sic]" adjacent to, and west of, Lot 1. In regard to the Indian field to the east of Shaw's claim, Ralph's survey showed an "Indian Field" adjacent to, and east of, Lot 3.¹⁶⁵ However, when Lot 1063, located adjacent to Lot 3 where this field had been, was pre-empted in 1890 by Burns, the Survey Plan did not show an Indian field or any other Indian interests described the area as "open prairie."¹⁶⁶

Fourth, Fouquet's correspondence from 1874 to 1877, suggests that Fouquet did not understand the legal requirements of the pre-emption process as well as whether or not he had actually acquired Shaw's pre-emption in a proper, legal manner.¹⁶⁷

¹⁶² See Documents CAN000927; EXP-000030, pp. 4-5.

¹⁶³ See Documents CAN-000729; CAN-000479; CAN000732; CAN000480.

¹⁶⁴ See Documents CAN000732; CAN000480.

¹⁶⁵ See Documents CAN000498; CAN000494, pp. 21-24, 31-32.

¹⁶⁶ See Document CAN000577 [Survey Plan located on p. 13].

¹⁶⁷ See Documents CAN-000729; CAN-000479; CAN000732; CAN000480; CAN000734; CAN000482; CAN000738; CAN000487; CAN000743; CAN000493; CAN000496.

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Fifth, when Surveyor William Ralph surveyed Lot 1 in 1877, he advised that he had altered the shape of the Shaw pre-emption from its original 20 chains by 80 chains to a newly configured 40 chains by 40 chains. This, Ralph noted, had been done at the request of Fouquet. While this alteration maintained the original 160 acre size of the lot, it allowed for the inclusion of “a strip of the land abandoned by John Burns” putting “the Lot into a good shape.”¹⁶⁸

The sixth and final area of concern, relates to questions regarding John Galbraith’s 1872 pre-emption of the area known as Joseph’s Prairie (present-day Cranbrook¹⁶⁹ and some six miles from the Mission Farms Lands). Galbraith’s pre-emption, although not part of the Mission Farm Lands, speaks to the larger suitability of the pre-emption process in the Kootenay region. In a November 26, 1887 Letter from Indian Superintendent Powell to the Superintendent General of Indian Affairs questioned as the legality of Galbraith’s pre-emption, stating:

...The land on Joseph Prairie, about forty acres of medium quality, had been occupied by Chief Joseph after whom the Prairie derives its name and as Isadore, his successor, alleges thus descended to him. It was, however, a few years ago, pre-empted by John Galbraith (now deceased) who had sold it to Col. Baker, the present owner. Isadore’s story is that he did not interfere in the transaction because Mr. Galbraith informed him that he had applied for the land to prevent any other settler from taking it up, and he, Isadore, would still be the occupant, and virtual owner.

Whatever Mr. Galbraith’s intentions towards Isadore were...but the facts [sic] are, that Isadore has been allowed to occupy it, without molestation, from the time he succeeded to it, after Joseph’s death until Mr. Galbraith sold the whole ranch to Col Baker, and included with it the piece of land in question for which he held a certificate of purchase from the Crown. Col. Baker at once applied for, and obtained the Crown patent, so that at the time of our visit, and possibly at the period of the Reserve Commissioners visit in 1884, the land had actually been alienated and hence out of the question as an Indian reservation, though at the time the Commissioner was of opinion that Isadore did not want it.

Powell further stated the following regarding the legality of Galbraith’s pre-emption of Joseph’s Prairie, noting that Chief Isadore:

...had the right of preoccupation of the land on Joseph Prairie, and it is doubtful if, in view of a provision of the Land act, preventing the sale, or pre-emption of land occupied by Indians, this particular piece first occupied for many years by

¹⁶⁸ See Document SMT 6 (Tab 41 – Claimant’s Amended List of Documents, July 24, 2014). For a copy of Galbraith’s 1872 Certificate of Pre-emption (the Sketch was not provided) see Document CAN000726.

¹⁶⁹ See Document EXP-000031, p. 2.

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Joseph, and then by Isadore could legally have been purchased by Mr. Galbraith.¹⁷⁰

On December 14, 1887, the Deputy Superintendent General of Indian Affairs responded to Powell's November 26th Letter, stating:

...that the Department should raise the question of Col. Baker's legal title to this piece of land, even supposing a Patent has been issued to him for the same, inasmuch as the land, was unquestionably occupied and improved by the father of Chief Isidore and by Chief Isidore himself for many years before it was deeded to Col. Baker, and it was, therefore, under the land of British Columbia not competent for the Government or that Province to sell the land to any White man.¹⁷¹

~~The story of Galbraith's alleged impropriety with Joseph's Prairie raises questions as to the suitability of the pre-emption process to protect Indian interests in the Kootenay region. It also lends further credibility to the story recounted by Michel regarding the lands pre-empted under duress at the Mission Farm Lands in the late 1860s.~~

¹⁷⁰ See Document CAN000385.

¹⁷¹ See Document CAN000386.

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2. RESERVE CREATION HISTORY IN THE 19TH CENTURY FOR THE ʔAǾAM WITHIN HISTORICAL CONTEXT OF RESERVE CREATION IN BRITISH COLUMBIA

HISTORY OF FEDERAL JURISDICTION OVER “INDIANS AND LANDS RESERVED FOR INDIANS”

Subsection 91(24) Constitution Act, 1867

In 1867, Canada obtained exclusive legislative jurisdiction over “Indians and Lands reserved for Indians” pursuant to subsection 91(24) of the *Constitution Act, 1867* (30 & 31 Vict., c. 3 (U.K.)).¹⁷²

British Columbia Terms of Union, 1871

Upon British Columbia’s entry into Confederation in 1871, Article 13 of the *British Columbia Terms of Union, 1871 (Terms of Union)* provided that:

The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union.

To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for decision of the Secretary of State for the Colonies.¹⁷³

¹⁷² See Document EXP-000006.

¹⁷³ See Document SMT 46 (Tab 7 – Claimant’s Amended List of Documents, July 24, 2014). ~~According to Cail, there was no mention of “Indians” in the original union resolutions between Canada and British Columbia. Article 13 would be added later in what Cail calls “a vain attempt to effect a satisfactory division of responsibility between the two governments...” [See Document EXP-000029, Cail, *Land, Man, and the Law*, p. 187].~~

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HISTORY OF RESERVE ALLOTMENT IN BRITISH COLUMBIA

British Columbia's Colonial Policy regarding Lands Reserved for Indians

~~In 1858, Governor James Douglas outlined his policy for lands reserved for Indians stating that they should “in all cases include their [Indians] cultivated fields and village sites, for which from habit and association they invariably conceive a strong attachment, and prize more, for that reason, than for the extent or value of the land.”¹⁷⁴~~

~~In 1859, Douglas' Indian policy on the mainland, was to provide First Nations with “generous reserves” that were “to the extent of several hundred acres round each village” with such land to be closed to pre-emption.¹⁷⁵~~

~~By 1861, Douglas instructed that “the extent of the Indian Reserves...be defined as they may be severally pointed out by the Natives themselves.”¹⁷⁶~~

In January 1864, Governor Douglas, when addressing the opening of the first Legislative Council, discussed the progress made in allotting Reserves to some of the Province's Indians, noting:

...The native Indian tribes are quiet and well disposed, the plan of forming reserves of land, embracing village sites, cultivated fields, and favorite places of resort of the several tribes, and thus securing them against the encroachment of settlers, and forever removing the fertile cause of agrarian disturbances, has been productive of the happiest effects on the minds of the natives.

Such Reserve lands were “to be held as the joint common property of the several tribes, being intended for their exclusive use and benefit...” and could not be sold or alienated by the Indians as title remained with the Crown.¹⁷⁷

It should also be noted that Douglas also stated in his 1864 address that such Reserve lands had been limited to “*ten acres for each family* [sic].”¹⁷⁸ This statement, seeming to go against his policy for generous Reserves, requires further explanation. ~~Firstly, Cole Harris argues that this was a misleading figure perhaps meant to defend his generous practices in front of his fellow politicians (who were not as inclined to generous Reserves). Indeed, ten years later, in a Letter to Indian Superintendent Powell, Douglas admitted that the ten acre per family statistic had only been based on Reserves in the lower Fraser Valley and~~

¹⁷⁴ See Document EXP-000029, Cail, *Land, Man, and the Law*, p. 174. Cail quoting Douglas directly.

¹⁷⁵ See Document EXP-000032, Harris, *Making Native Space*, p. 34.

¹⁷⁶ See Document EXP-000032, Harris, *Making Native Space*, p. 35.

¹⁷⁷ See Document CAN000727, p. 12.

¹⁷⁸ See Document CAN000727, p. 12.

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~~Vancouver Island. In other parts of province “reserves in pastoral areas, where Natives possessed many horses and cattle” that had been roughly traced out were “laid out on a large scale...to allow sufficient space and range for their cattle at all seasons.” Douglas then in referencing a formula of ten acres per family “made it easy to miss or ignore the essence of Douglas’s Native land policy” that he sought to create generous Reserves for First Nations, and to treat them as equals before the law.¹⁷⁹~~

~~In spite of Douglas’ “definite and coherent views” that lands were to be generously reserved for Indians, he left his successors with “a remarkably ill-defined position.” For example, few of Douglas’ Reserves were surveyed and none were gazetted. His instructions for laying out Reserves were often provided verbally. This was, Cole Harris rightly points out, “a frail legacy” in a colonial context that was “bent on development, disinclined to recognize any Native rights, and more than prepared to dismiss the Native land question altogether.”¹⁸⁰~~

~~Following Douglas’ retirement in 1864 much of Douglas’ generous Indian land policy, which was admittedly poor defined, would be abandoned in British Columbia. During this period from 1864 until British Columbia’s entry into Confederation in 1871, the matter of Indian land policy “quickly passed into the hands of local officials, all of whom broadly represented the aspirations and values of an incipient settler society.”¹⁸¹ Essentially, as Cole Harris asserts, during this period British Columbia had “a Native policy run by settlers” that did not recognize Aboriginal title to lands.¹⁸² The face and voice of this settler society was Joseph Trutch, who became the Chief Commissioner of Lands and Works in April 1864.¹⁸³~~

~~Within a month of Douglas’ retirement the Legislative Council of British Columbia passed a resolution that the Indian Reserves in the Okanagan were “unnecessarily large” and “seriously interfering with the development of the agricultural resources of the Colony.” Thereafter, similar complaints were made about Reserves in the Fraser Valley. During the subsequent years until British Columbia’s entry into Confederation, Trutch and the colonial government would reduce a number of these “unnecessarily large” Reserves set aside by Douglas.¹⁸⁴ Interestingly, Peter O’Reilly, who later would allot the majority of Indian Reserves in BC, including those of the Upper Kootenay, concurred that Douglas’ overly large Reserves were causing settlers “much inconvenience.”¹⁸⁵~~

~~¹⁷⁹ See Document EXP-000032, Harris, *Making Native Space*, p. 43.~~

~~¹⁸⁰ See Document EXP-000032, Harris, *Making Native Space*, p. 44.~~

~~¹⁸¹ See Document EXP-000032, Harris, *Making Native Space*, p. 45.~~

~~¹⁸² See Document EXP-000032, Harris, *Making Native Space*, p. 69.~~

~~¹⁸³ See Document EXP-000032, Harris, *Making Native Space*, p. 45.~~

~~¹⁸⁴ See Documents EXP-000032, Harris, *Making Native Space*, pp. 56-58; EXP-000029, *Gail, Land, Man, and the Law*, pp. 179-180.~~

~~¹⁸⁵ See Document EXP-000032, Harris, *Making Native Space*, p. 58.~~

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~~British Columbia in the years leading up to Confederation also sought to limit Reserves to approximately 10 acres per family.¹⁸⁶ In reality, however, British Columbia's Reserves were much smaller than this limit. In 1871, at the end of the colonial period, the province's 76 Reserves were "less than one acre per Indian."¹⁸⁷ Later, British Columbia would assert that the pre-Confederation average for Reserve size was 6 acres per family.¹⁸⁸~~

British Columbia's Policy regarding Lands Reserved for Indians at Confederation

Following British Columbia's entry into Confederation in 1871, a dispute between British Columbia and the federal government emerged over the matter of how lands were to be reserved for the Indians of the province.

~~As previously noted, under Article 13 of the 1871 Terms of Union, Canada agreed to follow the "hitherto" policies and practices of the British Columbia government without actually knowing what these policies and practices had been.¹⁸⁹ The result, as Cole Harris argues, was that Confederation "had created a new polarity." On one side was the federal government:~~

~~...prepared to exercise its custodial role over Indians, inclined to be liberal in its treatment of them, and completely ignorant about British Columbia...~~

~~Conversely, in the province of British Columbia there was:~~

~~...a group of men who previously had the running of Indian affairs much to themselves and still controlled the allocation of provincial land, represented the values and interests of settler society, and resented outside interference, particularly when it cast aspersions on their former policies.¹⁹⁰~~

~~Canada, however, would soon discover that British Columbia's previous policies and practices were not akin to its own in Manitoba and the Northwest Territories. For example, First Nations on the Prairies had received between 160 and 640 acres per family as well as annuities from Canada.¹⁹¹ In contrast, British Columbia repeatedly claimed that it was under no legal obligation to convey more than ten acres per family for Reserves – claiming this as its "hitherto" practice~~

~~¹⁸⁶ See Document EXP-000032, Harris, *Making Native Space*, p. 68.~~

~~¹⁸⁷ See Document EXP-000029, Cail, *Land, Man, and the Law*, p. 190.~~

~~¹⁸⁸ See Document EXP-000032, Harris, *Making Native Space*, pp. 74-75.~~

~~¹⁸⁹ The federal government's lack of understanding of British Columbia's pre-Confederation Indian land policies is also discussed by Cail, *Land, Man, and the Law*, pp. 185-186 [EXP-000029].~~

~~¹⁹⁰ See Document EXP-000032, Harris, *Making Native Space*, p. 73.~~

~~¹⁹¹ See Document EXP-000029, Cail, *Land, Man, and the Law*, pp. 185; 197.~~

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~~before Confederation.¹⁹² As previously shown, however, British Columbia's 76 Reserves prior to Confederation were much smaller than 10 acres per family.¹⁹³~~

~~The result of the very different views of the federal and provincial governments was a federal-provincial conflict that "tended to fossilize the Native land policies worked out in British Columbia between Douglas's retirement and Confederation."¹⁹⁴~~

~~Thereafter, in March 1873, Powell, the Dominion's Superintendent of Indian Affairs for BC, put forth a federal Order in Council (OIC) stating that 80 acres of average quality land be set aside for each family as Reserve lands.¹⁹⁵ British Columbia responded that this was far too large especially because it argued that the pre-Confederation average for Reserve size was 6 acres per family.¹⁹⁶~~

~~Eventually, the provincial government would agree that "all future reserves for Indians would be adjusted on the basis of twenty acres of land for each head of a family" which the Dominion agreed to. Still to be worked out, however, were issues of family size (which British Columbia argued should be defined as six people per family) and whether 40 acres of land per family should be allotted in dry, pastoral areas. Following several years of correspondence, the province agreed that family size would not be defined and Canada agreed that twenty acres per family would be the formula for the entire province.¹⁹⁷~~

~~As a side note which speaks to the attitude of the province of British Columbia towards the idea of Indian Reserves, in 1874, the province put forth a version of the Land Act that "made no provision for Indian reserves or lands for that purpose." While the 1874 Land Act would be disallowed by the federal government, it nonetheless reflected British Columbia's earlier denial of Aboriginal title as recognized by the *Royal Proclamation (1763)* in a Memorandum, written by Joseph Trutch, dated January 29, 1870.¹⁹⁸~~

~~The agreement between Canada and British Columbia however was short lived as tensions over how the new formula would apply to existing Reserves many which "did not contain five acres of land per head of family."¹⁹⁹ The result was~~

¹⁹² See Document EXP-000032, Harris, *Making Native Space*, p. 73.

¹⁹³ See Document EXP-000029, Cail, *Land, Man, and the Law*, p. 190.

¹⁹⁴ See Document EXP-000032, Harris, *Making Native Space*, p. 73.

¹⁹⁵ See Document EXP-000029, Cail, *Land, Man, and the Law*, pp. 194-195.

¹⁹⁶ Cole Harris calls this "a spurious calculation made by dividing the acreage of the reserves the province admitted had been conceded at Confederation by one-sixth of an estimate of the total Native population in the province." [See Document EXP-000032, Harris, *Making Native Space*, p. 75].

¹⁹⁷ See Document EXP-000032, Harris, *Making Native Space*, p. 75.

¹⁹⁸ See Document EXP-000029, Cail, *Land, Man, and the Law*, pp. 27; 182-183.

¹⁹⁹ See Document EXP-000032, Harris, *Making Native Space*, p. 75.

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~~that from just after Confederation to the creation of the Joint Indian Reserve Commission in 1876 “no reserves were allocated or adjusted in British Columbia.”²⁰⁰~~

Establishment of the Joint Indian Reserve Commission (JIRC)

In order to bring about “a settlement of the Indian Land question” in British Columbia, the federal and provincial governments, in 1875, approved the creation of a Joint Indian Reserve Commission (JIRC). A Memorandum attached to a Canada OIC, dated November 10, 1875, highlighted the following responsibilities for the JIRC:

1. That with a view to the speedy and final adjustment of the Indian Reserve question in British Columbia on a satisfactory basis, the whole matter be referred to three Commissioners, one to be appointed by the Government of the Dominion, one by the Government of British Columbia, and the third to be named by the Dominion and Local Governments jointly.
2. That the said Commissioners shall as soon as practicable after their appointment meet at Victoria and make arrangements to visit with all convenient speed, in such order as may be found desirable, each Indian Nation (meaning by Nation all Indian Tribes speaking the same language) in British Columbia and after full inquiry on the spot into all matters affecting the question, to fix and determine for each nation separately the number, extent and locality of the Reserve or Reserves to be allowed to it.
3. That in determining the extent of the Reserves to be granted to the Indians of British Columbia, no basis of acreage be fixed for the Indians of that Province as a whole, but that each Nation of Indians of the same language be dealt with separately.
4. That the Commissioners shall be guided generally by the spirit of the terms of Union between the Dominion and the Local Governments which contemplates a “liberal policy” being pursued towards the Indians, and in the case of each particular nation regard shall be had to the habits, wants and pursuits of such Nation, to the amount of territory available in the region occupied by them, and to the claims of the White settlers...²⁰¹

In a corresponding January 6, 1876 BC OIC the above responsibilities were agreed to by the province of BC.²⁰²

On August 25, 1876, the JIRC was provided with Dominion instructions for the allotment of Indian Reserves, which stated:

²⁰⁰ ~~See Document EXP-000032, Harris, *Making Native Space*, p. 76.~~

²⁰¹ See Document CAN-000363, pp. 1-8.

²⁰² See Document CAN-000363, pp. 37-42

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While it appears theoretically desirable as a matter of general policy to diminish the number of small reserves held by any Indian nation, and when circumstances will permit to concentrate them on three or four large reserves, thus making them more accessible to missionaries and school teachers, you should be careful not even for this purpose to do any needless violence to existing tribal arrangements, and especially not to disturb the Indians in the possession of any villages, fishing stations, fur-trading posts, settlements or clearings, which they may occupy and to which they may be specially attached, and may be to their interest to retain. Again it would not be politic to attempt to make any violent or sudden change in the habits of the Indians, or that those who are now engaged in fishing, stock-raising, or in any other profitable branch of industry should be diverted from their present occupations or pursuits, in order to induce them to turn their attention to agriculture. . .

Should circumstances require that the number of reserves for a particular nation be three, or even more, from the fact of the nation being divided by natural physical barriers, or from differences in the habits, pursuits and modes of life of different portions of the nation or for other causes, you will in determining the number of reserves to be assigned to any particular Indian nation be guided rather by the special circumstances of that nation, their habits, tastes, pursuits and physical surroundings, than by any fixed theoretical rule.²⁰³

Appointment of Gilbert Malcolm Sproat as Indian Reserve Commissioner

Following the dissolution of the Joint Indian Reserve Commission on February 23, 1877,²⁰⁴ Gilbert Malcolm Sproat was appointed the sole Indian Reserve Commissioner on March 8, 1878, by Canada OIC 1878-0170.²⁰⁵ As previously noted, prior to Sproat's selection as the sole Indian Reserve Commissioner in 1878, he had been provided, as a member of the JIRC, with Dominion instructions, dated August 25, 1876, for the allotment of Indian Reserves in British Columbia.²⁰⁶

Appointment of Peter O'Reilly as Indian Reserve Commissioner

On July 19, 1880, Canada OIC 1334 appointed Peter O'Reilly as Indian Reserve Commissioner following Sproat's resignation. O'Reilly's duties at Indian Reserve Commissioner were outlined as follows:

²⁰³ See Document EXP-000010.

²⁰⁴ See Documents CAN000745; EXP-000011.

²⁰⁵ See Document SCB 10 (Tab 19 – Claimant's Amended List of Documents, July 24, 2014).

²⁰⁶ See Document EXP-000010.

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...the responsible duties connected with which consist mainly in ascertaining accurately the requirements of the Indian Bands in that Province, to whom lands have not been assigned by the late Commission, and allotting suitable lands to them for tillage and grazing purposes.

Furthermore, O'Reilly was to "act on his own discretion, in furtherance of the joint suggestions of the Chief Commissioner of Lands and Works, representing the provincial government, and the Indian Superintendent, representing the Dominion government, as to the particular points to be visited, and Reserves to be established." O'Reilly's authority to allot lands for Reserves was to require joint approval by the provincial Commissioner of Lands and Works and the federal Indian Superintendent for British Columbia, with any disagreement being referred to the Lieutenant Governor of the Province, "whose decision should be final and binding."²⁰⁷

~~Prior to his appointment as Indian Reserve Commissioner, O'Reilly had worked for the colonial and provincial governments in a number of capacities though largely as a magistrate.²⁰⁸ In relation to the focus of this Report, O'Reilly was the magistrate in the Kootenay when John Shaw pre-empted the 160 acres that would become Lot 1 of the St. Eugene Mission Farm Lands. In fact, O'Reilly signed and approved Shaw's application for pre-emption as well as his Certificate of Improvement.²⁰⁹~~

~~In describing O'Reilly's eighteen year tenure as Indian Reserve Commissioner, Cole Harris describes him as "an agent of the Crown working quickly and efficiently, interpreting his instructions and the law as he understood them, making land decisions, and writing reports promptly." While at times, O'Reilly was a "limited defender of Native rights" ultimately he "reflected the predominant values of settler society" acting "as a trusted agent" of the settler focused colonialism in which he lived and worked. Furthermore, O'Reilly "had to comply with the provincial government's desire to allocate reserves quickly and minimally." Such limitations were not difficult for O'Reilly to accept as he "was prepared to grant some land, but the boundaries of his and, more basically, the provincial government's generosity were narrow and insisted upon."²¹⁰~~

Instructions to O'Reilly, drafted by Deputy Superintendent General of Indian Affairs Vankoughnet on August 9, 1880, advised the new Commissioner to:

...act in your discretion upon the joint suggestions of the Hon. the Chief Com^r of Lands & Works for British Columbia representing the Provincial Government

²⁰⁷ See Document SCB 12 (Tab 21 – Claimant's Amended List of Documents, July 24, 2014).

²⁰⁸ ~~See Document EXP-000029, Cail, *Land, Man, and the Law*, p. 217.~~

²⁰⁹ See Documents CAN000712; CAN000719; CAN-000721; EXP-000008.

²¹⁰ ~~See Document EXP-000032, Harris, *Making Native Space*, p. 186.~~

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and Mr. Powell...Indian Supt. for that Province representing the Dominion Government...

...In allotting Reserve lands to each Band you should be guided generally by the spirit of the terms of Union between the Dominion and local Governments which contemplated a "liberal policy" being pursued towards the Indians. You should have special regard to the habits, wants and pursuits of the Band, to the amount of territory in the Country frequented by it, as well as to the claims of the White settlers (if any).

You should assure the Indians of the anxious desire of the Government to deal justly and liberally with them in the settlement of their Reserves as well as in all other matters...

With regard to the views of the Govt [sic] on the land question. I have the honor to refer you to the documents in relation to this matter printed with the Annual Report of the Dept. of the Interior for 1875 and I have the honor to request that you will act in the spirit thereof.-

The Government consider it of paramount importance that in the settlement of the land question nothing should be done to militate against the maintenance of friendly relations between the Government and the Indians, you should therefore interfere as little as possible with any tribal arrangements being specially careful not to disturb the Indians in the possession of any villages, fur trading posts, settlements, clearings[,] burial places and fishing stations occupied by them and to which they may be specially attached...

...You should in making allotments of lands for Reserves make no attempt to cause any violent or sudden change in the habits of the Indian Band for which you may be setting part the Reserve land; or to divert the Indians from any legitimate pursuits or occupations which they may be profitably following or engaged in, you should on the contrary encourage them in any branch of industry in which you find them so engaged.

The claims to water privileges of Bands whose [sic] Reserves require irrigation should be fully recognized by you and an ample provision of water should be made for them...²¹¹

O'Reilly was also informed of Sproat's 1878 Report of Progress which stated that the "first requirement is to leave the Indians in the old places to which they are attached." As well as interfering as little as was necessary "for settling up the

²¹¹ See Document SMT 50 A-11: 2 (Tab 22 – Claimant's Amended List of Documents, July 24, 2014).

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country with white settlers permits, with the favourite resorts of the Indians, their old ways, their councils and gatherings and their intertribal traffic..."²¹²

URGENT CALL FOR THE ALLOTMENT OF INDIAN RESERVES IN THE KOOTENAY REGION

On June 30, 1880, William Fernie, the Government Agent, Kootenay District, wrote to the Superintendent of Indian Affairs, Victoria, requesting that measures be taken to alleviate the destitute situation faced by some Indians in the Kootenay district with the decline of the buffalo hunt. In response to this decline, Fernie noted, some had turned to raising cattle and to the cultivation of the land as their future prospects. While Fernie did not specifically request the allotment of Indian Reserves, he did request that Indian Affairs act to "encourage and help them [Kootenay Indians] to start small farms." Fernie also described the Kootenay Indians as "always friendly disposed to the whites" and having "behaved on the whole very well indeed."²¹³

An April 17, 1883 Letter from Indian Superintendent for BC Powell to the Superintendent General of Indian Affairs discussed "the pressing urgency of setting aside lands in Kootenay, Chilcotin, and on the West Coast of Vancouver Island..." ~~Addressing this urgent need, however, was to be particularly difficult in light of Indian Commissioner O'Reilly's leave for six months commencing May 1, 1883²¹⁴ which was likely to allow two or three years to go by before these districts would be attended to.~~ This, the Indian Superintendent cautioned, would result in "serious trouble...long before the expiration of that period, if lands were not reserved." As such, the Indian Superintendent requested "some other arrangement...for reserving Indian lands during Mr. O'Reilly's absence."²¹⁵ No evidence of another arrangement was located. O'Reilly would allot Reserves in the Kootenay in 1884.

On July 14, 1883, the Chief Commissioner of Lands and Works instructed A.S. Farwell to proceed to and report on the Kootenay District so "the Government [provincial] may be possessed of full information..." of that area. Farwell was also instructed to report "upon the number of Indians (if any?) who, by usage,

²¹² See Document EXP-000018. ~~Cited in *Kitselas First Nation v. Canada*, 2013 SCTC 1, para. 16, 142.~~

²¹³ See Document CAN000799.

²¹⁴ ~~O'Reilly would miss the 1883 and 1885 field seasons "because of exhaustion" [See Document EXP-000032, Harris, *Making Native Space*, p. 174]. As will be noted, O'Reilly will allot the Reserves in the Kootenay in the 1884 field season~~

²¹⁵ See Document SMT 51 A-11: 3 (Tab 23 – Claimant's Amended List of Documents, July 24, 2014).

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may have claims for grazing or other purposes, upon the lands proposed to be reclaimed, and generally upon Indian requirements in the locality.”²¹⁶

Farwell's subsequent “Report on the Kootenay Indians,” dated December 31, 1883, advised that:

On my arrival in the Kootenay District, every white man I conversed with, without an exception, forcibly impressed on me the fact that the Kootenay Indians, as a whole, were extremely dissatisfied with the unsettled state of their land affairs...

Farwell, considering it time sensitive, had communicated with the Kootenay Indians in relation to their land claims and collected information as he was able. In regard to population figures, Farwell advised that a census of the Kootenay Indians had not been completed “either by the Indian Department or anyone else.” Based on his unspecified sources, Farwell estimated the Kootenay Indians to number about 800 men, women, and children with “450 British Indians domiciled north of the international boundary, and 200 American Indians residing in Idaho and Montana Territories; the remaining 150 Indians are migratory...” Of the 450 British Indians, Farwell advised that:

...150 claim the Lower Kootenay as their country, from the boundary line, down Kootenay river, and through Kootenay Land and its tributaries. The remaining 300 Indians consider the land along the Upper Kootenay River, from the boundary line at Tobacco Plains northward, to the Lower Columbia Lake, as theirs. The majority of these Upper Kootenays winter at St. Mary's Mission. This Mission is, at present, presided over by the Rev. Father Fouquet, and is situated on the right bank of St. Mary's River, about four miles from its confluence with Kootenay River. In the immediate vicinity of the church and mission buildings, the Indians have erected fifty-five houses, which are occupied by their families during the winter.

In further describing the Upper Kootenay Indians, Farwell stated that they:

...now depend for their sustenance chiefly on their cattle, and the game and fish that they can secure on the Upper Kootenay and Upper Columbia Rivers. These Indians at present own about 400 head of cattle and some 500 horses...

Isadore, the chief of the Upper Kootenays, resides on the right bank of the Kootenay River, about eight miles below Galbraith's Ferry.

In regard to the pressure for lands in the Kootenay by settler interests, Farwell noted:

Numerous applications have also been filed for large tracts of meadow and grazing land between the Kootenay and Columbia Rivers, by different parties,

²¹⁶ See Document EXP-000022.

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chiefly stock-raisers from the North-West Territory. These Indians have been anxiously awaiting, year after year, the arrival of the “Commissioner,” and are particularly angry and disappointed at no action having been taken during the past season towards defining their reserves...

The Indian Reserve Commission will probably meet with more difficulty in satisfactorily assigning the Upper Kootenay Reserves than has been experienced in any other section of the Province. These Indians are in constant communication with the aborigines south of the boundary line, and are thoroughly acquainted with the vast extent of the American reservations...

The Kootenay are also well acquainted with the manner of dealing with the North-West Territory Indians, adopted by the Dominion Government...

It is within the bounds of possibility that the undisturbed relations at present existing, between the very few white residents of Kootenay District, and the Indians may not be of long duration. The land complications above referred to are daily increasing, and there is little doubt that next spring, a number of stock-raisers and settlers will record land claims along the Upper Kootenay and Columbia rivers. I beg, therefore, to point out the grave necessity of settling the Indian land claims in this district at the earliest possible date. It is much to be regretted that the proper authorities failed to take steps in this direction during the past season, thereby permitting the difficulties, which have been known to exist in that portion of the Province for many years past, to accumulate to a very serious extent.²¹⁷

Former Indian Reserve Commissioner G.M. Sproat also accompanied Farwell to the Kootenay. In instructions from the provincial Secretary, dated July 12, 1883, Sproat was told to proceed to the Kootenay “for the purpose of examining and reporting upon that territory...” so as to give the provincial government an understanding of “value of the country for farming, grazing, mining, and other economic purposes.” Sproat was also instructed to “report upon the Indian population, and indicate what lands (if any) may be required for the purpose of Indian reserves.”²¹⁸

In Sproat’s Report, dated January 7, 1884, he commented on a wide-range of characteristics of the Kootenay District including the “Indian Land Question.” In this regard, Sproat advised that “the continued neglect in adjusting the Indian Land Question repulsed incoming capital and settlers...” Dealing with the Indian Land Question in 1884, Sproat stated, was necessary for the District to move forward from a settlement perspective in 1885. However, Sproat did not consider

²¹⁷ See Documents EXP-000023; SMT 45 C-1: 3 (Tab 24 – Claimant’s Amended List of Documents, July 24, 2014).

²¹⁸ See Document EXP-000021.

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it wise to make inquiries as to Indian Reserves because there was no “one in Kootenay to represent the Dominion Government in Indian land matters.”²¹⁹

On April 10, 1884, the Indian Reserve Commission (most likely Commissioner O’Reilly) wrote to the Chief Commissioner of Lands and Works recommending, in light of his proposed visit to Kootenay for the purpose of defining the Indian Reserves,” that “no application to pre-empt, or purchase land in that locality should be granted, except subject to what may be deemed necessary for the Indians.”²²⁰ By this time, however, Lots 1, 2 and 3 of the St. Eugene Mission Farm Lands had already been pre-empted.

ALLOTMENT OF UPPER KOOTENAY INDIAN RESERVES – IR NO. 1

On July 7, 1884, Indian Reserve Commissioner O’Reilly met with Chief Isidore and 22 other members of the Kootenay Indians at Wild Horse Creek. O’Reilly explained that the object of his visit to allot Indian reserves and that while it was the wish of the Government “to give the Indians all the land required for agricultural pasture or timber purpose,” it was also “not considered advisable to make the whole country an Indian Reserve.” O’Reilly further stated that he came “as a friend to protect Indians interests, not to take anything away from them.” Chief Isidore responded that he and his people did not want to be confined to one Reserve due to the various lands in which they held an interest including along the St. Mary’s River where their horses ran.²²¹

In regard to the above meeting, on July 9, 1884, Father Fouquet of the St. Eugene Mission wrote to O’Reilly advising that the Kootenay Indians did not understand the “matter” of Indian Reserves but following Fouquet’s explanation “seem[ed] to understand what was a reservation and the necessity of pointing out to you the lands they wish to be reserved for themselves.” Fouquet also estimated that the “Kootenays from St. Mary river to Columbia lake number between 400 and 450 souls” and had “between 300 and 400 heads of cattle and 400 or 500 horses.” Fouquet expected that Isidore’s tribe would continue to increase in size.²²²

On July 26, 1884, O’Reilly met again with Chief Isidore and nine of his people. At this meeting, O’Reilly reiterated that he had come to allot Reserve lands for the Upper Kootenay as there were “numbers of white men coming into the

²¹⁹ See Document EXP-000024.

²²⁰ See Document SMT 49 A-11:4 (Tab 25 – Claimant’s Amended List of Documents, July 24, 2014).

²²¹ See Documents SMT 52 (Tab 26 – Claimant’s Amended List of Documents, July 24, 2014); CAN000364.

²²² See Document SMT 53 (Tab 27 – Claimant’s Amended List of Documents, July 24, 2014).

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country, and it will soon be filled up with them..." O'Reilly requested that Chief Isidore "point out the best land [that] he knows of so that I [O'Reilly] can reserve it for you..." But, O'Reilly cautioned, again, that Chief must not expect that O'Reilly could give him "the whole country." Chief Isidore and O'Reilly then discussed the matter as follows:

Chief Isidore: We have a great number of horses & cattle and we would like to get as much land as possible. We should like it to be as close to the Mission as possible. I want all the country from Bull river to abt [sic] 3 miles below Wolf Ck [sic] on both sides of the Kootenay River (Wolf ck is abt 15 miles up the river from Galbraiths, Bull R. about 18 below Galbraith) In the winter time we have to pick out the best places on a [sic] account of snow. We winter our horse on Tobacco Plains where the snow is light. We shall be glad to have our reserve laid off soon, as we don't want too many white men near us as they do wrong sometimes, and it is charged to us.

Commissioner O'Reilly: 20 years ago I though the land north of St. Marys [sic] river the most desirable place for an Indian reservation. I wish you had not asked for so much for it is three or four times more than you require. I want to ride over the land and see what is good, where it is fit for agricultural purpose I propose to give you plenty with adjoining grazing land.

Chief Isidore: I don't think what I have asked is too much, it is only a small piece. You could ride over it all this afternoon. We want no delay.

Commissioner O'Reilly: When I was here before I wanted and Interpreter and proposed McLaughlin, Phillips Galbraith and Father Fouquet to all of which you objected. It is you who have delayed the settlement of your reserve I know I could not examine the land you asked for in half a day.

Chief Isidore: The people of Tobacco Plains have only got a small reserve, and you may have trouble there soon. It will be the same here.

Commissioner O'Reilly: The Govt [sic] recognize you as Chief and so long as you are Chief there will be no trouble.

Chief Isidore: The Indians are not to blame, it is because the white men came and crowded us out.

Commissioner O'Reilly: It is to prevent that I come to layout your reserves. I cannot tell how long by your reserve will be until I [s]ee the land. I know you are busy, it is not necessary that all your people accompany me, I recognize you as the Chief, and you can act for them. I will camp tomorrow on St. Mary's river, and will not pledge myself to anything until I have examined the land.

Chief Isidore: I know all that land, it is all good. I should like the reserve to be defined today. You were not asked by us to come to lay off the reserve. We have not seen the Queen tho [sic] you say the land belongs to her...

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Commissioner O'Reilly: How can I tell you where your reserve will be before I see the land[?] The country belongs to the Queen not to individual white men or Indians.

Chief Isidore: We did not send for the white men to come and take our country.

Commissioner O'Reilly: The white men are here, and it is to protect you that I come here. The Govt must think it of importance to you when they send me all the way from Victoria to see you. With a view to knowing what you require, I want to know how many Indians you have in your tribe, and the number of cattle and horses.

Chief Isidore: I know all the people here, but do not know all those who are coming to settle with us. (Meaning those over the boundary line.)

Commissioner O'Reilly: Those are provided for in their own country.

Chief Isidore: I don't care about giving the numbers of horses and cattle I have.

Commissioner O'Reilly: If you have not sufficient land for them you must not blame me. I cannot judge how much you require if I do not know. The number is a basis to calculate the amount required.

Chief Isidore: When you know how many cattle and horse we have, and how many Indians there are, you will only give us a small piece of land as you did at Tobacco Plains. I don't know how many there are.

Commissioner O'Reilly: The Govt require a census both of white & Indians as that they can see if the country is improving I think you don't wish to give it, if there is a mistake made you will be responsible for it. I asked you for it a fortnight ago, and you say you are in a hurry to settle the matter. You told me before you did not know how many children you had, and I have written it in my notes.²²³

According to Mary Ann Michel's oral history of the meeting with governmental officials for the allotment of Reserves, Chief Isadore specifically commented on the Mission Farms Lands, stating:

...the flat between, along the two cliff where those missionaries make their home, my people have made their home for years, they even build their log houses there which was set to fire by your people which we told the law maker and nothing was done...I want that land as a Reserve too, the missionaries are welcome to stay but I want it as Reserve land so that my people will build their

²²³ See Documents SMT 52 (Tab 26 – Claimant's Amended List of Documents, July 24, 2014); CAN000365.

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houses there again, it's one of the permanent home for my people for hundred [sic] of years."²²⁴

Michel's account further confirms Chief Isadore's requests for a large amount of land as well as his assertions of sovereignty over the land in the Kootenay region.²²⁵ Chief Isadore's request for the Mission Farm Lands was not referenced in any other governmental records, including those of O'Reilly.

On November 19, 1884, O'Reilly forwarded, for the approval of the Chief Commissioner of Lands and Works, "rough sketches, and minutes of decision of the Indian Reserves made by [O'Reilly] in the Kootenay district during this past summer." O'Reilly also confirmed that none of the Reserves allotted had "encroached on lands claimed by any settler."²²⁶

O'Reilly's attached Minutes of Decision described Kootenay Indian Reserve (IR) No. 1 for the Upper Kootenay Indians as consisting of approximately 18,150 acres "situated at the mouth of the St Mary's river, Kootenay district."²²⁷ The Sketch of IR No. 1 also shows Lots 1, 2 and 3 of St. Eugene's Mission Farm Lands showing an "Indⁿ [Indian] Village," as well as the "RC [Roman Catholic] Mission," within Lot 1 [Figure 10].²²⁸

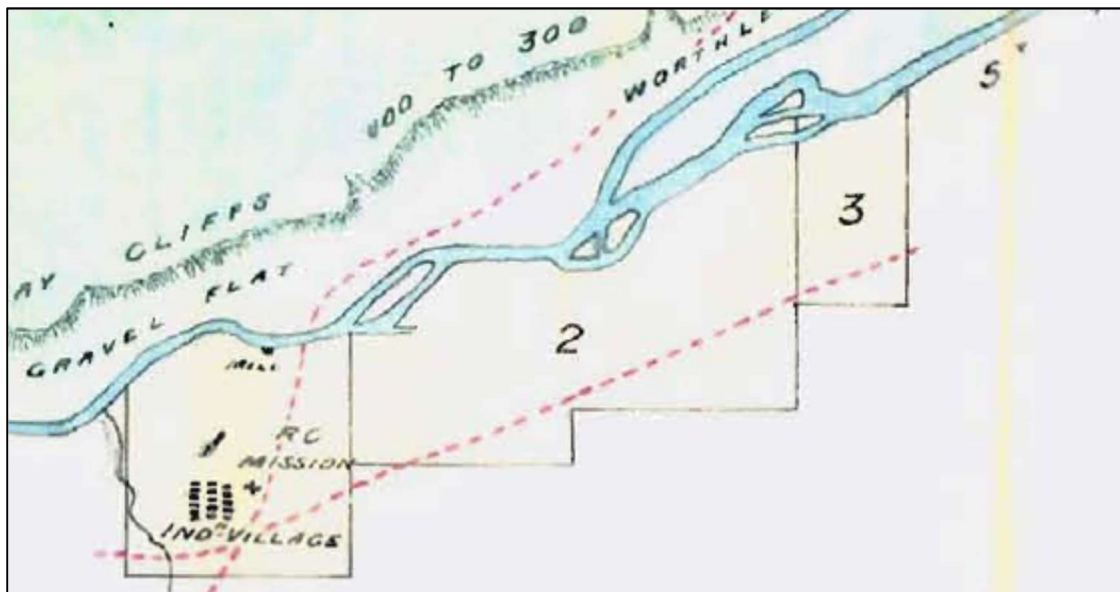


Figure 10 – Sketch of IR No. 1 for Lower Kootenay Indians, dated 1884

²²⁴ See Document CAN000932, pp. 29, 38.

²²⁵ See Document CAN000932, pp. 29-42.

²²⁶ See Document EXP-000025, p. 1.

²²⁷ See Document EXP-000025, p. 2.

²²⁸ See Document EXP-000025, p. 3.

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O'Reilly sent a further Letter to the Chief Commissioner of Lands and Works on December 10, 1884 advising generally on his visit to the Kootenay to allot Indian Reserves. O'Reilly advised:

You may not be aware, that prior to my visit to Kootenay, no reservations had been defined, and but very little land occupied by white settlers; the Indian claimed to be, and virtually were, in possession of the whole district, cultivating such portions as they pleased, and pasturing their cattle, and horses in the most favored spots. It was therefore my duty as Indian Reserve Commissioner, to define what land was necessary for them, having regard to their habits, wants, and pursuits, and to deal liberally with them; and I may here remark that I had the utmost difficulty in persuading the Kootenays to agree to the boundaries fixed on by me, and which they look upon as meagre in the extreme, compared with the million[s] of acres set apart by the United States Government for American Indians, a few miles South of the line...

That I have not overestimated the requirements of the Indians will be admitted by any disinterested person acquainted with the character of the country; and with the number of cattle owned by the Kootenays upon which they must in future depend in a large measure for food, the buffalo east of the mountains being now almost extinct. The amount of cultivable land within the reserves is extremely limited, and is found only in small patches whereas a large area is of little or no value. Had I included with the reserve all the scattered patches of land cultivated by the Indians on the banks of the Kootenay River, the acreage would be largely in excess of the returns forwarded to you in my letter of the 25th of November; that return shows only the cultivable land lying within the boundaries of the reserves. I consider that in the interests of both the whites and the Indians, it is well wherever practicable, to do away with isolated patches, and in lieu thereof give an equal amount of land in blocks, where the Indians can reside permanently and not be brought into conflict with whites. The amount of land cultivated by the Kootenay Indians prior to my visit cannot I submit be taken as indicating their abilities or requirements. Much of this tribe desired to engage in agricultural pursuits, they could not be expected to do so until their land had been defined.²²⁹

On December 16, 1884, O'Reilly also wrote to the Supt. General of Indian Affairs reporting on his trip to the Kootenay and specifically his meeting with Chief Isidore and "most of his tribe." O'Reilly stated that he explained the nature of his visit and "invited them to shew [sic] me what lands they most desired to have reserved." This, however, was deferred owing to what O'Reilly deemed the "excessive demands" of the Upper Kootenay as well as not having a "competent interpreter." As such, O'Reilly proceeded to Tobacco Plains and did not return to the Upper Kootenay until July 22nd when he again met with Chief Isidore and his people. O'Reilly described the discussions as follows:

²²⁹ See Document EXP-000026.

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The Chief stated, again and again, that he would not accept any limits to his reservation unless they included the whole valley of the Kootenay and Columbia rivers (from the International boundary line), and followed the base of the Rocky Mountains to the Boat landing on the Columbia river...

I informed the chief that I could not accede to any such demand as that made by him, nor could I form any idea of what was necessary for the requirements of the tribe, until I had visited the land. After a good deal of persuasion he promised to accompany me on the following day.

This examination occupied several days, and at length I decided upon the limits of Reservation No 1...

O'Reilly then described IR No. 1 as:

...bounded by the S^t Mary's and Kootenay rivers, both of which are accessible to cattle; there are a few Alkali lakes but no running streams. It contains 18,150 acres; of this some 5000 acres are of small value, being partly wash gravel flats on the S^t Mary's river, extending the whole length of the southern boundary; and the remainder of the ridge of rough, stoney, lightly timbered land, situated in the center of the reserve. The principal value of this reservation is the range to the west, containing approximately 5000 acres of excellent bunch grass; and the swamp lands to the East, on the banks of the Kootenay, from which a good supply of hay can be obtained. Should the reclamation scheme...prove a success, this low stretch of bottom land (which is overflowed during the greater part of the summer) may become of considerable value.

On this reserve, at the time of my visit, about 16 acres were cultivated without irrigation; the soil is poor, and gravelly, and crops are consequently light.

At this time, O'Reilly also numbered the Upper Kootenay population at 287 with 2511 horses, and 618 cattle. In summing up his Letter to the Supt. General, O'Reilly again reiterated that he "experienced very great difficulty in dealing with the Indians of Kootenay country" with "their demands for large tracts of land..." In spite of this, O'Reilly contended that the Upper Kootenay had in the end "appeared satisfied with the allotments made for them, and which, I believe, will not materially interfere with white settlement."²³⁰

Several years later, in October 1886, Kootenay IR No. 1 was surveyed at 17,425 acres by Surveyor E.M. Skinner. Skinner's Field Notes would also show Lots 1, 2 and 3 of the St. Eugene Mission Farm Lands. Lot 1 of the Mission Farm Lands was shown to contain a village of houses as well as a Church [**Figure 11**].²³¹

²³⁰ See Documents SCB 13 (Tab 29 – Claimant's Amended List of Documents, July 24, 2014); CAN000366.

²³¹ See Documents SCB 16 (Tab 32 – Claimant's Amended List of Documents, July 24, 2014); EXP-000027 [Sketch Plan [**Figure 11**] on p. 43].

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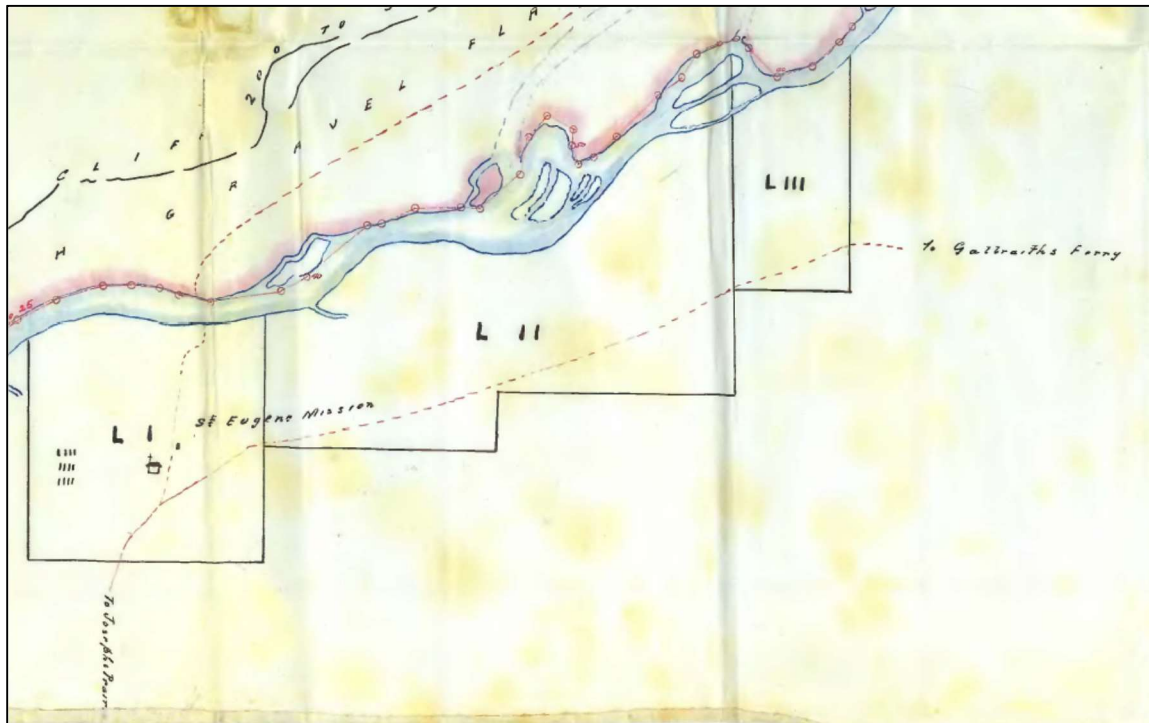


Figure 11 – Sketch showing Lots 1, 2, and 3 from
FBBC358 CLSR BC, dated October 1886

The resulting Survey Plan (ATBC55 CLSR BC) also showed Lots 1, 2, and 3 of the St. Eugene Mission Farm Lands. Once again, Lot 1 was shown to contain houses and a Church [Figure 12]. As previously noted, these houses represented the Indian Village on the St. Eugene's Mission Farm Lands. This Survey Plan of IR No. 1 was signed by O'Reilly and the Chief Commissioner of Lands and Works on June 10, 1887.²³²

²³² See Document SCB 16, p. 1 (Tab 32– Claimant's Amended List of Documents, July 24, 2014).

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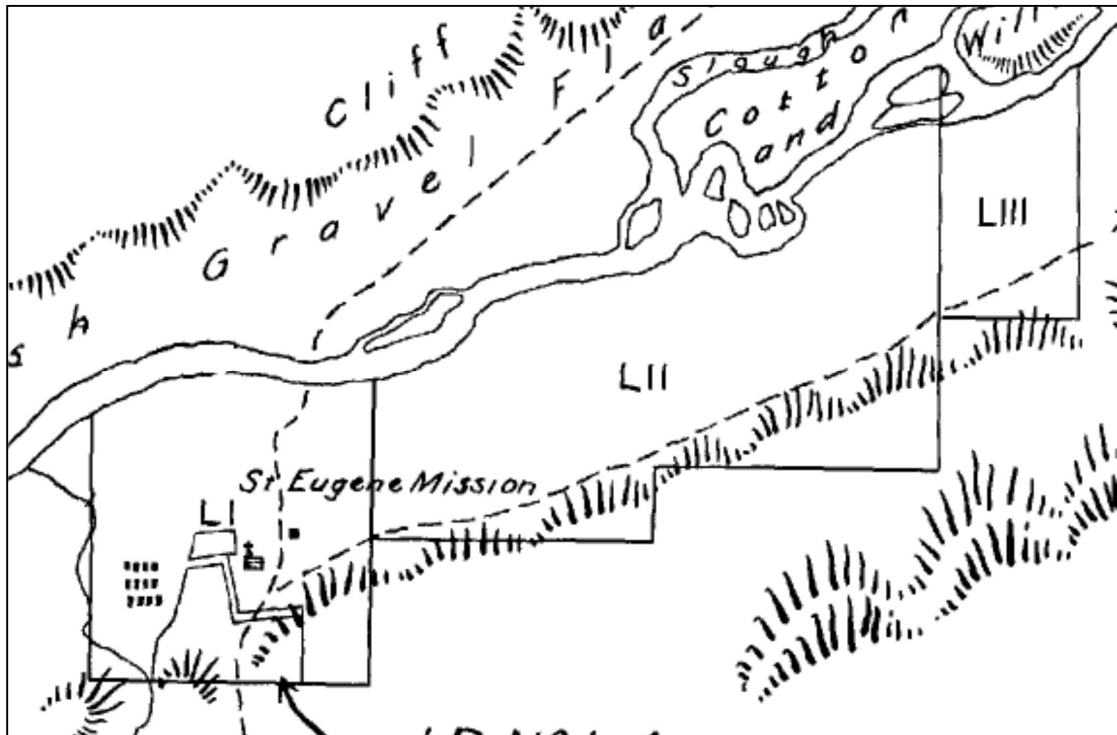


Figure 12 – Survey Plan ATBC55 CLSR BC showing Lots 1, 2, and 3 (St. Eugene Mission, dated 1887)

CORRESPONDENCE CALLING FOR MORE SUITABLE RESERVES FOR THE KOOTENAY INDIANS

An October 1885 anonymous Letter to the Editor in *The British Colonist* stated that while the Indians of the Kootenay had been granted Reserves, many had settlements that were outside these Reserves. As an example, the Letter pointed out that:

...the chief [Chief Isadore] of the tribe has over a hundred cattle and three hundred horses, a good house, and a fenced farm on the banks where he grows wheat, oats, hay potatoes, etc. He also has another piece of land on “Joseph’s Prairie,” which he cultivates...

Such settlements, “cultivated and fenced for years” outside the Reserve boundaries, were creating uncertainty as to how these lands would be dealt with in the context of white settlers. The Letter further noted that Indians had “no one to direct them [how] to take possession” of their Reserves yet.²³³

²³³ See Document CAN000823.

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Indian Commissioner O'Reilly addressed these concerns in a December 10, 1885 Letter stated that while there were "several small patches of cultivated land" held by the Kootenay Indians, it had been "impossible to include [them] within the reservation." Furthermore, Chief Isidore, O'Reilly noted, had "said he would not require" his lands on the Kootenay River or at Joseph's Prairie. Lastly, O'Reilly clarified that the "Indian village south of St. Mary's river" was situated on the "property of Revd. Father Fouquet of the St. Eugene Mission."²³⁴

In response to the claims of discontent of the Kootenay Indians as to their reserves not including the "lands on which they have their houses erected and their improvements," Indian Superintendent Powell, in a December 15, 1885 Letter, argued that these claims were exaggerated and thus unworthy of any serious attention. Powell also discussed the need for an Indian Agent who could direct the Indians as to their Reserve lands.²³⁵

In a Letter dated January 13, 1886, O'Reilly commented that the Reserves that he set aside for the Kootenay Indians had been protested by the provincial government as "too great [in] value, and altogether in excess of the requirements of the Indians." O'Reilly further stated that as the Reserves had been approved by the province the Indians could proceed to take possession of them.²³⁶

In an August 28, 1886 Letter, Col. Baker²³⁷ advised the Indian Commissioner for BC on his view of the Indian Reserve situation in the Kootenay, noting that all was not well in this regard. In particular, Baker stated:

Taking the Indian side of the case we find that until late years the Kootenay Indians were in practical possession of the whole land of the District [and] were accustomed to roam at will with their herds of stock. They now find themselves being gradually hemmed in by the white men, large tracts of lands have consequently been set aside by the Government on a very liberal scale, as Indian Reserves, but the Indians have not been definitely informed upon what terms they are to occupy them...

...they are...jealous of his [the white man's] encroachments [and] loth to relinquish their habitual wandering with their herds, at the various seasons, to the choice spots of grazing grounds in numerous parts of the District. They have been in the habit of moving from place to place at the different seasons like flights of birds [and] of taking off the cream of the grazing at each place. In some places they have erected rough canals [and] fenced in small gardens (not on the

²³⁴ See Document CAN000826.

²³⁵ See Document CAN000827.

²³⁶ See Document CAN000830.

²³⁷ As will be subsequently noted, Col. Baker was a local land holder and Member of the Provincial Parliament for the Kootenay District. ~~In particular, Baker's attempt to purchase 3000 acres known as Joseph's Prairie would be a source of dissatisfaction to the Upper Kootenay Indians and influence the decision to allot further reserves for the Upper Kootenay in 1887.~~

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present reserves) which they occupy for two or three months in each [and] then move to similar settlements somewhere else.

They have now to face the probability of being confined to their Reserves, and not liking the prospect, they wish to test the firmness of the Government...

Such uncertainty, Baker argued, was creating tension between settlers and Indians of the Kootenay District, where:

With the jealous feeling in his [the settler's] mind that too large a track of land has already been granted to the Indians as a reserve this additional right to the them [the Indians] of grazing down the land adjoining his [the settler's] ranch produces a feeling of profound irritation [and] antagonism. To remedy this arrogance the white settler, perhaps, purchases the adjoining grazing land but the Indians refuse to stop bring their herds there, on the plea that they have been accustomed so do so from time immemorial.

When the white settler has purchased the land he can, of course, legally drive the Indian herds away but this obliges him to go to the expense of constantly herding his cattle and he is almost certain to lead to feuds with the Indians.

In some cases where land, (not on the Indian Reserves) has been purchased [and] whereon there exist rough Indian corrals [and] fences, the Indians refuse to move.

Here there are cases which have occurred [and] are likely to occur in greater numbers as more white settlers enter the country [and] which are certain to breed feuds between the white settlers [and] the Indian unless some definite settlement of the question is promptly arrived at.

Baker's solution to the matter was to first ensure that a "sufficient amount of land has been granted to the Kootenay Indians as Reserves" and then enforce their confinement to these Reserves. In regard to this confinement, Baker recommended "a considerable force" of around 250 NWMP in the region – with 50 posted at the R.C. Mission [St. Eugene Mission].²³⁸

On September 21, 1886, Michael Phillipps²³⁹ advised the Indian Commissioner for BC on the poor nature of the relationship between settlers and Indians in the Kootenay District. The Kootenay Indians, Phillipps noted, "lose no opportunity of letting the settlers know that the land belongs to them [and] that the settlers only remain by their permission." Because this current state of affairs was "simply

²³⁸ See Document CAN000367.

²³⁹ Phillipps was a local settler and would later become the Indian Agent in the Kootenay [See Document EXP-000001].

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becoming unbearable,” Phillipps requested that the Indian Commissioner “act promptly” to address these tensions.²⁴⁰

In October 1886 Surveyor Skinner commenced the survey of Kootenay IR No. 1 “on St. Marys [sic] and Kootenay Rivers.” Skinner described Kootenay IR No. 1 as follows in a Letter to the Superintendent General of Indian Affairs:

...This is the largest of the Kootenay Reserves and contains seventeen thousand four hundred and twenty five (17,425) acres mostly good grazing but having some seven hundred acres of good land for cultivation. Only about fifty have been cultivated and but little of that last season. There are about six hundred acres of land subject to over flow from the Kootenay and St. Marys [sic] Rivers. An Indian cuts wild grass for hay on part of this. It would be very easy to take water from the St Marys on to the higher land which with irrigation would be very productive.

Skinner did not reference the St. Eugene Mission Farm Lands.²⁴¹

A further Letter, from Aylmer & Humphrey, Cranbrook, dated October 9, 1886, also commented on the “unsettled state of the Indians” in the Kootenay District advising that the Indians were asserting “that the whole country belongs to them and that they are to dictate to the white settler.” It was opinion of Aylmer & Humphrey that the “Indian reserve question should be promptly settled and on a liberal scale.” They also reiterated Baker’s assessment that the Kootenay Indians should be confined to Reserves and that an “exhibition of force in sufficient numbers” should thereafter be utilized to influence them. Lastly, they recommended the area between the Elk and Bull Rivers as “an extremely liberal and suitable location as an Indian reserve.” They even suggested that the St. Eugene Mission could be transferred there at some point, should a Reserve be allotted in that area.²⁴²

In a Letter dated November 18, 1886, Indian Commissioner for BC (at times also referred to as the Indian Superintendent for BC) Powell reported on his visit to the Kootenay District in August and September of 1886. The Indian Commissioner discussed his meeting with Chief Isadore and the Upper Kootenay at the St. Mary’s River in September. In regard to Joseph’s Prairie, Powell described these as some 3000 acres that the late Chief Joseph had settled and where Chief Isadore now resided and did not want to lose. This land had also been applied for by Col. Baker which was a “bone of contention and cause of [Isadore’s] dissatisfaction.” The Indian Commissioner further noted that the Upper Kootenay people “were in unison in demanding that the whole stretch of country from Bull River to Wolf Creek should be assigned to them.” In regard to

²⁴⁰ See Document CAN000368.

²⁴¹ See Document CAN000512.

²⁴² See Document CAN000369.

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the Reserve originally allotted by O'Reilly in 1884, the Indian Commissioner said it was "not at all acceptable...and not sufficient as there is a large quantity of the land that is stony and useless." Powell argued, however, that this was "clearly their [the Upper Kootenay's] own fault" as they had not provided O'Reilly with census information or the number of their stock. The Indian Commissioner then outlined some measures, including securing additional Reserve lands, that could be taken address the discontent of Chief Isadore and the Upper Kootenay as well as other Bands in the District.²⁴³

On November 29, 1886, the Department of Indian Affairs recommended that the province of British Columbia be contacted to request the suspension of lands for sale to white settlers throughout "the country which Isidore, Chief of the Upper Kootenay's at St Mary's River, claims for his Band between Bull River and Wolf Creek." This included suspending Col. Baker's purchase of the 3000 acres at Joseph's Prairie that Chief Isidore also claimed. Further, "any lands on which the Indians have made improvements outside of the limits of the Reserve allotted to them by Mr. O'Reilly" were to "be exempted from sale" until the satisfactory resolution of the "Indians' claims." Finally, Indian Reserve Commissioner O'Reilly along with the Indian Superintendent for BC were to go to the Kootenay District to meet with the Indians "to come to some settlement about their land claims."²⁴⁴

A Letter dated March 15, 1887 from Arthur Fenwick, Wild Horse (Kootenay), to Indian Superintendent Powell stated that Chief Isidore sought to have lands "from the St. Mary to the Skookum Chuck on the other side of the Kootenay [river]."²⁴⁵

In a March 22, 1887 Letter from Indian Superintendent Powell to the Superintendent General of Indian Affairs, Powell recommended "that some further concessions of land should be made to Isodore [sic]..." Mr. Vowell (the Indian Agent, Kootenay Agency²⁴⁶), Powell advised, was on his way to get a correct census of Isadore's band and ascertain their number of stock as well. There was no doubt, conceded Powell, "that the Indians consider that they are being crowded out, and Isadore having an old claim to land preempted by Col. Baker, personally considers himself badly used."²⁴⁷

Col. Baker wrote to the Attorney General, British Columbia, on April 27, 1887 calling attention to the "gravity of the situation in the Upper Kootenay Valley and to the danger in the prolonged delay in settling the Indian question..." Baker then

²⁴³ See Document CAN000370, pp. 8-27. The Indian Commissioner's visit was also discussed in a very similar DIA Memorandum dated December 24, 1886 [See Document CAN000372].

²⁴⁴ See Document CAN000371.

²⁴⁵ See Document CAN000373.

²⁴⁶ See Document EXP-000001.

²⁴⁷ See Document CAN000374.

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summarized events to that point including Farwell's visit in 1883, the allotment of Kootenay IR No. 1 by O'Reilly in 1884, the increased settlement in the Kootenay District, and the dissatisfaction of Isadore and his people with their Reserve and the thereafter. In regard to the latter, Baker advised that white settlers had begun "to pour into the country [and] these pieces of land [used by the Indians for camping, some being roughly fenced], which were outside the reserves were taken up by pre-emption and purchase." Baker also stated that while the government and settlers had believed the Reserve question dealt with by O'Reilly's 1884 allotments, this was the "opposite view" of the Indians in the Kootenay. In recounting Commissioner Powell's meeting with Chief Isidore in the autumn of 1886, Baker stated how Chief Isidore:

...said that it was for him to say what land he would grant the Queen [and] not that she should dictate to him. He then demanded as a reserve what was practically the greater part of the land in the whole valley.

Baker also noted that the Indians had "refused to allow white settlers to cut rails [and] do work on their pre-emption[s] [and] are practically in command of that portion of the district [the Upper Kootenay Valley]." ²⁴⁸

On July 13, 1887, Indian Superintendent Powell wrote to the Superintendent General of Indian Affairs advising again on his meeting with Isadore in the autumn of 1886. Powell noted that Isadore had again stated that the existing Reserve was too small and "wholly inadequate" as already "all of the arable land is taken up." Isadore also reiterated that he wanted his field on Joseph's Prairie. While Powell agreed that the Reserve "appeared too small" and "inadequate for the requirements of the band" due to the "great quantity of useless and stoney ground," he advised that he was not authorized to deal with Indian lands. In this regard, Powell appointed Mr. Phillips to act as an Indian Agent and to take a census of their population and number of stock. In sum, Powell argued that the land difficulties with Isadore and his people needed to be "promptly adjusted" and if the land Isadore sought could not be acquired than it would be necessary to buy the lands of some other settlers. ²⁴⁹

On July 15, 1887, Indian Superintendent Powell advised the Superintendent General of Indian Affairs that he did not anticipate any difficulty in gaining the consent of the province to "increasing the reserve for Isadore's Band..." Powell was to accompany the Chief Commissioner of Lands and Works, F.G. Vernon, to the Kootenay to "act definitely and finally in adjusting the land troubles..." in the Kootenay District. ²⁵⁰

²⁴⁸ See Document CAN000375.

²⁴⁹ See Document CAN000376.

²⁵⁰ See Document CAN000513.

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On July 16, 1887, Michael Phillips (Indian Agent for the Kootenay Agency²⁵¹) wrote to Powell, Supt. Indian Affairs, Victoria, on his meeting with Chief Isadore and “some of the leading Indians.” Phillips, summarized Isadore’s complaints, and argued that “Isadore’s demands as to land were as usual altogether too large” as he requested lands “from Skookum Chuck to a place opposite the mouth of Bull River.” Particularly, Isadore sought “his ranch down the river with a small tract of land round it for Paulius [and] his near relatives, he says Joseph owned it before him, [and] that he is attached to the spot.” Generally, Phillips described the Upper Kootenay as “over 200 in number” and there was “no doubt that the present reservation [Kootenay IR No. 1] is too small.” In response, Phillips inquired as to the possibility of securing further lands for both Isadore and the Upper Kootenay, requesting:

...If it is possible to procure Isadore’s lower farm from him [and] to give the others an addition to their land on the St. Mary’s river the matter can be easily settled...

Shortly – What I have to recommend is this – that if possible you allow to Isadore [and] his near relatives his lower farm on the West side of the Kootenay River (Joseph Ranch) with a suitable amount of hay [and] grazing land for his rather large band of horses, and cattle...

Also that a considerable addition of land be made to the present reservation on the St. Mary’s River. From the St. Mary’s River to Skookum Chuck is at all too large for them [and] their stock. I need hardly add that they cannot live on the present small reservation the greater part of which is simply waste land. Even on the apparently large tract between the St. Mary’s River [and] Skookum Chuck here are only small spots here [and] there that can be used for farms...²⁵²

Phillips’ Report was forwarded to the Superintendent General for Indian Affairs by Superintendent Powell on July 28, 1887. In doing so, Powell agreed that Chief Isadore “should have the land upon which he resides for the reason that he and Chief Joseph before him have lived upon it and obtained hay for their cattle there...” This, Powell added, would also be an easy way in which “to add to the St. Mary’s Reserve for the band generally.”²⁵³

A provincial Minute of Decision, approved August 31, 1887, affirmed the recommendation of the Chief Commissioner of Lands and Works that the adequacy of Indian Reserves set aside by O’Reilly in the Kootenay District be investigated by the Indian Reserve Commissioner and the Chief Commissioner of Lands and Works. This decision had been based on information from settlers, Col. Baker and Gold Commissioner/Stipendiary Magistrate Vowell that some Reserves set aside by O’Reilly in the Kootenay were “inadequate to the

²⁵¹ See Document EXP-000001.

²⁵² See Document CAN000379.

²⁵³ See Document CAN000514.

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requirements of the Indian population, and requesting that the said reserves may be increased in order to establish good feeling between the whites and natives.”²⁵⁴

On September 1, 1887, Indian Reserve Commissioner O’Reilly wrote to the Superintendent General of Indian Affairs on the matter of the re-adjustment of certain Reserves in the Kootenay District that had been deemed “inadequate to the requirements of the Indian population.” O’Reilly detailed the allotments that he made in 1884, noting that they were “the largest in area, and the most valuable that have been allotted by me to any tribe since assuming the duties of Indian Reserve Commissioner.” Further, these Reserve had in fact been protested by white settlers in the Kootenay as too large. In the end, however, these Reserves had been deemed, by local officials and settlers, “ample for the requirements of the Indians” but “not in excess of their just claims.” O’Reilly also advised that Chief Isidore had “expressed himself satisfied with the amount of land I proposed to give them; and stated they I had been more liberal with them than he had expected.” As previously noted, and here again affirmed by O’Reilly, the Kootenay Indians had “made excessive demands for land and virtually claimed the entire Kootenay Valley...” In spite of this, O’Reilly indicated that he did not “object in any way to the enlargement of these reserves; provided the Provincial Government is prepared to sanction such enlargement; at the same time I repeat that according to the basis upon which reserves have in the past been defined in British Columbia, the Kootenay Indians were liberally dealt with and at the time of the allotment of their reserves were perfectly satisfied.”²⁵⁵

A September 13, 1887 Department of Indians Affairs Letter advised that O’Reilly, the Chief Commissioner of Lands and Works, and Indian Superintendent Powell were on their way to the Kootenay District “with a view to the settlement of the land difficulty with the Indians.”²⁵⁶

²⁵⁴ See Document CAN000518.

²⁵⁵ See Document CAN000381.

²⁵⁶ See Document CAN000524.

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ALLOTMENT OF FURTHER UPPER KOOTENAY RESERVES – IR NOS. 4, 5 AND 6

Thereafter, on September 27, 1887, Indian Reserve Commissioner O'Reilly allotted the following additional three Reserves to the Upper Kootenay Indians:

- IR No. 4 (680 acres) "situated near the right bank of the Kootenay river, about eight miles South of Galbraiths Ferry, and known as Isidores ranche [sic];
- IR No. 5 (160 acres) "situated on the trail between Josephs Prairie and Tobacco Plains, about nine miles South of the former, and nearly opposite the mouth of the Bull River"; and
- IR No. 6 (198 acres) "situated [on] Bummers Flat, on the left bank of the Kootenay river, opposite Reserve No. 1, and about three miles above the mouth of the St. Marys River."²⁵⁷

O'Reilly, in writing to the Superintendent-General of Indian Affairs on October 15, 1887, advised that these three new had been allotted following a "thorough examination of the Indian lands" by himself as well as the Chief Commissioner of Lands and Works and Superintendent Powell. Problematically, O'Reilly admitted that these new Reserves had been allotted without actually conferring with Chief Isidore or the majority of his Band as they were away purchasing winter provisions. As a result, the decision of the Commission regarding the three additional Reserves was to be declared to Chief Isidore by Superintendent Powell (later to be completed by Major Steele of the NWMP). The allotment of the three new Reserves totaling 1,038 acres had been done, O'Reilly stated, "with a view to allaying all feeling of dissatisfaction on the part of the Indians..."²⁵⁸

The Decision regarding these new reserves was outlined in a Letter from O'Reilly and Powell to "Chief Isadore, and the Kootenai Indians at St. Mary's Reserve," which was attached to a Letter dated October 10, 1887.²⁵⁹ This Letter, which was read to Chief Isadore by Major Steele of the NWMP, advised that O'Reilly, Powell and F.G. Vernon (the Chief Commissioner of Lands and Works) had visited Isadore's Reserves and increased them "to what we consider ample for your requirements." The Letter then outlined the original allotment in 1884 as well as the new 1887 allotments, noting:

...You know that white men come into this country, and take up land according to its laws. There is a good deal of land the Indians do not use, and do not require. It is the same in Kootenai as in other places where there are Indians.

²⁵⁷ See Document SCB 19 (Tab 37 – Claimant's Amended List of Documents, July 24, 2014).

²⁵⁸ See Document CAN000532.

²⁵⁹ See Document SCB 20, pp. 5-10 (Tab 38 – Claimant's Amended List of Documents, July 24, 2014).

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The Government was anxious that the Indians should have what land they could use, before it could be taken up by white men, so Mr. O'Reilly came up four years ago. He enquired of you what lands you particularly valued and the number of cattle and horses you owned. You would not tell him. You wanted nearly the whole country which you know you could not use.

He then reserved all the land he thought necessary and as much as he thought you could use for your stock. He asked Isadore at Joseph's Prairie if he were satisfied at the reservations, or whether he should return and reserve another piece on Isadore's lower ranch on the Kootenai River Isadore had been given more land than they expected and that there was no occasion to reserve any more land.

Messrs. John and Robert Galbraith and Mr. Green were present and heard him say this.

Some time [sic] after Mr. O'Reilly left, Isadore changed his mind and said he wanted his place on the Kootenai River. Why did he not tell Mr. O'Reilly so that it could have been reserved at the proper time[?]

Dr. Powell came here this Spring and the Indians said their reserves are too small. Isadore told Dr. Powell that all the arable land on the Reserve had been taken up by his people, and that there were many who could not get any land to work...

We have now spent many days here, and have been all over the Reserve, and seen much good land that is not used. There is a good deal of hay that could be cut, but is going to waste.

If you want to save your cattle in the winter why do you not cut the hay.

You have abundance of range on the hills for your horses, you have plenty of land on which to raise potatoes and other roots and vegetables, why do you not grow them? Why do you not try to use the land you have before asking for more, you have hundreds of horses running wild, and we are told they are increasing in number[?] They only tend to destroy the ranges and are of little value to you. You cannot expect the Govt [sic] to give you more land to raise useless horses.

The Government are desirous that you should have all the land you can utilize, but they will not give you more than your wants justify.

We have now decided to allow you a piece of land on what is known as Isadore's lower farm, so as to cover all the improvements and all the hay land in the immediate vicinity. We have also reserved a valuable meadow some distance away, where some of you have been accustomed to cutting hay, as well as a piece of Bummer's Flat, where you have been accustomed to camp during some portions of the Summer. These Reserves are all that will be made and will with those previously laid off contain all the land you can possibly want for yourselves

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and your stock, and much more than has been allotted to Indians in some other places. This is a final conclusion and will not be altered.

Mr. Phillips, the Agent appointed by Dr. Powell will show you the lands and how to improve them. The land on Joseph's Prairie does not belong to you and will have to be vacated immediately. You will be paid a fair value for the fencing you have put there...²⁶⁰

Major Steele of the NWMP advised Powell that he had met with Chief Isadore and his men, on November 7, 1887, to read the above Letter to him. In regard to the land in dispute with Col. Baker, Steele advised:

The Chief was much against giving up land at Col. Baker's, saying that he was justly entitled to it, having been here ten years before Mr. J. Galbraith came. He is most anxious to meet [Messrs.] Galbraith [and] Baker face to face, but I told him the matter had to be decided at once, there being no appeal from the decision of the Commissioners, and that he must leave as soon as Col. Baker should pay whatever price is agree upon for the improvements. After considerable parley he consented to leave, on the payment of one Thousand Dollars by the Colonel for his improvements. This, I imagine is too high... [and] presume it must be left to arbitration.

During the interview the Chief stated that Mr. O'Reilly was mistaken in supposing that when the Reserves were laid out before he was satisfied...²⁶¹

On November 8, 1887, a Letter from T.W. [Thomas White, Superintendent General of Indian Affairs] to O'Reilly requested to know why Chief Isadore was required to give up "the twenty acres which were occupied by [the] late Chief Joseph and are now occupied by Isadore."²⁶² White also wrote to Superintendent Powell on that same day expressing regret that Powell had not remain "to see Chief Isadore and have the matter settled with him."²⁶³

In a Telegram from O'Reilly to the Superintendent General of Indian Affairs, dated November 9, 1887, O'Reilly stated that the land on Joseph's Prairie had been "only occasionally occupied by Chief Joseph and since by Isadore" and "was not deemed desirable" as a Reserve as it was of little value and some distance from the main Reserve.²⁶⁴

²⁶⁰ See Documents SCB 21 (Tab 39 – Claimant's Amended List of Documents, July 24, 2014); CAN000360.

²⁶¹ See Document CAN000382, pp. 1-2.

²⁶² See Document CAN000535.

²⁶³ See Document CAN000536.

²⁶⁴ See Document CAN000383.

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In a November 16, 1887 Letter from Indian Superintendent Powell to the Superintendent General of Indian Affairs, Powell defended his decision to leave and have the NWMP deliver the Commission's decision. Powell also advised that before he left he had met with Chief Isadore, discussed Joseph's Prairie, and explained that the government could not provide it:

...[because] it had been taken up by Mr. Galbraith who sold it to Col. Baker and that it had been alienated, and a Crown Grant given for it before the Commission could deal with it, otherwise, possibly, it might have been given to him.

However, this loss had been compensated with new additional Reserves that had been allotted. Powell noted that Isadore was "greatly pleased with..." these new Reserves and had vacated his lands on Joseph's Prairie.²⁶⁵ Powell's explanation was accepted by the Superintendent General in a November 24, 1887 Letter.²⁶⁶

In a Letter from Indian Superintendent Powell to the Superintendent General of Indian Affairs, dated November 26, 1887, Powell discussed his visit to the Kootenays and in particular his meeting with Chief Isadore, regarding Isadore's complaints that the original Reserve was insufficient and his request for additional pieces of land – including Joseph Prairie. In regard to these complaints, Powell advised:

...The land on Joseph Prairie, about forty acres of medium quality, had been occupied by Chief Joseph after whom the Prairie derives its name and as Isadore, his successor, alleges thus descended to him. It was, however, a few years ago, pre-empted by John Galbraith (now deceased) who had sold it to Col. Baker, the present owner. Isadore's story is that he did not interfere in the transaction because Mr. Galbraith informed him that he had applied for the land to prevent any other settler from taking it up, and he, Isadore, would still be the occupant, and virtual owner.

Whatever Mr. Galbraith's intentions towards Isadore were...but the facts [sic] are, that Isadore has been allowed to occupy it, without molestation, from the time he succeeded to it, after Joseph's death until Mr. Galbraith sold the whole ranch to Col Baker, and included with it the piece of land in question for which he held a certificate of purchase from the Crown. Col. Baker at once applied for, and obtained the Crown patent, so that at the time of our visit, and possibly at the period of the Reserve Commissioners visit in 1884, the land had actually been alienated and hence out of the question as an Indian reservation, though at the time the Commissioner was of opinion that Isadore did not want it.

The other [sic] piece of land on Kootenay River had also been occupied by Chief Joseph, and his widow lives there now. Isadore uses it as a winter run for his cattle, and as it includes several good hay meadows, though of small

²⁶⁵ See Document CAN000541.

²⁶⁶ See Document CAN000542.

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dimensions, the Chief and several members of the band are accustomed to cut hay there. At the time of our visit, there were upon it a log hut, sheds, fences, and old corrals.

Mr. O'Reilly, at this first visit, had offered to reserve this land but Isadore expressed himself satisfied and he did not do so on the other hand, Isadore, when making his complain to me, said that Mr. O'Reilly had misunderstood him – that he had never been satisfied and certainly desired this land, on which the Indians had improvements already. Last year, the land not being included in any reserve Col. Baker applied to the Government to purchase it, as he was deficient of hay land, and wanted the winter run very much, in fact it was, as he said a “desired key to his ranch.”

Powell stated that he later interviewed Isadore regarding the additional Reserves, which were to make up for the insufficiencies of the Reserve originally allotted by O'Reilly, noting:

...Like most men of whatever color or nationality, Isadore wants all he can get. He had the right of preoccupation of the land on Joseph Prairie, and it is doubtful if, in view of a provision of the Land act, preventing the sale, or pre-emption of land occupied by Indians, this particular piece first occupied for many years by Joseph, and then by Isadore could legally have been purchased by Mr. Galbraith.

In other respects, it is not desirable that it should be an Indian Reserve, as it is a small piece of land in the middle of Col. Baker's ranch, by itself of little value, and would always be a source of serious trouble...

In setting aside for Isadore, better and more extensive lands on the Kootenay which he values very much, the Commission felt that they were dealing both justly and generously with him, and at the same time an addition was made to the hay meadows which the Indians needed...

He [Isadore] did not want however to give up Joseph Prairie land, for the reason mentioned, and after I had told him that his improvements, not nothing more would be paid for, and that he would be compelled to abandon it, he left me “to think over it.”

[Later as noted by Steele]...Isadore...has promised to give up the Joseph Prairie land on receiving compensation for his improvements (fences) thereon.

In light of the above, Powell considered the matter “settled in a very simple manner.”²⁶⁷

In a December 12, 1887 Memorandum (written on NWMP Letterhead), Chief Isadore signed (with his mark) the following statement:

²⁶⁷ See Document CAN000385.

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Received from Superintendent S.B. Steel, N.W.M. Police, acting on behalf of the Indian Commissioners of the Province of British Columbia, the Sum of Four hundred and ninety Dollars (\$490.00) in full of all demands for my improvements on the land situated on Joseph's Prairie, Kootenay District, in the Province aforesaid, and owned by Col. Baker M.P.P. and I now vacate the said land and premises.²⁶⁸

Chief Isadore's above agreement to \$490.00 in compensation for his land on Joseph's Prairie was also communicated from Indian Agent Phillipps to Superintendent Powell in a December 15, 1887 Letter. This settlement, Phillipps advised, came only after "Major Steele spoke to him [Chief Isadore] severely..."²⁶⁹

On December 14, 1887, the Deputy Superintendent General of Indian Affairs responded to Powell's November 26th Letter disagreeing that the matter had been dealt with satisfactorily as Isadore's demand for \$1000.00 in compensation of Joseph Prairie was not attainable (he was apparently unaware of the aforementioned agreement by Chief Isadore to \$490.00 in compensation). The Deputy Superintendent also expressed regret that Powell had not remained in person to determine Isadore's final views on the matter. As such, the Deputy Superintendent recommended that either a price of compensation agreeable to both Isadore and Baker be negotiated or:

...that the Department should raise the question of Col. Baker's legal title to this piece of land, even supposing a Patent has been issued to him for the same, inasmuch as the land, was unquestionably occupied and improved by the father of Chief Isadore and by Chief Isadore himself for many years before it was deeded to Col. Baker, and it was, therefore, under the land of British Columbia not competent for the Government or that Province to sell the land to any White man.

In closing, the Deputy Superintendent instructed Superintendent Powell to return to the Kootenay District in order to bring about the "final determination of this matter..."²⁷⁰

On December 28, 1887, Indian Superintendent Powell responded to the Superintendent General of Indian Affairs again defending his actions with Chief Isadore. Powell also provided an update that Isadore had signed a release and vacated the property at Joseph's Prairie.²⁷¹

In an extract from an NWMP Monthly Report by Steele for January 1888 it was reported that Father Cocola [sic], R.C. Missionary [St. Eugene Mission], believed

²⁶⁸ See Document CAN000551.

²⁶⁹ See Document CAN000552.

²⁷⁰ See Document CAN000386.

²⁷¹ See Documents CAN000387, p. 9; CAN000554.

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it “necessary to survey the Indian Reserves before the [NWMP] Division is removed from the District, as the Indians are certain to cause trouble at that time.” Steele concurred with Cocola’s opinion.²⁷² In a Letter from the NWMP to the Deputy Superintendent General of Indian Affairs, the NWMP requested, in light of Cocola’s opinion, “that a survey of the Indian Reserves” in the Kootenay District “be made before the Police are removed from the District.”²⁷³

In a January 9, 1888 Letter from Col. Baker to the Superintendent General of Indian Affairs, Baker complained that he had to pay compensation to Chief Isidore for lands he believed he had attained properly and legally and under the understanding the reserve question had been resolved in the District. Baker noted that following his purchase of the lands on Joseph’s Prairie he had learnt that some key bottom land had been “granted to Isidore who possessed about 1200 head of stock” and wintered there.²⁷⁴

In March 1888, in response to a request from the Superintendent General of Indian Reserves to, “with the least possible delay,” survey IR Nos. 4, 5, and 6 of the Upper Kootenay, Ashdown Green, Surveyor for the Indian Reserve Commission, advised that O’Reilly had, the previous October, secured surveyors to complete the surveys. At that time, IR Nos. 4 and 6 had already been surveyed and IR No. 5 was to “be undertaken without delay.” In regard to the Superintendent’s request that the surveyor’s also “procure the signature of Chief Isadore...accepting the Reserve lands allotted, and relinquishing all claims to any other lands for Reserves in that District,” it was suggested that the local Indian Agent [Michael Phillipps] complete this task.²⁷⁵

In a March 20, 1888 Letter from the Secretary’s Branch [Indian Affairs Branch], Indian Agent Phillipps was instructed to obtain the signature of Chief Isadore accepting the additional Reserve lands as surveyed “in final settlement of all my [Isadore’s] claims to land in the Kootenay District.”²⁷⁶

In a further March 20, 1888 Letter from the NWMP to the Deputy Superintendent General of Indian Affairs, the NWMP advised that while Chief Isadore was “contented,” he nonetheless requested that the “boundaries of the Reserve [be] pointed out to the Indians as they are anxious to get to work and do not know exactly where their land is.” As such, NWMP again requested that Indian Affairs have the boundaries of the additional Reserves defined.²⁷⁷

²⁷² See Document CAN000555.

²⁷³ See Document CAN000565.

²⁷⁴ See Document CAN000556.

²⁷⁵ See Document CAN000567.

²⁷⁶ See Document CAN000568.

²⁷⁷ See Document CAN000569.

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On April 16, 1888, Indian Agent Michael Phillipps advised the Deputy Superintendent General of Indian Affairs that he would go to Chief Isadore in order to get his “signature” accepting IR Nos. 4, 5 and 6 “in settlement of all claims to land in the Kootenay District.”²⁷⁸

On April 20, 1888, Col. Baker wrote again to the Superintendent of Indian Affairs, Ottawa, in regard to the injustice of him having to provide compensation to Isadore for the land on Joseph’s Prairie as well as the loss of the lands on the Kootenay River which had been also granted as a Reserve. In regard to the latter, Baker complained that following O’Reilly’s original 1884 allotments settlers had been “informed that all lands outside that Reserve were open to settlement.” Based on this understanding, Baker had invested great resources in the area. Three years later, however, “the whole Indian Reserve question [was] reopened” and consequently the value of his estate had been reduced by one half. In regard to compensation, Baker advised of his willingness to pay only \$150.00 for the land on Joseph’s Prairie (Chief Isadore had indicated his willingness to accept \$490.00). In regard to any future further Reserve adjustments, Baker noted:

...several Indians, the Chief Isadore amongst them, are dotted about the country on small holdings [and] in positions which are certain to be attractive to white settlers in the near future. The moment white settlers take up the lands adjoining these small Indian holdings the latter people will rebel.

The Indians do not clearly understand that they are the owners of the small holdings only [and] no more [and] that white settlers can take up all the neighbouring land [and] if they please, fence it in...²⁷⁹

On May 4, 1888, Baker was instructed that Indian Affairs held that he was committed to pay the fully agreed to compensation to Chief Isadore and not the \$150.00 suggested by Baker. While this Letters notes the full compensation to be \$1000.00, previous documentation shows that Chief Isadore had agree to accept \$490.00.²⁸⁰

On May 8, 1888, Indian Superintendent Powell wrote to the Superintendent General of Indian Affairs in response to the latter’s Letter of January 18, 1888 regarding “Indian matters in the Kootenay District.” Powell stated that Chief Isadore’s land demands were “excessive” including “the whole settled country from Bull River to a point a few miles below Wolf Creek, on both sides of the Kootenay river, a distance of about thirty five miles, which includes the most

²⁷⁸ See Document CAN000388.

²⁷⁹ See Document CAN000389.

²⁸⁰ See Document CAN000571.

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settled and valuable portion of the whole district.” In regard to the originally allotted Reserve by O’Reilly, Powell acknowledged Isadore’s disappointment with it but also argued that, when juxtaposed against the rest of the Province, it was fair if not exceptional. As for the way in which O’Reilly allotted the Reserve in 1884, it and others had only been reluctantly approved by the provincial government. While it would have been desirable when Powell, O’Reilly, and Vernon visited the previous fall “to provide land for Isadore, in lieu of that claimed by him on Joseph Prairie” nonetheless “very important additions were however made by us to the reserve and Isadore was allowed as much land on the Kootenay as the agreement between the local Government” allowed “to be reserved for Indian purposes.” Chief Isadore was noted to be much better off and satisfied with the new allotments.²⁸¹

A Statement, dated May 8, 1888, and marked with an “X” by Chief Isadore, stated:

I Chief Isadore, on behalf of myself and people hereby accept the reserves numbered 4, 5, and 6, which have been allotted to the Band which I represent and have been conveyed, in final settlement of all my claims to land in the Kootenay District.²⁸²

A Transcript of Indian Agent Phillipps conversation with Chief Isadore on May 8, 1888 stated:

Indian Agent – You are then satisfied and content to sign the paper from the chief at Ottawa.

Isadore – I told you that I wanted from “Skookum Chuck” down to Bull River, but as you say the matter is settled for ever; it is no use my saying anything more. We have large bands of horse and cattle, they will starve on such a small country.

Agent – You already know that the Crown land is open to you in the same way as to whites.

Isadore – The ditch I was promised has never been made. My crop will dry up.

Agent – Whatever has been promised by the Government will be carried out. Of that you may be assured.

Isadore – I am satisfied...²⁸³

²⁸¹ See Document CAN000390.

²⁸² See Documents CAN000392; CAN000573, p. 2.

²⁸³ See Documents CAN000391; CAN000573, p. 1.

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A Letter dated May 28, 1888 from Superintendent Powell to the Superintendent General of Indian Affairs discussed \$300.00 provided by DIA “for the purpose of constructing a drain and improving the St. Mary’s reserve...”²⁸⁴

In 1888 Survey Plan ATBC51 was completed for Upper Kootenay IR Nos. 4, 5, and 6. This Plan does not show the St. Eugene’s Mission Farm Lands.²⁸⁵

OPINIONS FORMED ON RESERVE CREATION HISTORY IN THE 19TH CENTURY FOR THE ʔAʔAM WITHIN HISTORICAL CONTEXT OF RESERVE CREATION IN BRITISH COLUMBIA

Opinion 1: Impact of Delay in Allotting Indian Reserves in the Kootenay District

The delay in allotting Indian Reserves in the Kootenay District impacted the availability of lands for the Kootenay peoples in 1884 when the Indian Reserve Commission, as represented by its sole Commissioner O’Reilly, finally arrived to allot Reserves. During this delay, a number of lands were pre-empted in the Kootenay District in the 1860s and 1870s, including in the area where the Mission Farm Lands (St. Mary’s River area) would be.

Examples include, in 1868, when Shaw pre-empted the 160 acres that would become Lot 1 of the St. Eugene Mission Farm Lands²⁸⁶ as well as five other known pre-emptions along the St. Mary’s River in 1868 alone.²⁸⁷ Later, in 1877 and 1878, Lots 2 and 3 would be pre-empted by Gregoire and Burns, respectively, for the St. Eugene Mission Farm Lands.

Furthermore, according to the 1871 Terms of Union, Indian Reserves were to be “reserved” for the “use and benefit” of British Columbia’s First Nations, presumably in a timely manner.²⁸⁸ Instead, the federal and provincial governments engaged in a dispute largely over the definition of Indian Reserves.²⁸⁹ ~~The result was a five year delay, following British Columbia’s entry into Confederation, where “no reserves were allocated or adjusted in British Columbia.”²⁹⁰~~ It was during this period of dispute, as shown within governmental

²⁸⁴ See Document CAN000572.

²⁸⁵ See Document SCB 23 (Tab 42 – Claimant’s Amended List of Documents, July 24, 2014).

²⁸⁶ See Documents EXP-000008; CAN000712; CAN000719.

²⁸⁷ See Documents CAN000714 to CAN000718.

²⁸⁸ See Document SMT 46 (Tab 7 – Claimant’s Amended List of Documents, July 24, 2014).

²⁸⁹ Please refer to section “British Columbia’s Policy regarding Lands Reserved for Indians at Confederation” for further details.

~~²⁹⁰ See Document EXP-000032, Harris, *Making Native Space*, p. 76. The JIRC would commence its work in 1876.~~

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and Oblate records, where we see multiple calls to address the land question in regard to Reserves in the Kootenay District.

As early as 1873, one year before the establishment of the Mission, Indian Commissioner Powell discussed his visit to the Kootenay to assess the “complaints of Indian difficulties.” In particular, Powell met with Chief Joseph who stated that “...he was anxious that land should be reserved for their families, and encouragement given them to depend more upon what they could produce themselves...”²⁹¹

In 1874 and 1875, Fouquet, noted that the issue of the land issue was a “very sensitive topic” to the Kootenay as they were very aware that “the Indians of the other side of the Rocky Mountains” were “liberally treated by the Dominion and local Government, as well as their intercourse with those of the United States who have reservations said to be nearly one hundred miles long...” Fouquet suggested that such knowledge reinforced to the Kootenay that were “right,” presumably in their land demands. As such, Fouquet suggested that the land question be settled as soon as possible.²⁹²

A “Report of the State of the Militia of the Dominion of Canada for the year 1875,” referenced claims that Indians in the Kootenay were “said to be growing insolent and claiming territorial rights of property.”²⁹³

In April 1883, the Indian Superintendent for BC advised the Superintendent General of Indian Affairs on “the pressing urgency of setting aside lands in Kootenay, Chilcotin, and on the West Coast of Vancouver Island...” Addressing this urgent need, however, was to be particularly difficult in light of Indian Commissioner O’Reilly’s leave for six months commencing May 1, 1883 which was likely to create a significant delay in allotting Reserves in these areas. Such a delay, the Indian Superintendent cautioned, would result in “serious trouble...long before the expiration of that period, if lands were not reserved.” While the Indian Superintendent requested “some other arrangement...for reserving Indian lands during Mr. O’Reilly’s absence,”²⁹⁴ it would be O’Reilly who would allot Reserves in the Kootenay in 1884. ~~Interestingly, O’Reilly would miss the 1883 and 1885 field seasons, the seasons directly before and after his allotment Kootenay Reserves, due to “exhaustion.”~~²⁹⁵

²⁹¹ See Document SCB 8 (Tab 10 – Claimant’s Amended List of Documents, July 24, 2014).

²⁹² See Documents CAN000483; CAN000732; CAN000480.

²⁹³ See Document CAN000740, p. 30.

²⁹⁴ See Document SMT 51 A-11: 3 (Tab 23 – Claimant’s Amended List of Documents, July 24, 2014).

²⁹⁵ ~~See Document EXP-000032, Harris, *Making Native Space*, p. 174.~~

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Opinion 2: O'Reilly does not address the Village at the St. Eugene Mission

~~Following the establishment of the St. Eugene Mission in 1874, an Indian Village was established at the Mission. According to settler and governmental records, this village would contain numerous homes and a sizable population as early as 1883. In 1884, O'Reilly described it as the "principal village of the Kootenays, consisting of 47 houses."²⁹⁶ For further details on the village at the Mission please refer to the section titled, "History of First Nation Use of History of Ktunaxa and ʔaᑭam use of the Mission Farm Lands following the establishment of the Mission."~~

~~In spite of the above, none of O'Reilly's correspondence or his Minutes of Decision indicated any discussions regarding the Mission Farm Lands, the village's status in relation to the larger Mission or the implications of such a large village site being on Mission Farm Lands and off the allotted Reserve lands. In contrast, according to the oral history of the meeting with governmental officials for the allotment of Reserves, recounted by Mary Ann Michel, Chief Isadore is noted to have requested the Mission Farms Lands, which would have included the Village, as part of the Reserve lands of the Upper Kootenay.²⁹⁷~~

~~When O'Reilly returned to the Kootenays in 1887 to allot further Reserve lands, he also did not address the village on the Mission Farm Lands.²⁹⁸ This in spite of the fact that in November 1886 Indian Commissioner Powell noted that the village had a population of about 200.²⁹⁹~~

~~Lastly, the existence of such a prominent Indian Village at the Mission at the time Reserves were being allotted raises questions as to whether or not such a village represents a "cognizable interest" at the time of reserve allotment, as envisioned by the Kitselas decision.³⁰⁰~~

Opinion 3: O'Reilly's 1884 Reserves did not meet the needs of the Kootenay Indians

~~As is well established in the section titled, "Correspondence calling for more Suitable Reserves for the Indians," an assortment of settlers and government~~

~~²⁹⁶ See Documents SCB 13, p. 7-8 (Tab 29 Claimant's Amended List of Documents, July 24, 2014); CAN000366, p. 3.~~

~~²⁹⁷ See Document CAN000932, pp. 29, 38.~~

~~²⁹⁸ See Documents SCB 19 and 20 (Tabs 37 and 38 Claimant's Amended List of Documents, July 24, 2014); CAN000532.~~

~~²⁹⁹ See Document CAN000370. Powell's report on the St. Eugene Mission is also stated in a December 24, 1886 DIA Memorandum [See Document CAN000372].~~

~~³⁰⁰ For more on the relevance of the Kitselas decision please refer to the section of this Report titled, "Understanding Habitual Use and Occupation."~~

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~~officials viewed O'Reilly's 1884 Reserves as unsuitable to the needs of the Kootenay Indians.³⁰¹ Furthermore, a number of settlers and other informants in the Kootenay District advised that in spite of the allotment of Reserves in 1884, there were many Indian settlements that fell outside the boundaries of the Reserves.³⁰²~~

~~This reality was fully admitted by O'Reilly, who, in December 1884 noted that the Kootenay Indians cultivated areas throughout the district as they pleased, "pasturing their cattle and horses in the most favored spots." And had he "included with the reserve all the scattered patches of land cultivated by the Indians on the banks of the Kootenay River" the Reserves would have been larger than those he allotted.³⁰³ The following year in a December 1885 Letter O'Reilly again confirmed that there were "several small patches of cultivated land" held by the Kootenay Indians, it had been "impossible to include [them] within the reservation."³⁰⁴~~

~~In 1887, O'Reilly would allot three additional Reserves to the Upper Kootenay to address these noted insufficiencies with the original Reserve. As previously noted, these Reserves did not include the Village at the St. Eugene Mission or any of the Mission Farm Lands.³⁰⁵~~

~~Opinion 4: O'Reilly was a proponent of British Columbia's settler society~~

~~Prior to his appointment as Indian Reserve Commissioner, O'Reilly had worked for the colonial and provincial governments in a number of capacities though largely as a magistrate.³⁰⁶ Indeed, O'Reilly was the magistrate in the Kootenay when John Shaw pre-empted the 160 acres that would become Lot 1 of the Mission Farm Lands. O'Reilly signed and approved Shaw's application for pre-emption as well as his Certificate of Improvement.³⁰⁷~~

~~As Reserves were being reduced in the Trutch era before Confederation, O'Reilly agreed with these reductions noting that Douglas' overly large Reserves were causing settlers "much inconvenience."³⁰⁸~~

~~³⁰¹ See Documents CAN000370, pp. 8-27; CAN000372; CAN000376; CAN000379; CAN000823; CAN000367; CAN000368; CAN000375.~~

~~³⁰² See Documents CAN000823; CAN000367; CAN000375; CAN000370, pp. 8-27; CAN000376.~~

~~³⁰³ See Document EXP-000026.~~

~~³⁰⁴ See Document CAN000826.~~

~~³⁰⁵ See Document SCB-19 (Tab 37 – Claimant's Amended List of Documents, July 24, 2014).~~

~~³⁰⁶ See Document EXP-000029, *Cail, Land, Man, and the Law*, p. 217.~~

~~³⁰⁷ See Documents CAN000712; CAN000719; CAN-000721; EXP-000008.~~

~~³⁰⁸ See Document EXP-000032, Harris, *Making Native Space*, p. 58.~~

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~~Lastly, in describing O'Reilly's eighteen year tenure as Indian Reserve Commissioner, Cole Harris describes him as "an agent of the Crown working quickly and efficiently, interpreting his instructions and the law as he understood them, making land decisions, and writing reports promptly." While at times, O'Reilly was a "limited defender of Native rights" ultimately he "reflected the predominant values of settler society" acting "as a trusted agent" of the settler focused colonialism in which he lived and worked. Furthermore, O'Reilly "had to comply with the provincial government's desire to allocate reserves quickly and minimally." Such limitations were not difficult for O'Reilly to accept as he "was prepared to grant some land, but the boundaries of his and, more basically, the provincial government's generosity were narrow and insisted upon."³⁰⁹~~

~~3. WHETHER ʔAQAM HABITUALLY USED AND OCCUPIED THE MISSION FARM LANDS PRIOR TO AND DURING THE RESERVE CREATION PROCESS~~

~~UNDERSTANDING HABITUAL USE AND OCCUPATION~~

~~In 2014, the Federal Court of Appeal (FCA) ruled on the Specific Claims Tribunal's (SCT) 2013 decision in relation to the *Kitselas First Nation v. Canada* [*Kitselas*].³¹⁰ The FCA upheld the decision of SCT that Canada had a fiduciary duty to First Nations at the reserve allotment stage. The SCT and FCA decisions also affirmed that during the reserve allotment process the Crown had been required to consider the "habitual use of the land..." of First Nations.³¹¹ This decision therefore provides some guidelines to frame an understanding of the ʔaqam habitual use and occupation of the Mission Farm Lands.~~

~~The SCT's *Kitselas* decision found that the Kitselas people had a "cognizable Indian interest" in the land that Indian Reserve Commissioner O'Reilly excluded from their Indian Reserves in 1891. As such, the SCT found "that the Indian Nations had, at a minimum, a substantial practical interest in the land they habitually used."³¹² Or as stated by the FCA, the Crown was "clearly required" to "take into account and to have regard to the actual land uses of the various aboriginal nations for which the reserves were being created" [emphasis added].³¹³ In establishing that the Kitselas had a "cognizable" interest in the~~

³⁰⁹ See Document EXP-000032, Harris, *Making Native Space*, p. 186.

³¹⁰ See *Kitselas First Nation v. Canada*, 2013 SCTC 1, Specific Claims Tribunal; *Canada v. Kitselas First Nation*, 2014 FCA 150, Federal Court of Appeal.

³¹¹ See *Kitselas First Nation v. Canada*, 2013 SCTC 1, p. 3; *Canada v. Kitselas First Nation*, 2014 FCA 150, para. 16.

³¹² See *Kitselas First Nation v. Canada*, 2013 SCTC 1, para. 143 and 144; *Canada v. Kitselas First Nation*, 2014 FCA 150, para. 16.

³¹³ See *Canada v. Kitselas First Nation*, 2014 FCA 150, para. 52.

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lands excluded from their Reserves, the SCT decision also utilized a combination of archaeological, oral historical, as well as documentary evidence to support its decision. These forms of evidence will also be used to demonstrate the ʔaḡam habitual use and occupation of the Mission Farm Lands in the forthcoming sections.

The basis of the Kitselas' cognizable interest was Article 13 of the *Terms of Union* and the subsequent instructions for the creation of Indian Reserves in the province of BC. As noted previously, the 1871 *Terms of Union* "provided for the appropriation of tracts of land to be conveyed from the provincial government to the federal government in trust for the use and benefit of the various aboriginal populations of the province."³¹⁴ Thereafter, when Canada and BC would establish the Joint Indian Reserve Commission (JIRC), various instructions would establish that the Commission:

...was to visit each aboriginal nation in British Columbia to inquire into reserve allotments and to fix and determine separately for each nation the number, extent and locality of reserves taking into account their habits, wants, pursuits, and the amount of territory available. In the region occupied by them, as well as the claims of the White settlers.³¹⁵

A further Memorandum attached to a Canada OIC, dated November 10, 1875, stated that the JIRC was to take into account, "the case of each particular nation," including the "habits, wants and pursuits of such Nation, to the amount of territory available in the region occupied by them, and to the claims of the White settlers."³¹⁶ Later, when Gilbert M. Sproat was appointed the sole Commissioner in 1878, he was instructed to continue with the "same policy which has hitherto guided the Commission in dealing with their Reserves...be continued in the future."³¹⁷

In 1880, Peter O'Reilly was appointed the sole Indian Reserve Commissioner and his instructions for allotting Indian Reserves from the Department of Indian Affairs similarly stated that he was to "have special regard to the habits, wants and pursuits of the Band, to the amount of territory in the Country frequented by it, as well as to the claims of the White settlers (if any)." Further, O'Reilly was to:

³¹⁴ See *Canada v. Kitselas First Nation*, 2014 FCA 150, para. 6; *Kitselas First Nation v. Canada*, 2013 SCTC 1, para. 9, 135;

³¹⁵ See *Canada v. Kitselas First Nation*, 2014 FCA 150, para. 7.

³¹⁶ See Document CAN-000363, pp. 1-8. Cited in *Kitselas First Nation v. Canada*, 2013 SCTC 1, para. 10, 136.

³¹⁷ See Document SCB 10 (Tab 19 – Claimant's Amended List of Documents, July 24, 2014). Cited in *Kitselas First Nation v. Canada*, 2013 SCTC 1, para. 12.

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~~...interfere as little as possible with any tribal arrangements being specially careful not to disturb the Indians in the possession of any villages, fur trading posts, settlements, clearings[,] burial places and fishing stations occupied by them and to which they may be specially attached...~~

~~...You should in making allotments of lands for Reserves make no attempt to cause any violent or sudden change in the habits of the Indian Band for which you may be setting part the Reserve land; or to divert the Indians from any legitimate pursuits or occupations which they may be profitably following or engaged in, you should on the contrary encourage them in any branch of industry in which you find them so engaged...³¹⁸~~

~~O'Reilly was also informed of Sproat's 1878 Report of Progress which stated that the "first requirement is to leave the Indians in the old places to which they are attached." As well as interfering as little as was necessary "for settling up the country with white settlers permits, with the favourite resorts of the Indians, their old ways, their councils and gatherings and their intertribal traffic..."³¹⁹~~

~~The *Kitselas* decision also confirmed a broad understanding of what cognizable interest entails, noting:~~

~~...it is not necessary that the Kitselas First Nation base its claim to a cognizable interest on proof of "pre-existing distinct and complete legal entitlement" to the land in question.~~

~~Rather, it was necessary to establish an interest as contemplated by Article 13 of the *Terms of Union* and the ensuing instructions i.e. "actual land uses."³²⁰~~

~~This broad understanding of cognizable interest also affirmed the importance of the aboriginal perspective on its use and occupation of a place, noting that while the Kitselas village excluded from their Reserve "would not have been perceived by Indian Commissioner O'Reilly as a village," from the First Nation perspective it would not have been considered "abandoned" as it was a site "of significance to the identity of the Kitselas people."³²¹~~

~~In total then, the *Kitselas* decision and its subsequent confirmation by the FCA provides several useful guidelines for the habitual use and occupation of the Ktunaxa peoples of the Kootenay, which includes the ʔaqam.~~

³¹⁸ See Document SMT 50-A-11: 2 (Tab 22 – Claimant's Amended List of Documents, July 24, 2014). Cited in *First Nation v. Canada*, 2013 SCTC 1, para. 15, 141.

³¹⁹ See Document EXP-000018. Cited in *First Nation v. Canada*, 2013 SCTC 1, para. 16, 142.

³²⁰ See *Kitselas First Nation v. Canada*, 2013 SCTC 1, para. 125.

³²¹ See *Kitselas First Nation v. Canada*, 2013 SCTC 1, para. 81-86; *Canada v. Kitselas First Nation*, 2014 FCA 150, para. 14.

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The ~~Kitseles~~ decision affirms that Article 13 of the ~~Terms of Union~~ and the subsequent instructions for the creation of Indian Reserves in the province of BC should be considered when understanding and defining habitual use and occupation and cognizable interest. In doing so, the Crown was “clearly required” to “take into account and to have regard to the actual land uses of the various aboriginal nations for which the reserves were being created” [emphasis added].³²² In regard to the Ktunaxa and ʔaḡam, these “actual land uses” are documented to include:

- The ~~Semi-nomadic use of various portions of the Kootenay region, which includes the area of the Mission Farm Lands, for hunting, fishing, agriculture, settlements, and other pursuits;~~
- ~~Agricultural practices throughout the Kootenay Region, which includes the area of the Mission Farm Lands.~~
- ~~Repeated and concerted assertions of sovereignty over the lands of the Kootenay region, which included the Mission Farm Lands.~~
- ~~Specific evidence that the Mission Farm Lands were used by the Ktunaxa and ʔaḡam historically, at and around the time the Mission was established; and at the time Reserves were created by Commissioner O'Reilly (in the form of an Indian Village).~~

~~These will be demonstrated in the following section of this Report using oral history, archaeological evidence, and a wide range of documentation from settlers and government officials.~~

~~THE GENERAL HABITUAL USE AND OCCUPATION OF LANDS IN THE KOOTENAYS BY THE KTUNAXA~~

Introduction

~~The Ktunaxa people, which includes the ʔaḡam (formerly the St. Mary's Indian Band) “...have occupied the lands adjacent to the Kootenay and Columbia Rivers and the Arrow Lakes for more than 10,000 years.” Ktunaxa traditional territory “...covers approximately 70,000 square kilometres (27,000 square miles) within the Kootenay region of south-eastern British Columbia and historically included parts of Alberta, Montana, Washington and Idaho.”³²³~~

~~Archaeologist Wayne Choquette states that there exists a record of human habitation in the Rocky Mountain Trench, in which the traditional lands of the Ktunaxa are located, back to “at least 9,000 years ago.” Further, the “grassy basin that was later to become known as Joseph's Prairie (present-day~~

³²² See ~~Canada v. Kitseles First Nation, 2014 FCA 150, para. 52.~~

³²³ See ~~Document EXP-000037.~~

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~~Cranbrook) and which was near the future Mission Farm Lands³²⁴ “was probably already supporting seasonal game herds, and hunting camps were established nearby which would be occupied for the next 8,000 years.”³²⁵~~

~~The Semi-Nomadic Nature of the Ktunaxa~~

~~The semi-nomadic nature of the Ktunaxa, which includes the ʔaḡam, highlights that the Kootenay region, which was largely claimed by the Ktunaxa and includes the Mission Farm Lands, was used for a range of pursuits including hunting, fishing, and agriculture as part of their seasonal rounds.~~

~~Archaeologist Choquette states that the Ktunaxa, in particular the Upper Kootenay, were a semi-nomadic³²⁶ people, following:~~

~~...a nomadic seasonal round determined by the location and scheduling of abundance and ripening of a broad range of animal and plant resources. There is no information in the ethnographic literature regarding the hunting of resident bison but other large game animals, particularly deer and elk, were hunted singly with bows and with traps. Less frequent communal hunts were most important in the spring and fall, the latter providing the bulk of the meat that was dried and stored for winter consumption. From late spring through early fall, game, fish, waterfowl, and plant foods such as roots and berries were acquired by task groups, for example, a group of women picking berries accompanied by a few men who undertook casual hunting at the same time or several families journeying to the headwaters of the Columbia River to take salmon. After obtaining horses around A.D. 1730, the Ktunaxa began making thrice yearly treks to the bison grounds east of the Rockies.~~

~~Choquette further notes that Joseph’s and St. Mary’s prairies “were probably fall and spring hunting areas” that were part of the Seasonal rounds of the Ktunaxa.³²⁷ The semi-nomadic nature of the Ktunaxa is also highlighted in Mary Ann Michel’s oral history.³²⁸~~

~~The semi-nomadic nature of Ktunaxa was also reported in a wide range of documentation from government officials, settlers and the Oblates from 1859 onward.~~

³²⁴ ~~The habitual use and occupation of the Mission Farm Lands are dealt with in the forthcoming section titled, “Ktunaxa Use and Occupation of the Mission Farm Lands up to the Establishment of the Mission.”~~

³²⁵ ~~See Document, p. 2.~~

³²⁶ ~~Although some documents will note the nomadic nature of the Ktunaxa, it is asserted that the term “semi-nomadic” is more appropriate considering that the Kootenay region was a continuous home base for the Ktunaxa as well as their various pursuits and settlements in the region.~~

³²⁷ ~~See Document, pp. 2-3.~~

³²⁸ ~~See Document CAN000932, pp. 2, 16, 19, 25.~~

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~~During Captain Palliser's 1859 Expedition to British North America he met the Kootenays [sic] Indians who were described as regularly making excursions across the Rocky Mountains "in the spring and fall for the purpose of killing buffalo...for their own subsistence and trade..."³²⁹~~

~~In the 1870s and 1880s, a crucial period in the Kootenay region for the allotment of lands to both First Nations and settlers, the Ktunaxa continued to live a semi-nomadic way of life. For instance, official Reports by the Department of Indian Affairs (1872 and 1873) advised that the First Nations of the Kootenay, numbering 300-400 in population, lived "by the chase and hunt the buffalo" taking them away from the Kootenay District for long time periods.³³⁰ An August 26, 1872 Letter by Jesuit missionary P. Tosi, who ministered in the Kootenays, stated that Kootenay Indians were dispersed "during the different seasons of the year."³³¹~~

~~A November 3, 1873 Report by the Indian Commissioner for BC discussed his visit to the Kootenay region to assess "complaints of Indian difficulties." In particular, Powell described the Upper Kootenay Indians as "exclusively horsemen—living entirely by the chase..." with their food consisting "principally of Buffalo meat which they regularly cross the mountains to obtain..." In numbering the Kootenay Indians, Powell estimated their population at 400 to 500 with the ability to "send at any time one hundred and fifty horsemen to the hunting grounds."³³²~~

~~In October 1874, Father Fouquet, who founded the St. Eugene Mission that same year, noted that there were only a few Kootenay Indians there as the majority were away on the buffalo hunt.³³³ Just a few months later, Fouquet stated that the majority of the Kootenay Indians had left for the buffalo and marten hunts and would not return until Easter.³³⁴ Again in July 1875, Fouquet stated that the majority of the Kootenay Indians were "all gone."³³⁵~~

~~A "Report of the State of the Militia of the Dominion of Canada for the year 1875, indicated that the Kootenay Indians were semi-nomadic, relying on "hunting buffalo on the prairies of the North West Territories, as well as cariboo, elk, bear, deer, &c, and trapping fur-bearing animals in the woods and valleys adjacent."³³⁶~~

³²⁹ See Documents CAN000707, p. 53; CAN000704, p. 17.

³³⁰ See Documents CAN000362; CAN000727.

³³¹ See Document CAN000942.

³³² See Document SCB-8, p. 6-13 (Tab 10—Claimant's Amended List of Documents, July 24, 2014).

³³³ See Documents CAN000729; CAN000479.

³³⁴ See Documents CAN000733; CAN000481.

³³⁵ See Documents CAN000738; CAN000487.

³³⁶ See Document CAN000740, p. 11.

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~~Fouquet in further correspondence, dated January 28, 1877, stated that the Kootenay Indians continued to rely upon the buffalo hunt for their survival beginning their hunting trips following the planting of crops in the spring and fall which ensured they have food for winter.³³⁷~~

~~Farwell's 1883 "Report on the Kootenay Indians," advised that the Kootenay Indians had "lived almost entirely on the products of the chase, and annually crossed to the eastern side of the mountains in quest of buffalo, their staple article of food."³³⁸~~

~~Col. Baker, writing to the Attorney General, British Columbia, on April 27, 1887, described the Kootenay Indians generally as "nomadic in their habits":~~

~~...seldom remain[ing] more than a few months on one spot; they camp here at one season [and] there at another but usually return to the same locality at the same season of the year.~~

~~There were several of these camping places outside the Reserves [and] scattered over the valley for a distance of over one hundred miles, where the Indians had been in the habit of camping with their herds [and] in two or three of these places they had roughly fenced from four to five acres of land.³³⁹~~

~~In September 1887, when the Indian Reserve Commission arrived in the Kootenay to allot additional Reserves, Chief Isidore had been away securing supplies for the winter.³⁴⁰~~

~~The Agricultural Patterns of the Ktunaxa~~

~~The Ktunaxa, though semi-nomadic, were also an agricultural people with interests throughout the Kootenay region, which includes the Mission Farm Lands. These agricultural patterns would be reported in various documentation from the Oblates, government officials and settlers from 1859 onward.~~

~~During Captain Palliser's 1859 Expedition he met the Kootanie [sic] Indians who were described as having made "a few attempts at agriculture," and possessing large herds of horses and several cows and oxen.³⁴¹~~

~~³³⁷ See Documents CAN000744; CAN000495.~~

~~³³⁸ See Documents EXP-000023; SMT 45-C-1: 3 (Tab 24 Claimant's Amended List of Documents, July 24, 2014).~~

~~³³⁹ See Document CAN000375.~~

~~³⁴⁰ See Document CAN000385.~~

~~³⁴¹ See Document CAN000704, p. 17.~~

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~~Official Reports by the Department of Indian Affairs (1872 and 1873) stated that the First Nations of the Kootenay cultivated “small patches of land, “growing of potatoes and other vegetables,” and having 300 400 head of cattle and 2500 horses.³⁴²~~

~~A Report, dated November 3, 1873, by the Indian Commissioner for BC I.W. Powell, discussed Powell's visit to the Kootenay's to assess “complaints of Indian difficulties.” In regard to cultivation, Powell noted that they were:~~

~~...fond of agriculture but possess no implements, and no facilities for obtaining Seeds. They cultivate altogether some two hundred acres of land situate on Tobacco Plains, and St Mary's river Prairie...~~

~~...I visited their farming district on St Mary's River, and also on Kootenay River and am of opinion that in the former place [St Mary's River], a good reserve of land may be set apart for them which will be satisfactory...~~

~~...I had a meeting with the head Chief of the Tribe Joseph or Ka-Ka-Kilth...He cultivates some five acres of land, has cut [illegible] grass land this year some 40 tons of hay, has 22 cattle 100 Horses...~~

~~As for stock, Powell estimated that the Kootenay Indians “possess[ed] about 100 head of cattle and from 2500 to 3000 horses...”³⁴³~~

~~When Fouquet arrived in the Kootenay in 1874 and purchased Shaw's farm (Lot 1) Fouquet noted the existence of “the savage's field” that was to the west of Shaw's pre-emption. Fouquet further noted that the Indians had also “chosen to take the plain east of Shaw's claim.” This plain east of Shaw's claim was said to include 40 to 60 acres of “good land.”³⁴⁴ When Surveyor William Ralph surveyed Lots 1, 2, and 3 of the St. Eugene Mission Farm Lands in 1877, his Plan and Field Notes showed Indian fields adjacent to, and west of, Lot 1 as well as adjacent to, and east of, Lot 3.³⁴⁵~~

~~Father Fouquet, writing in February 1875, advised that the Kootenay Indians would continue to “cultivate more patches of land” throughout the entire “country as long as there is no regulation on the matter.” Fouquet further noted that it was “the same for pastures.”³⁴⁶~~

~~³⁴² See Document CAN000362; CAN000727.~~

~~³⁴³ See Document SCB-8, p. 6-13 (Tab 10 – Claimant's Amended List of Documents, July 24, 2014).~~

~~³⁴⁴ See Document CAN000732; CAN000480.~~

~~³⁴⁵ See Document CAN000498; CAN000494, pp. 21-32.~~

~~³⁴⁶ See Document CAN000483.~~

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~~Father Fouquet in a Letter dated January 28, 1877 stated that the Kootenay Indians began their hunting trips following the planting of crops in the spring and fall.³⁴⁷~~

~~Farwell's "Report on the Kootenay Indians," dated December 31, 1883, advised that the Kootenay Indians had, since the loss of the buffalo hunt, shifted to raising cattle which they depended upon, along with hunting and fishing, for their sustenance.³⁴⁸~~

~~In July 1884, when Indian Reserve Commissioner O'Reilly visited the Kootenay District to allot Reserves he commented that Chief Isidore had stated that he did not want to be confined to one Reserve due to the various lands in which they held an interest including along the St. Mary's River where their horses ran.³⁴⁹ Generally Isidore also reiterated that his people had "a great number of horse & cattle" requiring as much land as possible.³⁵⁰~~

~~In a later December 1884 Letter, O'Reilly noted that the Kootenay Indians cultivated areas throughout the district as they pleased, "pasturing their cattle and horses in the most favored spots." Furthermore, O'Reilly stated that if he had "included with the reserve all the scattered patches of land cultivated by the Indians on the banks of the Kootenay River," Reserves would have been much larger than those he allotted.³⁵¹~~

~~An October 1885 anonymous Letter to the Editor in *The British Colonist* stated that many settlements of the Kootenay Indians were outside the Reserves allotted by O'Reilly. As an example, the Letter pointed out that:~~

~~...the chief [Chief Isidore] of the tribe has over a hundred cattle and three hundred horses, a good house, and a fenced farm on the banks where he grows wheat, oats, hay potatoes, etc. He also has another piece of land on "Joseph's Prairie," which he cultivates...~~

~~Such settlements, "cultivated and fenced for years" and outside the Reserve boundaries, were creating uncertainty as to how these lands would be dealt with in the context of white settlers.³⁵²~~

~~³⁴⁷ See Documents CAN000744; CAN000495.~~

~~³⁴⁸ See Documents EXP-000023; SMT 45 C 1: 3 (Tab 24 Claimant's Amended List of Documents, July 24, 2014).~~

~~³⁴⁹ See Document SMT 52 (Tab 26 Claimant's Amended List of Documents, July 24, 2014); CAN000364.~~

~~³⁵⁰ See Document SMT 52 (Tab 26 Claimant's Amended List of Documents, July 24, 2014); CAN000365.~~

~~³⁵¹ See Document EXP-000026.~~

~~³⁵² See Document CAN000823.~~

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~~Indian Commissioner O'Reilly addressed the above concerns in a December 10, 1885 Letter advising that while there were "several small patches of cultivated land" held by the Kootenay Indians, it had been "impossible to include [them] within the reservation[s]."~~³⁵³

~~Col. Baker, writing to the Attorney General, British Columbia, on April 27, 1887, noted that the Kootenay Indians had in a few places:~~

~~...roughly fenced from four to five acres of land. On Joseph's Prairie Isidore the Chief had fenced about twenty acres of which he has ploughed two acres.~~

~~White settlers began to pour into the country [and] these pieces of land, which were outside the reserves were taken up by pre-emption and purchase.~~³⁵⁴

~~Following the allotment of additional Reserves to the Upper Kootenay, the October 1887 Letter of Decision regarding these new reserves confirmed the stock raising and cultivating practices of the Upper Kootenay Indians, noting:~~

~~We have now decided to allow you [the Upper Kootenay] a piece of land on what is known as Isadore's lower farm, so as to cover all the improvements and all the hay land in the immediate vicinity. We have also reserved a valuable meadow some distance away, where some of you have been accustomed to cutting hay, as well as a piece of Bummer's Flat, where you have been accustomed to camp during some portions of the Summer. These Reserves are all that will be made and will with those previously laid off contain all the land you can possibly want for yourselves and your stock...~~³⁵⁵

~~Assertions of Sovereignty over the Land by, and for, the Ktunaxa~~

~~As is noted previously in this Report, Reserves were allotted to the Upper Kootenay in 1884 and 1887 by Indian Reserve Commissioner O'Reilly. Prior to, and leading up to these allotments, various settler and government accounts confirm that the Ktunaxa, including the Upper Kootenay and Chief Isadore, continually and repeatedly asserted their sovereignty over the lands of the region, which included the Mission Farm Lands.~~

~~Indian Commissioner Powell's November 1873 Report discussed his meeting with Chief Joseph (also known as Ka-Ka-Kilth) of the Upper Kootenay Tribe who advised that his people wanted land reserved. In doing so, Chief Joseph expressed his view that the:~~

~~³⁵³ See Document CAN000826.~~

~~³⁵⁴ See Document CAN000375.~~

~~³⁵⁵ See Documents SCB-21 (Tab 39 – Claimant's Amended List of Documents, July 24, 2014); CAN000360.~~

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~~...country had been the land of his ancestors long before the white people saw it and therefore belonged to them, and he wished, now that a Chief was appointed solely for themselves... [to] see they had justice and their homes secured to them.³⁵⁶~~

~~Father Fouquet, writing in February 1875, noted that the issue of the land was a “very sensitive topic” to the Kootenay as they were very aware that “the Indians of the other side of the Rocky Mountains” were “liberally treated by the Dominion and local Government, as well as their intercourse with those of the United States who have reservations said to be nearly one hundred miles long...” Such knowledge reinforced to the Kootenay that “they are right.” In light of this, Fouquet suggested that the land matter be settled as soon as possible. If not the Kootenay Indians would continue to “cultivate more patches of land, [and] those patches will be over the all country as long as there is no regulation on the matter; it is the same for pastures.”³⁵⁷~~

~~A later “Report of the State of the Militia of the Dominion of Canada for the year 1875,” referenced claims that Indians in the Kootenay were “said to be growing insolent and claiming territorial rights of property.” In response to their potential threat of quarrel between Indians and settlers, the Report recommended that a force of the NWMP was “required at Joseph’s Prairie or Wild Horse Creek,” in order to settle the Kootenay region.³⁵⁸~~

~~In July 1884, when Indian Reserve Commissioner O’Reilly visited the Kootenay to allot Reserves he commented that the Kootenay Indians, prior to his visit:~~

~~...claimed to be, and virtually were, in possession of the whole district, cultivating such portions as they please, and pasturing their cattle, and horses in the most favored spots.~~

~~...I had the utmost difficulty in persuading the Kootenays to agree to the boundaries fixed on by me, and which they look upon as meagre in the extreme, compared with the million[s] of acres set apart by the United States Government for American Indians, a few miles South of the line...³⁵⁹~~

~~In specific regard to Chief Isidore of the Upper Kootenay, O’Reilly advised that:~~

~~The Chief stated, again and again, that he would not accept any limits to his reservation unless they included the whole valley of the Kootenay and Columbia~~

~~³⁵⁶ See Document SCB-8, p. 6-13 (Tab 10 – Claimant’s Amended List of Documents, July 24, 2014).~~

~~³⁵⁷ See Document CAN000483. Fouquet’s observations were provided to Indian Commissioner Lenihan, Victoria, on March 23, 1875 [See Document CAN000484].~~

~~³⁵⁸ See Document CAN000740, pp. 30-31.~~

~~³⁵⁹ See Document EXP-000026, pp. 1-2.~~

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~~rivers (from the International boundary line), and followed the base of the Rocky Mountains to the Boat landing on the Columbia river...³⁶⁰~~

~~Several years later, calls emerged from the Kootenay Indians, including the Upper Kootenay, to either enlarge the existing Reserves laid out by O'Reilly or allot new Reserves. These calls, which were also echoed in the correspondence of various settlers and government officials, also conveyed repeated assertions of sovereignty by Kootenay Indians, including Chief Isidore and the Upper Kootenay.~~

~~In August 1886, Col. Baker, who was attempting to purchase lands on Joseph's Prairie that would become a source of significant tension with Chief Isidore, stated:~~

~~...until late years the Kootenay Indians were in practical possession of the whole land of the District [and] were accustomed to roam at will with their herds of stock. They now find themselves being gradually hemmed in by the white men, large tracts of lands have consequently been set aside by the Government on a very liberal scale, as Indian Reserves, but the Indians have not been definitely informed upon what terms they are to occupy them...~~

~~...they are...jealous of his [the white man's] encroachments [and] loth to relinquish their habitual wandering with their herds, at the various seasons, to the choice spots of grazing grounds in numerous parts of the District. They have been in the habit of moving from place to place at the different seasons like flights of birds [and] of taking off the cream of the grazing at each place. In some places they have erected rough canals [and] fenced in small gardens (not on the present reserves) which they occupy for two or three months in each [and] then move to similar settlements somewhere else...~~

~~Baker also advised that the Kootenay Indians were accustomed to using certain grazing lands "from time immemorial."³⁶¹~~

~~On September 21, 1886, Michael Phillipps advised the Indian Commissioner for BC that the Kootenay Indians "lose no opportunity of letting the settlers know that the land belongs to them [and] that the settlers only remain by their permission."³⁶²~~

³⁶⁰ See Document SCB 13, p. 5 (Tab 29 – Claimant's Amended List of Documents, July 24, 2014); CAN000366, p. 2.

³⁶¹ See Document CAN000367.

³⁶² See Document CAN000368.

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~~A Letter, dated October 9, 1886, from Aylmer & Humphrey, Cranbrook, stated that Indians of the Kootenay District were asserting “that the whole country belongs to them and that they are to dictate to the white settler.”³⁶³~~

~~In a Letter dated November 18, 1886, the Indian Commissioner for BC reported on his visit to the Kootenay District in August and September of 1886 confirming that Chief Isadore and the Upper Kootenay “were in unison in demanding that the whole stretch of country from Bull River to Wolf Creek should be assigned to them.”³⁶⁴~~

~~A Letter dated March 15, 1887 from Arthur Fenwick, Wild Horse (Kootenay), to Indian Superintendent Powell stated that Chief Isadore sought to have lands “from the St. Mary to the Skookum Chuck on the other side of the Kootenay [river].”³⁶⁵ Col. Baker, writing to the Attorney General, British Columbia in April 1887, drew attention to the “gravity of the situation in the Upper Kootenay Valley and to the danger in the prolonged delay in settling the Indian question...” Baker advised that while the government and settlers had believed the Reserve question dealt with by O’Reilly’s 1884 allotments, this was the “opposite view” of the Indians in the Kootenay. In recounting Commissioner Powell’s meeting with Chief Isadore in the autumn of 1886, Baker stated how Chief Isadore:~~

~~...said that it was for him to say what land he would grant the Queen [and] not that she should dictate to him. He then demanded as a reserve what was practically the greater part of the land in the whole valley.~~

~~Baker further noted that the Indians had “refused to allow white settlers to cut rails [and] do work on their pre-emption[s] [and] are practically in command of that portion of the district [the Upper Kootenay Valley].”³⁶⁶~~

~~On July 16, 1887, Indian Agent Michael Phillips advised Superintendent Powell that “Isadore’s demands as to land were as usual altogether too large” as he had requested lands “from Skookum Chuck to a place opposite the mouth of Bull River.”³⁶⁷~~

~~On September 1, 1887, Indian Reserve Commissioner O’Reilly wrote to the Superintendent General of Indian Affairs on the matter of the re-adjustment of certain Reserves in the Kootenay District that had been deemed “inadequate to the requirements of the Indian population.” In regard to 1884, O’Reilly reiterated~~

~~³⁶³ See Document CAN000369.~~

~~³⁶⁴ See Document CAN000370.~~

~~³⁶⁵ See Document CAN000373.~~

~~³⁶⁶ See Document CAN000375.~~

~~³⁶⁷ See Document CAN000379.~~

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~~that the Kootenay Indians had “made excessive demands for land and virtually claimed the entire Kootenay Valley...”³⁶⁸~~

~~In April 1888, Col. Baker, writing to the Superintendent of Indian Affairs confirmed that Kootenay Indians, including Chief Isidore, were “dotted about the country on small holdings in positions which are certain to be attractive to white settlers in the future.” Baker, cautioned that the Kootenay Indians did “not clearly understand that they are the owners of the small holdings only [and] no more...”³⁶⁹~~

~~On May 8, 1888, Indian Superintendent Powell wrote to the Superintendent General of Indian Affairs advising that Chief Isadore’s land demands were “excessive” including “the whole settled country from Bull River to a point a few miles below Wolf Creek, on both sides of the Kootenay river, a distance of about thirty five miles, which includes the most settled and valuable portion of the whole district.”³⁷⁰~~

~~That same day, in spite of the allotment of IR Nos. 4, 5, and 6, Chief Isadore again reminded Indian Affairs that he had wanted a much greater land area “from ‘Skookum Chuck’ down to Bull River...”³⁷¹~~

~~*KTUNAXA USE AND OCCUPATION OF THE MISSION FARM LANDS UP TO, AND AT, THE ESTABLISHMENT OF THE MISSION*~~

~~As previously shown, the St. Eugene Mission Farm Lands were first established in 1874 with land (Lot 1) acquired from pre-emptor John Shaw. Overtime, further lands (Lots 2, 3, and 1063) would be added to the Mission Farm Lands. Prior to, and at, the establishment of the Mission, however, archaeological, oral historical and Oblate records suggest that the Ktunaxa and the ʔaqam used and occupied the Mission Farm Lands.~~

~~According to Archaeologist Wayne Choquette’s 1992 Report titled, “The Heritage Resource Base of the St. Eugene Mission Site, Southeastern British Columbia,” the Mission Farm Lands were the site of “a large pre contact camp” that was situated at the confluence of Joseph’s Creek with the St. Mary’s River, in what was the “hay field behind the mission buildings.” This site, which contained artifacts of tourmalinite, was, Choquette notes, about 3000 to 5000 years old. Choquette further highlights the existence of a second archaeological site about 2000 to 3000 years old that is “situated beside Joseph’s Creek and Mission Road~~

~~³⁶⁸ See Document CAN000381.~~

~~³⁶⁹ See Document CAN000389.~~

~~³⁷⁰ See Document CAN000390.~~

~~³⁷¹ See Documents CAN000391; CAN000573, p. 1.~~

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about 1 km [sic] south of the Mission Farm lands.” All in all, the Mission Farm Lands were “situated centrally with respect to a number of other significant archaeological sites in the surrounding area, including sites at Joseph’s Prairie, St. Mary’s Prairie and Kimberley.”³⁷² Choquette further states that St. Mary’s prairie, which includes the Mission Farm Lands, was likely part of the fall and spring hunting rounds of the Ktunaxa.³⁷³

Oral historical evidence also confirms the importance of the Mission Farm Lands to the Ktunaxa, including the ʔaʔam. According to Mary Ann Michel of the St. Mary’s Band, a number of families lived on the Mission Farm Lands described as “on the south side of the St. Mary’s River” on the “land the missionaries have claimed.” Michel recounted how they used to live on the Mission Farm Lands “from one of the flat to the other end, some of them right by Joseph’s Creek,” “long before the white people ever laid their eyes.” Further, as previously noted in this Report, Michel told how there were permanent log houses on the Mission Farm Lands that were destroyed by a white settler or pre-emptor, possibly Shaw.³⁷⁴ Michel, in recounting Chief Isadore’s meeting with governmental officials for the allotment of Reserves, stated that Chief Isadore described the Mission Farm Lands as where “my people have made their home for years” and as “one of the permanent home for my people for hundred [sic] of years.”³⁷⁵ Michel also stated that the Mission was established where it was [Kamukuwu’uku] because the missionaries “knew...that this is where the people lived.”³⁷⁶ Lastly, according to Naomi Miller’s *Fort Steele: Gold Rush to Boom Town* Fouquet’s location for the Mission “was already the traditional winter campground for one band of the Upper Kootenay Indians.”³⁷⁷

The Ktunaxa and ʔaʔam interest in the Mission Farm Lands prior to the establishment of the Mission is also recounted in governmental and Oblate documents.

A November 3, 1873 Report by the Indian Commissioner for BC Powell discussed Powell’s visit to the Kootenay region to assess “complaints of Indian difficulties.” In particular, Powell described the Upper Kootenay Indian presence at the St. Mary’s River as a “farming district” that would make a good reserve site.”³⁷⁸ As is noted below, in 1874 when the Mission was founded, there was a First Nation presence on the fields both west and east of the Mission. This

³⁷² See Document EXP-000031, pp. 5-6.

³⁷³ See Document EXP-000031, pp. 2-3.

³⁷⁴ See Document EXP-000030, pp. 4-5.

³⁷⁵ See Document CAN000932, pp. 29, 38.

³⁷⁶ See Document CAN000927.

³⁷⁷ See Document EXP-000033, p. 40.

³⁷⁸ See Document SCB 8, p. 6-13 (Tab 10 – Claimant’s Amended List of Documents, July 24, 2014).

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~~suggests that the St. Mary's "farming district" noted by Powell in all likelihood included lands which became, or were in the vicinity of, the Mission Farm Lands.~~

~~When Fouquet arrived in the Kootenay in October 1874 and purchased Shaw's farm (Lot 1) he advised that he "found only the Chief, two old people and a few women, a few Kootenay, Shuswap, Coeur d'Alene, Spokane, Kalispel and Colville waiting for the Kootenay to return from a buffalo hunt." In all there had been "40 to 50 savages in the field."³⁷⁹~~

~~Fouquet, writing in November 1874, stated that he might have to take "the savage's field" that was to the west of Shaw's pre-emption in order to acquire additional lands for the mission. Fouquet further noted that the Indians had also "chosen to take the plain east of Shaw's claim" which included "40 to 60 acres of good land."³⁸⁰ A further Note by Fouquet, also from November 1874, stated, in referring to the lands in the area of the Mission: "The savages have their land, and the priest must have his"³⁸¹~~

~~The presence of Indian fields in and around the Mission Farms Lands, as noted by Fouquet, was confirmed by Surveyor William Ralph's survey of Lots 1, 2, and 3 of the St. Eugene Mission Farm Lands in 1877. Ralph's Plan and Field Notes showed Indian fields adjacent to, and west of, Lot 1 as well as adjacent to, and east of, Lot 3.³⁸²~~

~~Fouquet also indicated, on several occasions in 1874 and 1875 that Indians were continuing to use the Mission Farm Lands for picking potatoes and grazing their numerous horses.³⁸³ In July 1875, Fouquet expressed concern that if the Mission Farm Lands were not properly defined the Indians would "settle in as they see fit."³⁸⁴~~

~~HISTORY OF KTUNAXA AND ?AQAM USE OF THE MISSION FARM LANDS FOLLOWING THE ESTABLISHMENT OF THE MISSION~~

~~Documentary evidence from a variety of sources including the Oblates, settlers, and government officials describe the emergence of permanent homes, in the context of an Indian Village, on Mission Farm Lands following the establishment of the St. Eugene Mission in 1874.~~

³⁷⁹ See Documents CAN000729; CAN000479.

³⁸⁰ See Documents CAN000732; CAN000480.

³⁸¹ See Documents CAN000732; CAN000480.

³⁸² See Documents CAN000498; CAN000494, pp. 21-32.

³⁸³ See Documents CAN000729; CAN000479; CAN000732; CAN000480; CAN000738; CAN000487.

³⁸⁴ See Documents CAN000738; CAN000487.

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~~In a July 10, 1875 Letter, Fouquet advised that he had:~~

~~...left land for the savages to camp or even build on. These houses (which we can later use as service buildings if we wish) will be on the same side as the barn and around our house...³⁸⁵~~

~~As of June 1879 it was reported that there was only one Indian living at the Mission. The rest were said to “all or almost all [be] camped 5 or 6 miles from” the Mission.³⁸⁶~~

~~By 1883, however, there was a sizable Indian population at the Mission. In Farwell’s 1883 “Report on the Kootenay Indians” he stated that:~~

~~...The majority of these Upper Kootenays winter at St. Mary’s Mission. This Mission is, at present, presided over by the Rev. Father Fouquet, and is situated on the right bank of St. Mary’s River, about four miles from its confluence with Kootenay River. In the immediate vicinity of the church and mission buildings, the Indians have erected fifty-five houses, which are occupied by their families during the winter.³⁸⁷~~

~~In July 1884, when Indian Reserve Commissioner O’Reilly came to set aside Reserves in the Kootenay, there was a village at the St. Eugene Mission that he described as the “principal village of the Kootenays, consisting of 47 houses.” This village, O’Reilly specified, was:~~

~~...situated on the south bank of the St. Mary’s river and on the property of the Rev^d Father Fouquet; the ‘St. Eugene Mission’ has been established by the Roman Catholics at this place; and here the Indians congregate during the winter months.³⁸⁸~~

~~O’Reilly in a December 10, 1885 Letter stated that the “Indian village south of St. Mary’s river” was situated on the “property of Revd. Father Fouquet of the St. Eugene Mission.”³⁸⁹~~

~~In October 1886, when Kootenay IR No. 1 was surveyed, Surveyor Skinner’s Survey Plan and Field Notes would also show Lots 1, 2 and 3 of the St. Eugene~~

~~³⁸⁵ See Documents CAN000738; CAN000487.~~

~~³⁸⁶ See Documents CAN000947; CAN000502.~~

~~³⁸⁷ See Documents EXP-000023; SMT 45-C-1: 3 (Tab 24 – Claimant’s Amended List of Documents, July 24, 2014).~~

~~³⁸⁸ See Documents SCB-13 (Tab 29 – Claimant’s Amended List of Documents, July 24, 2014); CAN000366.~~

~~³⁸⁹ See Document CAN000826.~~

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~~Mission. Lot 1 of the Mission Farm Lands was shown to contain a village with houses as well as a Church.³⁹⁰~~

~~In a Letter dated November 18, 1886, Indian Commissioner Powell reported that the “Indian Village” at the Roman Catholic Mission at St. Mary’s River had a population of about 200. This Village, the Indian Commissioner stated, was “...a collection of forty or fifty log huts” where “most of the Kootenays spend the winter their numbers being considerably augmented at Xmas [sic] time, and Easter by neighboring Indians who, come to take part in devotional exercises.”³⁹¹~~

~~Four years later, in a Letter dated February 10, 1890, the Deputy Superintendent General of Indian Affairs, following his visit to the St. Eugene Mission, described the village as an “Indian Winter Village”:~~

~~...consisting of probably between 30 and 40 cottages... These houses are very close to one another and I could not but feel that they were too close to be healthful. The Indians who inhabit these domiciles spend many months in them during the Winter and I assume that they have been induced to congregate there for the convenience of the Missionaries, in order to save them the trouble and expense of visiting them on the Reserves.³⁹²~~

~~³⁹⁰ See Documents EXP-000027, p. 43; SCB 16, p. 1 (Tab 32 – Claimant’s Amended List of Documents, July 24, 2014).~~

~~³⁹¹ See Document CAN000370, p. 8. Powell’s report on the St. Eugene Mission is also stated in a December 24, 1886 DIA Memorandum [See Document CAN000372].~~

~~³⁹² See Document SMT 17 (Tab 45 – Claimant’s Amended List of Documents, July 24, 2014).~~

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~~OPINIONS FORMED ON ʔAǾAM HABITUAL USE AND OCCUPATION OF THE MISSION FARM LANDS PRIOR TO AND DURING THE RESERVE CREATION PROCESS~~

~~Opinion 1: The General Habitual Use and Occupation of Lands by the Ktunaxa~~

~~In considering habitual use and occupation, this Report has utilized the decision of the Specific Claims Tribunal in relation to the *Kitselas First Nation v. Canada*, 2013 SCTC 1 as well as its affirmation in 2014 by the Federal Court of Appeal in *Canada v. Kitselas First Nation* (2014 FCA 150), to define and understand these terms. This has helped to frame an understanding of the habitual use and occupation of the Mission Farm Lands by the Ktunaxa and ʔaǾam.~~

~~In particular, the *Kitselas* decision affirms that Article 13 of the *Terms of Union* and the subsequent instructions for the creation of Indian Reserves in the province of BC should be considered when understanding and defining habitual use and occupation. Doing so, shows that the Crown was “clearly required” to “take into account and to have regard to the actual land uses of the various aboriginal nations for which the reserves were being created” [emphasis added].³⁹³~~

~~In regard to the Ktunaxa peoples of the Kootenay, which includes the ʔaǾam, these general “actual land uses” included:~~

- ~~• The Semi-nomadic use of various portions of the Kootenay region, which includes the area of the Mission Farm Lands, for hunting, fishing, agriculture, settlements, and other pursuits;~~
- ~~• Agricultural practices throughout the Kootenay Region, which includes the area of the Mission Farm Lands.~~
- ~~• Repeated and concerted assertions of sovereignty over the lands of the Kootenay region, which included the Mission Farm Lands.~~

~~Such understandings of the Ktunaxa peoples are supported by oral history, archaeological evidence, and a wide range of documentation from settlers and government officials [as is noted in the section, “The General Habitual Use and Occupation of Lands in the Kootenays by the Ktunaxa”]~~

~~First, the Ktunaxa, including the ʔaǾam, were historically a semi-nomadic people whose home base and interests were in the Kootenay region, which includes the Mission Farm Lands. Notably, this was the case during the 1860s and 1870s when lands in the Kootenay, including the Mission Farm Lands, were being pre-empted. This also includes the 1880s when Reserves would be allotted by Indian Reserve Commissioner O’Reilly.~~

³⁹³ See *Canada v. Kitselas First Nation*, 2014 FCA 150, para. 52.

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~~Second, the Ktunaxa, including the ʔaǰam, were historically, in addition to their semi-nomadic pursuits, an agricultural³⁹⁴ people cultivating patches of land and grazing horses and cattle throughout the Kootenay region, which includes the Mission Farm Lands. Such agricultural patterns certainly existed in the 1860s and 1870s when lands in the Kootenay, including the Mission Farm Lands, were being pre-empted. These agricultural patterns were also ongoing in the 1880s when Reserves would be allotted by O'Reilly.~~

~~Third, the Ktunaxa, including ʔaǰam and Chief Isidore, repeatedly and consistently asserted their sovereignty over the lands of the Kootenay Region, which included the Mission Farm Lands, during the 1860s and 1870s when lands in the Kootenay were being pre-empted; as well as in the 1880s when Reserves would be allotted by O'Reilly.~~

~~Opinion 2: Ktunaxa Use and Occupation of St. Eugene's Mission Farms Lands prior to the Establishment of the Mission~~

~~The Ktunaxa, including the ʔaǰam, used and occupied lands at the St. Eugene Mission in a historical sense as well as in the years prior to, during, and after, the establishment of the Mission. This is supported by archaeological evidence, oral history, and Oblate documentation [as is noted in the section, "Ktunaxa Use and Occupation of the Mission Farm Lands up to and at the establishment of the Mission"].~~

~~Archeological evidence shows that the Mission Farm Lands were the site of "a large pre-contact camp" including sites that go back 3000 to 5000 years, and 2000 to 3000 years, respectively.³⁹⁵~~

~~Oral historical evidence from Mary Ann Michel of the St. Mary's Band affirms the importance of the Mission Farm Lands to the Ktunaxa, including the ʔaǰam. According to Michel, a number of families lived on the Mission Farm Lands "long before the white people ever laid their eyes."³⁹⁶ Michel stated that Chief Isidore described the Mission Farm Lands as where "my people have made their home for years" and as "one of the permanent home for my people for hundred [sic] of~~

³⁹⁴ ~~While the Ktunaxa agricultural pursuits cannot be classified as extensive by settler standards, they nonetheless existed throughout the Kootenay region, including at the site of the St. Eugene Mission. As Cole Harris cautions however settlers and government officials believed that land that was "unsettled and unused — or used slightly...deserved to be replaced by more intensive, modern land uses." This was based on the idea that First Nations "were wanderers, primitive people who did not know how to use the land effectively" [See Document EXP-000032, Harris, *Making Native Space*, p. 46].~~

³⁹⁵ ~~See Document EXP-000031, pp. 5-6.~~

³⁹⁶ ~~See Document EXP-000030, pp. 4-5.~~

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years.”³⁹⁷ Michel also recounted the existence of permanent houses at the Mission Farms Lands that were destroyed by a white settler/pre-emptor (possibly John Shaw).³⁹⁸ Lastly, Michel stated that the Mission was established where it was because the missionaries “knew...that this is where the people lived.”³⁹⁹

Father Fouquet’s account also indicates the existence of Indian fields to the west and east of Shaw’s claim in 1874 when Fouquet purchased Shaw’s farm.⁴⁰⁰ These fields would still be in place as late as 1877 when the Lots 1, 2, and 3 of the Mission Farm Lands were surveyed. It was also in 1877 that Lot 2 was pre-empted by Gregoire.⁴⁰¹ Fouquet also stated, on several occasions in 1874 and 1875 that First Nations were continuing to use Mission Farm Lands for picking potatoes and grazing their numerous horses.⁴⁰²

Opinion 3: Ktunaxa Use and Occupation of St. Eugene’s Mission Farms Lands Following the Establishment of the Mission

Following the establishment of the St. Eugene Mission in 1874, settler, Oblate, and governmental documentation details the existence of an Indian Village on the Mission Farms Lands.

According to Fouquet, the village originated from land that he provided from Lot 1 “for the savages to camp or even build on.”⁴⁰³ While it is not clear when the first houses were constructed, Farwell, in 1883, described it as a winter village with 55 houses used by the majority of the Upper Kootenay peoples.⁴⁰⁴ When O’Reilly allotted Reserves in 1884 he described the village as the “*principal* [emphasis added] village of the Kootenays, consisting of 47 houses.”⁴⁰⁵ In November 1886, the “Indian Village” at the Roman Catholic Mission at St. Mary’s River was noted to have a population of about 200. This Village, the Indian Commissioner stated, was “...a collection of forty or fifty log huts” where “most of the Kootenays spend the winter their numbers being considerably

³⁹⁷ See Document CAN000932, pp. 29, 38.

³⁹⁸ See Document CAN000927.

³⁹⁹ See Document CAN000927.

⁴⁰⁰ See Documents CAN000732; CAN000480.

⁴⁰¹ See Documents CAN000498; CAN000494, pp. 21-32.

⁴⁰² See Documents CAN000729; CAN000479; CAN000732; CAN000480; CAN000738; CAN000487.

⁴⁰³ See Documents CAN000738; CAN000487.

⁴⁰⁴ See Documents EXP-000023; SMT 45-C-1: 3 (Tab 24 – Claimant’s Amended List of Documents, July 24, 2014).

⁴⁰⁵ See Documents SCB 13, p. 5 (Tab 29 – Claimant’s Amended List of Documents, July 24, 2014); CAN000366, p. 2.

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~~augmented at Xmas [sic] time, and Easter by neighboring Indians who, come to take part in devotionals exercises.”⁴⁰⁶~~

~~Four years later, in February 1890, the Deputy Superintendent General of Indian Affairs, following a visit to the Mission, described the village as an “Indian Winter Village...consisting of probably between 30 and 40 cottages...”⁴⁰⁷~~

~~CONCLUDING OPINION ON WHETHER ʔAǪAM HABITUALLY USED AND OCCUPIED THE MISSION FARM LANDS PRIOR TO AND DURING THE RESERVE CREATION PROCESS~~

~~In sum, it is the opinion of this Expert Report that the Ktunaxa, which include the ʔaǪam, used and occupied the Mission Farms Lands and surrounding areas prior to and during the Reserve Creation process.~~

~~This view is based upon the parameters laid out by the *Kitselas* decision which stated that the Crown, when determining cognizable interest, was “clearly required” to “take into account and to have regard to the *actual land uses* of the various aboriginal nations for which the reserves were being created” [emphasis added].⁴⁰⁸ Furthermore, such understandings need not be narrowly defined making it unnecessary to prove a “pre-existing distinct and complete legal entitlement” to the land in question.⁴⁰⁹ In other words, a broad understanding of “actual land uses” can be applied to the understanding of habitual use and occupation as well as cognizable interest.~~

~~As such, in the case of the Ktunaxa and ʔaǪam, such general “actual land uses” included:~~

- ~~• The Semi-nomadic use of various portions of the Kootenay region, which includes the area of the Mission Farm Lands, for hunting, fishing, agriculture, settlements, and other pursuits;~~
- ~~• Agricultural practices throughout the Kootenay Region, which includes the area of the Mission Farm Lands.~~
- ~~• Repeated and concerted assertions of sovereignty over the lands of the Kootenay region, which included the Mission Farm Lands.~~

~~⁴⁰⁶ See Document CAN000370, p. 8. Powell’s report on the St. Eugene Mission is also stated in a December 24, 1886 DIA Memorandum [See Document CAN000372].~~

~~⁴⁰⁷ See Document SMT 17 (Tab 45 – Claimant’s Amended List of Documents, July 24, 2014).~~

~~⁴⁰⁸ See *Canada v. Kitselas First Nation*, 2014 FCA 150, para. 52.~~

~~⁴⁰⁹ See *Kitselas First Nation v. Canada*, 2013 SCTC 1, para. 125.~~

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~~These understandings of the Ktunaxa peoples are supported by oral history, archaeological evidence, and a wide range of documentation from settlers and government officials.~~

~~More specifically, however, historical evidence also shows that the Mission Farm Lands were used and occupied by the Ktunaxa and ʔaʔam prior to and during the Reserve Creation process. This includes:~~

- ~~• Archeological evidence showing that the Mission Farm Lands were the site of “a large pre-contact camp” including sites that go back 3000 to 5000 years, and 2000 to 3000 years, respectively.⁴¹⁰~~
- ~~• Oral historical evidence stating that the Mission Farm Lands contained permanent homes prior to the arrival of white settlers.⁴¹¹~~
- ~~• Oblates records, in particular those of Father Fouquet, indicating the existence of Indian fields to the west and east of Shaw’s claim (Lot 1) in 1874 when Fouquet purchased Shaw’s farm.⁴¹² These fields would still be in place as late as 1877 when the Lots 1, 2, and 3 of the Mission Farm Lands were surveyed.⁴¹³ Fouquet also stated, on several occasions in 1874 and 1875 that First Nations were continuing to use Mission Farm Lands for picking potatoes and grazing their numerous horses.⁴¹⁴~~
- ~~• Following the establishment of the Mission, an Indian Village on the Mission Farm Lands emerged that was described 1883, as a winter village used by the majority of the Upper Kootenay peoples.⁴¹⁵ When Peter O’Reilly visited to allot Reserves for the Upper Kootenay he described the Indian Village on the Mission Farm Lands as the “*principal* [emphasis added] village of the Kootenays, consisting of 47 houses.”⁴¹⁶ As late as 1890, the village would be described as a winter village with 30 to 40 cottages.⁴¹⁷ In spite of this, O’Reilly would not include the Indian Village on the Mission in the Reserves of the Upper Kootenay or ʔaʔam.~~

~~⁴¹⁰ See Document EXP-000031, pp. 5-6.~~

~~⁴¹¹ See Documents EXP-000030, pp. 4-5; CAN000932, pp. 29, 38; CAN000927.~~

~~⁴¹² See Documents CAN000732; CAN000480.~~

~~⁴¹³ See Documents CAN000498; CAN000494, pp. 21-24.~~

~~⁴¹⁴ See Documents CAN000729; CAN000479; CAN000732; CAN000480; CAN000738; CAN000487.~~

~~⁴¹⁵ See Documents EXP-000023; SMT 45-C-1: 3 (Tab 24 – Claimant’s Amended List of Documents, July 24, 2014).~~

~~⁴¹⁶ See Documents SCB-13 (Tab 29 – Claimant’s Amended List of Documents, July 24, 2014); CAN000366.~~

~~⁴¹⁷ See Document SMT 17 (Tab 45 – Claimant’s Amended List of Documents, July 24, 2014).~~

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APPENDIX A – CURRICULUM VITAE

RYAN BLAAK

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Comox, BC, V9M 3A2
e: ryan@historynow.ca
p: 250.792.2294

Summary of Qualifications

- Committed to excellence and integrity in all areas of work and life.
- Proficient in historical and contemporary research related to First Nations issues and communities as well as the larger context of Canadian history.
- Considerable Project Management experience in a wide range of research projects.
- Experience conferring with various groups including First Nations, Law Firms and different levels of government (municipal, provincial and federal).
- Excellent interpersonal, verbal and written communication skills.

Professional Experience

Historical Research Specialist (Aboriginal Issues)

Independent Consultant
January 2014 – Present

- Historical Research Specialist with extensive experience in Aboriginal research (both historical and contemporary) including those areas related to numerous land issues (Indian Reserves, rights-of-way [roads, railways, transmission lines, pipelines, etc.], leasing, timber extraction, flood and water control, environmental issues, reserve allotments [colonial and post-confederation BC], and treaty entitlements), the history of Indian Residential Schools, the history of the Department of Indian Affairs and providing helpful historical context to the current issues affecting Aboriginal peoples today. Specific services provided include:
 - Helping clients to find, know and understand their histories.
 - Providing historical and contemporary context and knowledge for organizations working with and for First Nations.
 - Finding the documents that clients need.
 - Accessing a wide range of records including archival (i.e. Library and Archives Canada, British Columbia Archives), municipal, provincial, federal (i.e. Aboriginal Affairs and Northern Development Canada), cartographic, ethnographic, and Aboriginal oral traditions and histories.
 - Managing historical and contemporary records including copying, scanning, organizing (archiving/filing), coding and database management.
 - Developing written deliverables which clearly, concisely and effectively reflect the history of an issue or event.
 - Context Building Seminars on historical and contemporary Aboriginal issues.

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Instructor: Canadian History, Pre- and Post-Confederation

North Island College, Courtenay, BC

September 2016 – present

September 2015 – April 2016

- Coordinated and delivered all lectures; Coordinated and led all discussion classes.
- Maintained online venue for course (Blackboard Learn) which included Course schedule, weekly lectures and readings, class announcements, and opportunities for discussion and assessment.
- Marked all student assignments, maintained student records, entered final grades in University's online grade management system.

Part-time Instructor: History of Canada, Pre- and Post-Confederation

Trinity Western University, Langley, BC

September 2014 – December 2014

September 2013 – April 2014

- Researched, coordinated, and delivered all lectures; Coordinated and led all discussion classes; Selected Course Text and Discussion Reading Materials;
- Maintained online venue for course (MyCourses) which included Course schedule, weekly lectures and readings, class announcements, and opportunities for discussion and assessment.
- Marked all student assignments, maintained student records in Excel, entered final grades in University's online grade management system.

Part-time Instructor: Special Topics – History of the Department of Indian Affairs

Trinity Western University, Langley, BC

January 2014 – April 2014

- Instructed on key issues related to the Department of Indian Affairs (today's Aboriginal Affairs and Northern Development Canada) and its historical and contemporary legacies. This included issues like: the Indian Act, the Indian Reserve, the Indian Agent, Treaties (both historical and contemporary), Indian Residential Schools, the White Paper, Specific Claims, Comprehensive Claims, and Contemporary Issues.
- Developed course concept, syllabus, format and assembled course readings; Coordinated guest speakers from First Nation and Federal Government perspectives; Researched, coordinated, and delivered all lectures; Coordinated and led all in-class discussions.
- Maintained online venue for course (MyCourses) which included Course schedule, weekly lectures and readings, class announcements, and opportunities for discussion and assessment.
- Marked all student assignments, maintained student records in Excel, entered final grades in University's online grade management system.

Research Manager

The History Group Inc., Maple Ridge, BC

February 2006 – December 2013

- Worked with numerous First Nations and Bands in British Columbia as well as their legal representation in regard to Specific Claims and other land matters.

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- Worked on the Truth and Reconciliation Commission of Canada as well as the Resolution Sector, Indian and Northern Affairs Canada (Project: Historical Research Regarding Residential School Claims) in regard to the histories and legacies of Canada's Indian Residential Schools.
- Manager of historical research projects, budgets and personnel with primary emphasis on Specific Claims Research.
- Extensive experience planning, researching, documenting and writing about a wide range of Aboriginal issues.
- Manager of business development projects; Assisted in the development of corporate website and other online resources.
- Coordinated and worked with university students completing The History Group's Practicum Program.
- Successfully worked remotely with colleagues and clients via email, virtual workplace, and phone.

Part-time Instructor: History Practicum

Trinity Western University, Langley, BC

May 2008 – December 2008

- Facilitated students engaged in the History Practicum program at Trinity Western and through The History Group, Inc.
- Provided guidance, insight, and editing for students developing practicum Historical Profiles.
- Worked remotely with practicum students via email, internet, and phone.

Part-time Instructor: History of Canada, Post-Confederation

Trinity Western University, Langley, BC

January 2008 – April 2008

January 2007 – April 2007

January 2005 – April 2005

- Researched, coordinated, and delivered all lectures; Coordinated and led all discussion classes; Selected Course Text and Discussion Reading Materials.
- Developed Course Syllabus which clearly laid out Course Description, Objectives, Modes of Assessment, Assignments, and Schedule.
- Marked all student assignments, maintained student records in Excel, entered final grades in University's online grade management system.

Part-time Instructor: History in Practice

Trinity Western University, Langley, BC

January 2008 – April 2008

- Instructed course for third and fourth year students on the various manifestations of the practice of history in the public sphere. Exposed students to the way history is practiced in the public sphere including the ways in which communities, regions, nations, and others polities collect, manage, create, present and understand their histories, pasts, and stories.
- Researched, coordinated, and delivered all lectures; Coordinated and led all discussion classes; Selected Course Text and Discussion Reading Materials
- Developed Course Syllabus which clearly laid out Course Description, Objectives, Modes of Assessment, Assignments, and Schedule; Marked all

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student assignments, maintained student records in Excel, entered final grades in University online grade management system.

Part-time Instructor: History of the United States of America

Trinity Western University, Langley, BC

September 2007-December 2007

- Researched, coordinated, and delivered all lectures; Coordinated and led all discussion classes; Selected Course Text and Discussion Reading Materials.
- Developed Course Syllabus which clearly laid out Course Description, Objectives, Modes of Assessment, Assignments, and Schedule.
- Marked all student assignments, maintained student records in Excel, entered final grades in University's online grade management system.

Course Developer

Trinity Western University, Langley, BC

July 2007 – August 2007

- Developed Public History course, History in Practice, for third and fourth year history students.
- Researched and documented existing Public History courses and programs throughout Canada and the United States.
- Developed Course Syllabus which clearly laid out Course Description, Objectives, Modes of Assessment, Assignments, and Schedule.
- Selected Course Reading Materials.

Advancement Research Assistant

Trinity Western University, Langley, BC

October 2004 – April 2006

- Provided in-depth, creative research support for Advancement team working.
- Utilized numerous advanced on-line databases, in-house files, library references, and other sources to build information base.
- Produced concise, accurate and informative written deliverables.

Co-Instructor: History of Canada, Pre-Confederation

Trinity Western University, Langley, BC

May – June 2004

- Co-instructed an online introductory Pre-Confederation Canadian history course with Dr. Bruce Shelvey.
- Monitored student's on-line discussion forum in order to guide and facilitate discussion topics.
- Marked all student assignments, maintained student records in Excel, entered final grades in University online grade management system.

Part-time Instructor: History of the United States of America

Trinity Western University, Langley, BC

September 2003 – April 2004

- Researched, coordinated, and delivered all lectures; Coordinated and led discussion classes; Selected Course Text and Discussion Reading Materials.

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- Developed Course Syllabus which clearly laid out Course Description, Objectives, Modes of Assessment, Assignments, and Schedule.
- Marked all student assignments, maintained student records in Excel, entered final grades in University online grade management system.

Teaching Assistant, History Department (History of Canada, Pre- and Post-Confederation)

Trinity Western University, Langley, BC

September 2000 – April 2002

- Designed exams, marked exams and assignments.
- Substituted for professor and managed classroom.
- Utilized database in Excel to manage student grades.

Research Assistant

Dr. Bruce Shelvey, Trinity Western University, Langley, BC

May 2001 – December 2001

- Developed and prepared bibliography on Canadian environmental history using Internet and database research methods.
- Citations organized into bibliography based upon various categories.

Education

Master of Arts, History

University of British Columbia

November 2003

Bachelor of Arts, Honours History (Major), Human Kinetics (Minor)

Trinity Western University

September 2002

Volunteer

Judge, Fraser Valley Regional Heritage Fair

April 2014

Judged student Heritage Fair exhibits.

Abbotsford Arts and Heritage Advisory Committee

September 2010- February 2011

Member of Abbotsford Arts and Heritage Advisory Committee which was responsible for advising on arts and heritage matters for the benefit and advancement of the arts and heritage for the City of Abbotsford.

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Computer Skills

Proficient in:

- Microsoft Office software including Word, Excel, PowerPoint, Access, Publisher, and Outlook
- Working remotely via online resources such as Citrix, Email, and Virtual Workplaces.
- Various Databases including Summation, SADRE, Jenzabar, Microsoft Access, Microsoft Excel, America: History and Life, Academic Search Premier, Canadian MAS Full Text Elite, Canadian NewsDisc, and the Canadian Periodical Index.
- Adobe Acrobat Pro.

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APPENDIX B – CERTIFICATE CONCERNING CODE OF CONDUCT FOR EXPERT WITNESSES

I, Ryan Blaak, having been named as an expert witness by the Claimant, certify that I have read the Code of Conduct for Expert Witnesses set out in the schedule to the Federal Courts Rules and agree to be bound by it.

Dated: September 22, 2016



Signed: _____

Ryan Blaak

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Comox, BC
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