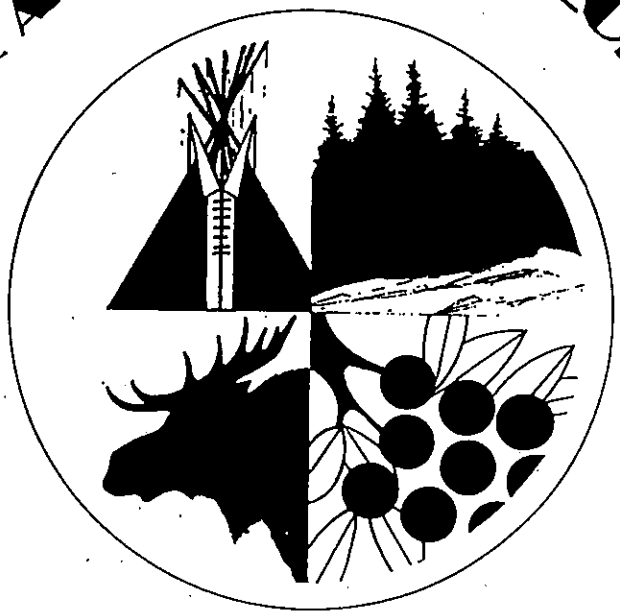
FOREST LANDS AND RESOURCES FOR ABORIGINAL PEOPLE



An intervention submitted to the Royal Commission on Aboriginal Peoples

by the

National Aboriginal Forestry Association

August, 1993

NAFA

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August 18, 1993

Honourable David E. Crombie
Chairman
Intervenor Participation Program
Royal Commission on Aboriginal Peoples
P.O. Box 1258, Station B
Ottawa, Ontario
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Dear Mr. Crombie:

I am pleased to submit the National Aboriginal Forestry Association's (NAFA) intervention to the Royal Commission on Aboriginal Peoples. Our submission, entitled Forest Lands and Resources for Aboriginal Peoples, deals with a subject that is vital to First Nations throughout Canada if they are to escape their dependence on well-meaning but demeaning programs and stand tall as self-sufficient communities ready to take on the challenges of self-government.

Through the initiatives of Aboriginal leaders across Canada, NAFA was established in 1989 to facilitate and develop ways for Aboriginal communities to become more involved in the forest resource sector. Through workshops and conferences with Aboriginal groups from all regions, we have developed a first hand perspective of the importance of forest resources to Aboriginal people and the key issues that need to be dealt with if Aboriginal communities are to reach their goals. Armed with this knowledge, NAFA has worked directly with individual departments of government, private sector organizations, and national bodies, including the National Round Table on the Environment and the Economy and the Canadian Council of Forest Ministers to foster policy initiatives and specific forestry programs to assist Aboriginal communities.

The forest sector would seem to offer the most natural avenue for many Aboriginal communities attempting to develop their economies while maintaining their traditional values and ties to the land. However, many barriers have been placed in the way, including provincial forest tenure systems and forest management policies, that have served systematically, if unintentionally, to exclude Aboriginal people from participation. Many other issues are also involved such as worker and entrepreneurial training and availability of investment capital, but a fundamental issue is the lack of access to the forest resource. The limited size of Indian reserves and the lack of a land base for many other Aboriginal communities is a major barrier to effective participation in the forest sector.

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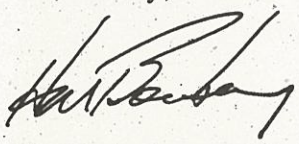
In this intervention, NAFA has explored provincial forest tenure and other policies that have inhibited growth of an Aboriginal forest industry and have lessened the ability of Aboriginal communities to continue reliance on traditional pursuits. At the same time, through specific examples, we have tried to demonstrate how some Aboriginal groups have had success in gaining access to forest resources through a range of approaches and justifications. In some cases, they have succeeded in acquiring provincial forest tenures and in establishing their own forest businesses. In others, they have achieved advisory, even partnership, roles in integrated forest resource planning and management. These developments suggest that governments and industry are becoming more willing to work cooperatively with Aboriginal communities to the benefit of all concerned. It is NAFA's position that the federal and provincial governments, the forest industry itself, have much to gain by building on the tentative cooperative spirit that seems to be emerging and by expanding their support of Aboriginal forestry on a comprehensive basis.

NAFA hopes that the Royal Commission will find our analysis and recommendations useful in responding to several of its original terms of reference. We thank you for the opportunity to contribute.

Yours truly,



Harry M. Bombay
Executive Director
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TABLE OF CONTENTS

FOREST LAND AND RESOURCES FOR ABORIGINAL PEOPLE

An intervention submitted to the Royal Commission on Aboriginal Peoples
by the National Aboriginal Forestry Association

INTRODUCTION

THE ISSUE

The quest of Aboriginal peoples for an adequate land base to support the pillars of viable self-governing communities - economic self-sufficiency, traditional lifestyle potential, and spiritual fulfilment - underlies the demand for the just settlement of land claims, the recognition of aboriginal and treaty rights and measures to address the Federal Crown's fiduciary obligations. With the exception of agreements reached or under negotiation in northern Quebec, the Northwest Territories and the Yukon, most Aboriginal communities remain frustrated in their efforts to regain productive use of lands and waters beyond the boundaries of those lands set aside for them as reserves or communities; nor, for the most part, have they succeeded in gaining a meaningful influence on decisions affecting the management of lands and waters in the vicinity of their reserves, on territories they have used for generations. For the majority of Aboriginal communities within Canada, the recognition of an inherent right of self-government will, by itself, fail to meet aspirations to break the demeaning dependency on governmental welfare programs and their constraints on self-determination. Improved access to land and resources will be essential.

The economic history of Canada has been the story of natural resource exploitation. Beginning slowly with agricultural settlement, the fur trade, lumbering and mining, the pace has increased as new technologies have allowed ever larger hydroelectric developments and the exploitation of more tree species and lower quality ore bodies. As industry has moved inexorably into the hinterlands, more and more of the traditional lands of Aboriginal peoples have been alienated from them. Not only have traditional lifestyles been shattered, but the possibilities of participating in Canada's economic growth have diminished. The original fur trade has suffered from destruction of wildlife habitat and changing consumer preferences. Decision-making on forest management has been driven by economic interests of industry. Governmental regulations requiring the ownership of sawmills or pulp mills as a prerequisite to obtaining timber licences has been another factor favouring the large industrial enterprise to the detriment of small scale Aboriginal enterprise. Technological advances and high capital costs in the forest sector have put the means of participating in the industry beyond reach for most Aboriginal communities, while at the same time reducing the demand for labour. Startup loan capital has often been denied because of the lack of a prior track record or the inability to find the necessary collateral. The remaining job categories require a substantial level of education and training, largely unavailable to most Aboriginal peoples.

Historically, forest management methods have not encouraged multiple use of resources; nor have they recognized the need to sustain the non-timber values of the forest. Finally, however, there appears to be a coming together of minds. Aboriginal communities have stood together confronting governments, enlisting public support and winning major court decisions supporting their rights. Concurrently, the industrialized world has awoken to the fact that its headlong rush

of resource exploitation must be tempered and sustainable development practised if economies are to be maintained for future generations. An area of common interest is emerging.

The past has shown that lack of consultation between governments and Aboriginal people with rights to land and resources creates conflicts. Several provinces have begun to consult with Aboriginal communities on resource exploitation plans; and Aboriginal communities have begun to respond with concrete plans of their own, with or without government support. First Nations are providing plans for their traditional areas that identify their own practices and needs. In some cases governments have begun to listen and Aboriginal interests have begun to be incorporated in official plans. Where this has occurred, aboriginal access to resources in traditional territories has been maintained. In others, there is still a difficult road ahead. In this intervention the National Aboriginal Forestry Association (NAFA) will discuss provincial regimes for access to forest resources and describe some of the difficulties and some the most encouraging cooperative initiatives through which Aboriginal people have successfully maintained or achieved access to resources.

THE OBJECTIVE

The objective of this submission is to provide the Royal Commission on Aboriginal Peoples with analyses and options to overcome the inaccessibility to land and resources. Access to forest land resources could be achievable in several forms ranging through outright ownership, special long-term Aboriginal tenures, resource harvesting leases under existing provincial tenure systems, cooperative or joint management agreements, and decision-making or advisory roles in resource management and environmental assessment processes on traditional-use territories. Not only should it be possible to increase the effective land base of many communities, but it should be possible to minimize the negative effects of industrial development on Aboriginal peoples' traditional use areas.

ACCESS TO RESOURCES

The expression "access to natural resources" can have a range of meanings depending on the circumstances of the Aboriginal communities involved. In non-treaty areas of British Columbia, land claim settlements will mean outright ownership of land and resources. In treaty land entitlement areas of the prairies, it will mean the addition of land and resources to existing reserves or the creation of new reserves. NAFA's intervention will not deal with these two categories of access to resources off reserves. To Aboriginal people, off-reserve land is often referred to as traditional territories, to governments it is Crown land and to other Canadians it is land of public domain.

NAFA sees the required access to resources to include two components. First, there is a need to gain access to harvest resources such as timber. Second, there is a need to gain access to resource management decision-making so that resources will be managed on an integrated basis taking aboriginal cultural and traditional uses into account along with the interests of Canada's industrial society.

Sometimes a province may offer "consultations" to the Aboriginal communities neighbouring areas leased to a forest industry. This is the weakest form of access to resources, but it does allow Aboriginal communities to bring their traditional uses of wildlife harvesting, cultural and spiritual use to the attention of government and industry, and to argue for their protection in forest management and logging plans. Some provinces may take the consultation process a step further by establishing formal advisory committees with representation from Aboriginal communities, industry and government in the development and review of forest management plans. While the province reserves final decision making to itself, the advisory committee process provides more certainty that Aboriginal concerns will be recognized and taken into account in final plans of the industrial lessee.

In some situations, usually involving wildlife management, governments have gone a step further, establishing what are sometimes referred to as "joint management" or "co-management" agreements. While offering Aboriginal communities significantly more involvement in decision-making, these agreements should really be referred to "co-operative management" since final jurisdiction is jealously retained by government. Nevertheless, Aboriginal representation on a co-management board may constitute the majority; and a boards's recommendations may go directly to ministers rather than to departmental officials. A board of this nature may be delegated decision-making at the operational level, and a minister would require very strong arguments to overturn the recommendations of a board.

The ultimate in cooperation between a province and an Aboriginal community is the truly "joint management" venture agreement in which aboriginal organizations and the province sit as true partners in decision-making. This type of partnership is usually sanctioned by the province through a formal agreement and even legislation. This is the arrangement sought by many Aboriginal communities and the process recommended by the Aboriginal Justice Inquiry of Manitoba in 1988 when it recommended:

> *It would be preferable for Aboriginal people and their representative organizations to be a partner with federal and provincial government departments in the establishment of appropriate regulations and standards. Co-management of natural resources is the only suitable method . . . "* (p. 188)

In the course of its study, NAFA has identified examples of each of these categories of Aboriginal peoples' access to resource management which we shall review for the Royal Commission in leading to our recommendations.

ABORIGINAL AND TREATY RIGHTS TO RENEWABLE RESOURCES

INTRODUCTION

In this intervention, NAFA wishes to draw the Royal Commission's attention to the decisions in some of the most significant cases dealing with access to natural resources that have come before the courts in recent years. Our purpose is to demonstrate that Aboriginal peoples' access to resources has been affirmed and improved in important ways over the last 20 years, but that the recognition received falls short of Aboriginal peoples' aspirations. Provinces remain reluctant to accept Aboriginal people as partners in forest resource management of traditional lands. Important issues remain, many of which could be resolved if both governments and Aboriginal peoples were to recognize each others concerns and cooperate on a pragmatic basis.

ABORIGINAL TITLE

The existence of aboriginal title in Canada was confirmed by the Supreme Court of Canada (S.C.C.) in 1973 in *Calder v. A.G. British Columbia*[1], Although the Court was evenly divided on whether the Royal Proclamation of 1763 applied in British Columbia, or whether aboriginal title to the land in question had been extinguished by Colonial laws, there was agreement that aboriginal title exists as a legal right derived from historic occupation and possession of tribal lands, where not extinguished by appropriate legislation. That is to say aboriginal title does not depend exclusively on the Proclamation.

In *Guerin (1985)*[2] and succeeding cases, the Supreme Court has referred to aboriginal title in land as *sub generis*, or unique. Aboriginal people have been found to have rights of occupancy, possession and use, but not ultimate ownership. This flows from early decisions of the Supreme Court of the United States, relied upon in Canada, to the effect that the European discoverer nations had the right to claim sovereignty over newly "discovered" lands even though they were quite aware that those lands were already inhabited. Bartlett (1991:5) described the aboriginal title that is recognized by Canadian courts as "a pragmatic accommodation of the facts of European settlement and aboriginal occupation of the land". This is an issue which perhaps will be re-examined by the courts in the future. The reason for noting it here is that it has led to recognition of the Crown's special fiduciary responsibilities to Aboriginal people.

In the *Queen v. Sparrow (1990)*[3], a case involving an alleged violation of a food fishing licence by an Aboriginal fisherman in British Columbia, the Court held that there was an aboriginal right to fish, that the Crown's intention must be clear and plain if it intends to extinguish an aboriginal right, and that aboriginal rights cannot be eliminated by regulation. The S.C.C. also concluded that aboriginal rights still existing in 1982, when they became constitutionally protected, should be interpreted flexibly to allow their evolution over time.

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1 Calder v. A.G. British Columbia, [1973] S.C.R. 313, 343 D.L.R. (3rd) 145, [1973] 4 W.W.R. 1

2 Guerin v. R. (1985) 13 D.L.R. (4th) 321, [1985] 1.120 (S.C.C.)

3 R. v. Sparrow, [1990] 3 C.N.L.R. 160 (S.C.C.)

In British Columbia, most of which remains uncovered by treaties, the extent of aboriginal title in traditional lands, including control over the forest resources, remains to be determined through the treaty negotiation process. An important step was taken on June 25, 1993 which appears to have removed a backward step taken in 1991. The decision of the B.C. Supreme Court in the land claim case of the Gitksan and Wet'suwet'en, *Delgamuukw v. R.*[4], was partly overturned. The original decision had included the judgment that all aboriginal rights had been extinguished by pre- Confederation colonial legislation. Although the split decision of the B.C. Court of Appeal[5] did not recognize aboriginal ownership or proprietary rights to the traditional lands in question, it did recognize unextinguished non-exclusive aboriginal rights of use and occupation of a special nature. The eventual extent of these rights awaits further definition by the courts or the negotiation of land claim settlements.

In addition to cases involving aboriginal rights in non-treaty parts of Canada, there have been a number of key cases that have affirmed aboriginal interests in natural resource uses protected by treaty. Two significant cases involved the recognition of certain peace agreements between the British military and aboriginal groups as treaties. These were *Simon v. R.*[6] in 1985 in Nova Scotia and *R. v. Sioui*[7] in 1990 in Quebec. In the first case, a Micmac's right to hunt was recognized, and in the second, the Hurons' right to practice their religion and customs in their tradition area, now a provincial park, were preserved. As Bartlett (1991:47) has pointed out, both these cases affirmed the S.C.C.'s position that where there is doubt in interpretation of treaties and statutes the issue should be resolved in favour of the Aboriginal people.

Treaty rights concerning hunting and fishing and the application of federal or provincial regulations have been confirmed or clarified in a number of court cases that need not be explored in detail here. We note only two cases to show that judicial interpretations of treaty rights are not cut and dried and, in some instances, are still evolving. An example of the first category is found in the 1990 *Horseman*[8] decision. In this case a Treaty 8 Indian had killed a grizzly bear in self-defence while hunting for food. Later he obtained a grizzly bear hunting licence and sold the bear skin. Questions before the S.C.C. were whether the section of the Alberta *Wildlife Act* prohibiting sale of wildlife without a licence applies to Treaty 8 Indians and whether the 1930 Natural Resources Transfer Agreement restricted the hunting rights of Treaty 8 Indians to hunting for food. Treaty 8 affirmed the Indians' right "to pursue their usual vocations of hunting, trapping and fishing .... subject to such regulations that may from time to time be made by the Government of the country". In a four to three decision the S.C.C. held that the Resources Transfer Agreement had diminished the original treaty right that included hunting for commercial purposes to one that provided for hunting only for "food". Therefore, the section

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[4] Delgamuukw v. R. [1991] 3 W.W.R. 97 (B.C.S.C.)

[5] Delgamuukw v. R. [1993] B.C. Court of Appeal, Vancouver Registry CA 013770

[6] Simon v. R. [1985] 2. S.C.R. 387

[7] R.v. Sioui [1990] 3. C.N.L.R. 127 (S.C.C.)

[8] R. v. Horseman [1990] 1. S.C.R. 901

of the *Wildlife Act* prohibiting sale of wildlife products without a licence applied to the Indian. The dissenting position argued that treaties and statutes relating to Indians should be given a fair and liberal construction in favour of the Indians and that, keeping in mind the commitment made to the Indians in treaty negotiations, the term hunting "for food" in the Transfer Agreement should be understood to include the right to exchange meat or skins for other subsistence items. In this scenario the *Wildlife Act* would not apply to Mr. Horseman.

Alberta uses the decision in this case to continue to justify its position that Indian treaty rights to wildlife are restricted to hunting for family food supplies. Unfortunately, Alberta's position exemplifies the minimalist approach that has plagued relations between governments and Aboriginal peoples for so long.

Another recent case involving alleged infractions of the *Fisheries Act* and Regulations demonstrates how the decision of the S.C.C. in *Sparrow* has begun to influence interpretation of treaty rights. In *Bombay v. R. (1993)*[9] two Treaty 3 Indians were charged with fishing out of season, fishing with a prohibited net, and selling fish out of season. In appealing their convictions, the Bombays relied on s. 35(1) of the *Constitution Act*, 1982, to protect their existing treaty rights and on the *Sparrow* decision that laid down the requirement that a legislative or regulatory infringement on aboriginal rights must be justified. The Court adopted the view that the *Sparrow* decision relating to aboriginal rights is also applicable to treaty rights. Consequently, the Ontario Court of Appeal quashed the convictions, noting that the Crown had not made a specific effort to justify its legislation and regulations. This case demonstrates that the *Sparrow* principle requiring justification of restrictions to aboriginal rights also applies to treaty rights, including those that go beyond fishing merely for food.

THE CROWN'S FIDUCIARY RESPONSIBILITIES

In *Guerin*[10] the S.C.C. established that the Crown has a trust-like fiduciary responsibility to Indians in the disposal of lands reserved for their use. Although the case was restricted to the leasing of lands that were part of an Indian reserve and dealt in detail with the federal government's obligations under the *Indian Act*, comments in Mr. Justice Dickson's judgment suggest that the Crown's fiduciary duties extend beyond status Indians and their reserve lands. He noted that, in his opinion, Indian interest in reserve land and unrecognized aboriginal title in traditional tribal lands is the same. That is to say, the Indian interest in the land is a legal right predating the Royal Proclamation, the Indian Act, or other legislative provision. The fiduciary responsibilities of government to Indians respecting reserve lands might therefore extend to aboriginal rights in traditional lands in Canada, if not extinguished by treaty or legislation with a clear intent.

This turned out to be the situation as determined by the S.C.C. in *Sparrow*. In this case, the Court determined that the Government has a trust-like fiduciary relationship with Aboriginal

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[9] Bombay v. R. [1993] Court of Appeal for Ontario, No. C5126

[10] Guerin v. R. (1985) 13 D.L.R. (4th) 321, [1985] 1 C.N.L.R. 120 (S.C.C.)

people and that this fiduciary duty is incorporated in S.35(1) of the *Constitution Act, 1982* that recognizes and affirms existing aboriginal and treaty rights. The Court also determined that any restriction of aboriginal rights must have a valid objective and be justified. It found that restrictions of aboriginal rights to fish could be justified if their objective was the conservation of the resource. It went on to indicate that conservation measures should be designed to have as little effect as possible on aboriginal rights; that aboriginal groups to be affected by conservation measures should be consulted about the proposed measure; and that where expropriation of a right occurs, fair compensation should be available.

Although the *1991 Delgamuukw* decision of the B.C. Supreme Court has just been superseded by the Appeal Court, it did confirm the fiduciary obligations of the Crown to include protection of aboriginal sustenance uses of unoccupied Crown lands. Aboriginal activities given a degree of protection would include such things as hunting and gathering; harvesting wood for buildings, canoes, totems and firewood; and maintaining sacred and ceremonial places. That decision has been strongly criticized, however, in that it did not provide for the evolution of aboriginal rights over time as had been recognized by the S.C.C. in *Sparrow*.

As Bartlett (1991) has pointed out, the S.C.C. has extended the Crown's fiduciary obligations to include surrenders of aboriginal title in non-reserve lands. In the *Bear Island Foundation v. A.G. Ontario (1991)*[11] case dealing with the land claim of the Teme-Augama Anishnabai in Ontario, the Court determined that the Crown had failed to fulfil some of its obligations under arrangements subsequent to a treaty and therefore had breached its fiduciary obligations. The Crown's fiduciary duties extend, therefore, to Indian reserves, aboriginal rights in non-treaty areas and surrenders of aboriginal title in non-reserve lands.

The Crown's fiduciary obligations to Aboriginal peoples has been explored by a number of experts. Turpel (1992) described the implications as "nothing short of vast". She suggests that in *Sparrow*, the S.C.C. has recognized a general constitutional fiduciary responsibility of the Crown in all types of relations with Aboriginal peoples. The responsibilities extend to all Aboriginal peoples, not only those identified as Indians. The provincial governments as well as the federal government are bound by the responsibility.

Noting that resource development is a major objective of provinces, Bartlett (1991:35) argues that, where aboriginal title has not been extinguished ". . . the changed constitutional setting in Canada, and in particular the enactment of the *Constitution Act, 1982,* now requires an accommodation between aboriginal title and resource development if development is to proceed". He also argues that where treaty land and resources entitlements have not been fulfilled, the Aboriginal people involved should be successful in obtaining injunctions to prevent provincial disposal of resources pending completion of treaty obligations. NAFA submits that the same requirement for accommodation exists between treaty rights for hunting and fishing on traditional lands and resource development if the resource development is to proceed.

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[11] Bear Island Foundation v. A.G. Ontario [1991] 3 C.N.L.R. 79 (S.C.C.)

THE CROWN'S FIDUCIARY OBLIGATIONS AND FOREST MANAGEMENT

The determination of the Crown's fiduciary duty to Aboriginal people has led to improved access to fish and wildlife resources and has had some influence on the way provinces manage forests. One important legal decision dealing with Indian treaty rights to resources *off* reserves was made in British Columbia in 1989. In *Claxton v. Saanichton Marina Ltd.*[12] the British Columbia Court of Appeal upheld an Indian's right "to carry on fisheries as formally" according to treaty. The case involved the licensing of a firm by British Columbia to build and operate a marina in an ocean bay traditionally used by a band that had entered one of the Douglas treaties on Vancouver Island. Bartlett (1991) quoted the judgment as stating:

> *There is no question that if the licence of occupation derogates from the treaty right of the Indians, it is of no force and effect. The province cannot act to contravene the treaty rights of Indians, nor can it authorize others to do so.*

The implications of this decision with respect to a forest industry operating in the traditional hunting and fishing area of treaty Indians is not clear cut. Logging would certainly disrupt wildlife habitat and populations. Depending on the nature of the logging operation (its size, shape, degree of clearcutting, recent logging history of nearby areas, etc.) the disruption might be severe and last for many years. On the other hand, with careful planning taking wildlife habitat requirements into consideration, disruptions could be minimal and only of a temporary nature. For some species it could even be beneficial. With respect to aboriginal or treaty rights to hunt, trap and fish on traditional lands that have not become "occupied" for other uses, a court would decide, in all likelihood, that an area was "occupied" during a logging operation and perhaps for a short period thereafter. While an aboriginal right of use would have been infringed upon, it would not have been extinguished; nor would treaty rights have been abrogated. If, however, the damage to wildlife habitat were to persist long after logging operations had ceased and the area had reverted to "unoccupied" status, another issue arises. The aboriginal or treaty right to hunt and fish as usual implies the right to find the wildlife resources about as plentiful as they had been before the logging disturbance. If it were otherwise, the treaty right would be empty and the honour of the Crown not upheld.

The implication is that before licensing an area for timber harvesting, a province has a fiduciary responsibility to ensure that forest management plans are in place to integrate the traditional resource use requirements of the local Aboriginal people with the timber management objectives of the province and the licensee. According to the *Sparrow* decision, that fiduciary responsibility also includes the requirement to consult with the Aboriginal people involved and to ensure that impacts on their forest uses are kept to a minimum.

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[12] Claxton v. Saanichton Marina Ltd. [1989] 3 C.N.L.R. 46 (B.C.C.A.)

THE MEANING OF CONSULTATION

In *Sparrow* the S.C.C. gave only limited guidance on what it meant in saying that a government's justification analysis of proposed regulations should include the question of consultation with Aboriginal groups to be affected. The judgment said simply that "Aboriginal peoples, with their history of conservation-consciousness and interdependence with natural resources, would surely be expected, at the least, to be informed..." At the same time, however, the Court said that the justification analysis should include the question of whether there was as little infringement as possible in order to achieve the desired result of the regulation. NAFA submits that it would be difficult to ensure the latter without full consultations for the following reasons. First, the S.C.C.'s provisions for justifying governmental regulations would extend to the justification of industrial development plans on Crown lands, including forest management plans. Second, merely being informed of proposed resource exploitation plan on traditional lands would be inadequate to any Canadian community, especially Aboriginal communities. The latter see themselves as part of the environment, dependent on its productivity of wildlife, particular species of trees, medicinal plants, etc., as well as special sites of cultural and spiritual significance. Government could not comprehend these values without full two-way consultations.

As we shall outline through examples, many provincial governments and industrial firms have begun this process of consultation. Nevertheless, Aboriginal communities feel that the consultation process does not go far enough. They believe that their treaty or aboriginal rights should be recognized to the extent that they should be included as partners in decision making. Aboriginal peoples' rights to traditional lands are *sub generis* or unique. They go beyond the concerns of any Canadian interest group or stakeholder. Aboriginal communities feel that their special interests can be fully recognized only if provinces were to invite the communities to participate fully in a decision-making process.

The provinces, on the other hand, are jealous of their jurisdiction over natural resources. There is the rub. Provinces insist that their ultimate jurisdiction be recognized. NAFA proposes that decision-making roles can be shared with Aboriginal communities. Once objectives and broad management principles have been agreed upon, the issue of final authority is less problematic and authority can be shared. We will describe examples where governments have taken steps to involve Aboriginal groups in decision-making without losing their ultimate control.

Finally, a word of caution. There have been occasions when provinces have attempted proactive policies respecting Aboriginal people only to have them overturned by the courts. In Manitoba, for example, the province initiated a policy in the 1980's to give Indian bands priority in the licensing of rice harvesting in northern lakes where rice had been introduced artificially. This attempt to assist Indians was successfully challenged in court under the Charter of Human Rights in 1988[13]. Provincial governments are faced with competing interests from all sides and cannot always find ways to respond fully to aboriginal interests.

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[13] Aspit v. Manitoba Human Rights Commission [1988] 1 W.W.R. 629

PROVINCIAL FOREST RESOURCE ACCESS POLICIES

INTRODUCTION

In this section NAFA presents a summary of provincial policies for allocating the harvest of forest land resources. We highlight those provisions and policies relating to forests, wildlife and plants that are particularly pertinent to Aboriginal peoples' interests. A more complete review of legislation dealing with the licensing of renewable resources in each province may be found in Mactavish (1989) and a review of federal and provincial forest legislation has been done by Bayne (1990).

FORESTS

The provinces offer a range of timber access opportunities tailored to the needs of the forest industry. The most significant category is designed for the larger integrated forest industries that operate pulp and paper and/or major sawmills. In recognition of the multimillion dollar investments required for plant and equipment, these licences provide for annual harvests of large volumes over periods of 20 - 25 years. All have renewable features, giving the licensee a virtually guaranteed supply of timber. In most cases the licensee receives exclusive timber harvesting rights to an area specified in the licence. In some instances, Quebec for example, several firms may hold privileges over the same area, each allocated rights to certain species. In return for timber harvesting rights, the licensees in all provinces are required to meet annual harvest quotas and apply reforestation, silvicultural and environmental measures to ensure forests are managed on a sustained yield basis. The applicant is also required to own and operate a wood processing facility such as a sawmill or pulp mill. Provincial control of forest management is maintained through the licensee's obligation to submit long range forest management plans and shorter term working plans for approval. Depending on the province, these large forest holdings are called tree farm licences, forest management agreements, forest management licence agreements, or timber supply and forest management agreements.

The provinces also offer timber licensing programs more suitable for smaller firms. Renewable licences for 10 and even 20-year periods are awarded through a competitive bidding process. In most cases these licences are also restricted to operators of sawmills or other manufacturing facilities.

The provinces also provide for very short term timber permits to satisfy domestic and other small timber needs, such as fuelwood, poles, and building materials.

British Columbia is the only province that has made specific legislative provision for access to Crown timber by Indian bands. The *Forest Act* provides for woodlot licences of up to 400 hectares of Crown land for terms of up to 15 years to persons or "a band as defined by the the *Indian Act* (Canada)" that do not operate wood processing facilities. At least 13 First Nations in B.C. have taken advantage of this provision, combining the forested portion of their reserves with the leased Crown land to create opportunities to participate in the forest industry.

RICE AND BERRIES

For generations, wild rice has been an important crop for Aboriginal people in regions of Ontario, Manitoba, and northern Saskatchewan. Its development by Aboriginal firms as a commercial crop, with exports to Europe, Japan and the United States, has been complicated in recent years by competition from commercial farming of the plant in California.

Licences to harvest wild rice are required in all three provinces. In both Saskatchewan and Manitoba, ten-year licences may be obtained after successful operation of one-year permits. In Ontario, only single year permits are provided for, although there has been some experimenting with longer terms. The longer tenures are, of course, important to entrepreneurs seeking to develop commercial enterprises.

Both Saskatchewan and Manitoba employ licensing measures that are helpful to Aboriginal rice harvesters. In northern Saskatchewan a permit applicant must have been resident of the region for at least 15 years or one half his or her lifetime, and holders of trapping licences may acquire a rice permit for the area covered by the trapline. Both these measures tend to favour Aboriginal people. In Manitoba, the *Wild Rice Act* carries the specific proviso that it be "administered so as not to abrogate or derogate any aboriginal or treaty rights an Indian band may have relating to wild rice". Also in Manitoba, certain areas may be designated for hand picking without a permit and in the Whiteshell area special provisions are made to allow only hand picking for several days at the beginning of each season before mechanical harvesting is permitted.

In the 1980's Manitoba went a step further in trying to foster Aboriginal rice harvesters by giving Indian bands priority licensing to harvest rice in northern lakes where it had been artificially introduced. The province had to drop this priority system when it was successfully challenged in court.[14]

New licensing of wild rice harvesting in the Treaty 3 area of Ontario has been under a moratorium since 1978 when it became known that the original treaty negotiations may have included exclusive rights for the Indians. This moratorium remains in place pending determination of which lakes may have been covered by the treaty discussions.

No province regulates the harvest of berries.

WILDLIFE

Aboriginal peoples' access to wildlife resources varies somewhat from province to province, depending on treaty provisions, or the lack thereof. Recent court decisions, including *Sparrow* and *Delgamuukw* have had a positive effect, especially in British Columbia, but also in other provinces where it is now confirmed that rights of treaty Indians come second only to necessary conservation measures.

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[14] Apsit v. Manitoba Human Rights Commission [1988] 1 W.W.R. 629

In March, 1993, British Columbia published new "Interim Guidelines on Aboriginal Use of Fish and Wildlife" to guide activities of wildlife officials and to serve as a basis for consultations with First Nations. The province hopes to develop cooperative wildlife planning and management processes with each First Nation for its traditional territory. In the interim, First Nation non-commercial hunting and fishing for life sustaining, cultural and spiritual uses may occur during all seasons where there are no conservation concerns. Where conservation measures are necessary, First Nations will be consulted, issued permits and given priority in harvest calculations. In return, First Nations will be asked to provide harvest data to the province for planning purposes. Restrictions will apply to species designated as threatened or endangered under the *Wildlife Act*, and to any species in areas where there is no open hunting season at any time of year for conservation or public safety reasons. The new policy guidelines also include a commitment by the province to consult with individual First Nations whenever a resource development activity, such as logging, is planned for their traditional territory.

While status Indians are exempt from trapping licence requirements in British Columbia, many have obtained licences to ensure they have exclusive rights to their trapping areas. Recent amendment to the *Wildlife Act* permits an amalgamation of licences in a First Nation's traditional area. This will allow a First Nation to allocate the available harvest among its trappers and will facilitate cooperative management programs with the province

Treaty provisions covering the three prairie provinces allow all season hunting, trapping and fishing for food on unoccupied Crown land and on private lands with the agreement of the occupant. First Nation commercial trappers are required to be licensed.

Traplines in Alberta are issued to individuals and provincial policy is to encourage a First Nation to find a successor when one of its members wishes to sell his trapline. The northern portion of Saskatchewan is divided into fur conservation areas within which the Aboriginal people themselves apportion trapping areas. Manitoba employs interrelated local, regional and a provincial trappers association to obtain advice on fur management questions, including the allocation of traplines. Aboriginal people have strong representation in these organizations.

The prairie provinces are attempting to address wildlife management difficulties through cooperative management agreements with individual First Nations. While retaining overall responsibility for resource management, the provinces are seeking agreements that will recognize treaty rights of Indians, help develop mutual understanding and trust, provide for data collection and sustained-yield management advice by the Aboriginal communities and provide for some delegation of responsibilities and employment opportunities in game management. Several agreements are described below to exemplify the cooperative management regime that is gradually evolving.

In Ontario, the Robinson-Superior Treaties and Treaties Nos. 3, 5, and 9 provide for First Nation hunting and fishing on unoccupied Crown lands. Although Treaty No. 9 is the only one that specifically mentioned trapping, the province considers trapping to be included in the provision for hunting in the other treaties. The *Game and Fish Act* are not applied to First Nations' hunters and trappers these treaty areas, except for provisions dealing with public safety.

However, most First Nation trappers do avail themselves of the exclusive use provisions of trapping licences.

Ontario considers those provincial game preserves and parks where public hunting is prohibited to be occupied Crown lands and therefore not open to treaty right use. Exceptions include the Polar Bear and Winisk Parks in the Treaty 9 area, where the First Nations continue to enjoy hunting and trapping rights. Through a 1991 interim agreement relating to land claim negotiations, Ontario extended special moose and deer hunting privileges in Algonquin Park to the Algonquins of Golden Lake First Nation.

In Quebec, the First Nations in the area covered by the James Bay and Northern Quebec Agreement have extensive exclusive hunting and trapping rights as well as advisory roles in wildlife management. South of the James Bay Agreement area, but north of the St. Lawrence River, the province has established a number of fairly large areas, referred to as Beaver Reserves, where Aboriginal people have all- season hunting and fishing rights and exclusive trapping rights. Those Aboriginal communities that do not have portions of Beaver Reserves for their use have obtained exclusive trapping and fishing rights on areas near their reserves. Forest industry intrusions in some Beaver Reserves and in the James Bay region have caused problems for Aboriginal communities wishing to protect their traditional lifestyles. Efforts of the Algonquins of Barrière Lake and the Grand Council of the Cree are discussed below. There appear to be no special hunting and trapping arrangements for communities south of the St. Lawrence.

Aboriginal peoples access to wildlife resources in the Maritime provinces has been uncertain since the 1985 Supreme Court of Canada decision in *Simon*. In that decision, the Court ruled that a 1752 peace agreement between the Micmacs and the British constituted a treaty which confirmed the right of the Micmac to live and hunt as previously. At the present time the Micmacs in Nova Scotia arrange their own moose hunt annually, just prior to the regular hunting season. In New Brunswick and Prince Edward Island all Crown land is considered to be occupied and First Nation persons are supposed to avail themselves of hunting and trapping licences. There are no registered trapline systems in the Maritimes. Aboriginal people in Labrador continue to live off the land in their traditional ways, while those on the Island of Newfoundland are expected to follow provincial regulations respecting wildlife.

The migratory bird conservation measures under the federal *Migratory Bird Convention Act* apply to Aboriginal peoples in all provinces.

BARRIERS TO FOREST RESOURCE OPPORTUNITIES

TIMBER

Aboriginal people face a number of barriers in attempting to gain access to standard timber licences.

1. The availability of the larger forest management agreement areas is limited. The larger blocks of economically accessible timber in most provinces are already under licence to integrated corporations. The situation is complicated in B.C. where treaty negotiations are in progress or pending, and the availability of forest areas for new licence areas is therefore uncertain. Even smaller timber license areas suitable for moderate to small sized wood processing facilities may be difficult to find. Still, there are occasions when an existing licensee does not wish to renew its licence; and there are times when licence areas may change hands, allowing a province to intervene and perhaps reallocate a portion of the licence area. Another option would be the purchase of an existing firm and the timber licence it holds. Finally, there will be new opportunities in some provinces when currently remote timber areas become economically accessible.

2. Many Aboriginal communities lack the management and technical knowledge or training to take on the start-up and operation of a complex forest management operation and the wood processing facility normally required. Consequently, provinces may be uneasy about issuing substantial timber licences to Aboriginal organizations, perceiving that the track record of Aboriginal businesses has not been strong.

3. Some Aboriginal communities interested in acquiring provincial timber licences find it difficult to abide by the province's policies respecting forest management. They see the annual harvest and management requirements as strongly biased toward timber production without making sufficient provision for integration of timber production with protection of wildlife habitat and traditional Aboriginal pursuits. In effect, provincial forest management policies do not accord sufficient value to non-timber uses and disregard almost completely the economic importance of forests to Aboriginal lifestyles

4. Provinces are uneasy about some Aboriginal peoples' objectives for "co-management" and how those objectives may relate to the larger issues of aboriginal or treaty rights. Aboriginal communities have put forward proposals for co-management involving joint decision-making. Proposals are sometimes placed in the context of "rights". From the provincial perspective, there is nervousness about the possibility of setting precedents. Provinces insist that ultimate jurisdiction over Crown land and resources rests with them.

5. The *Indian Act* operates as a significant barrier to First Nations attempting to gain access to forest resources under provincial control. As a condition, provincial licensing requirements may require First Nations to combine management of their reserve forests with the licensed provincial forest. In the past this process would normally require special regulation under the *Indian Act*. Basically, federal government authorizatioin is needed because ultimate control of reserve lands is vested in the Minsister of Indian

Affairs. Furthermore, First Nations cannot use their reserve forests as collateral to obtain operating funds from lending institutions because of other provisions of the *Indian Act*.

TRADITIONAL RESOURCES

The greatest threat to maintaining Aboriginal access to traditional rice, wildlife, fish, berry and medicinal plant resources is the continuing encroachment of resource industries into traditional territories.

1. The forest industry, with clearcutting systems and emphasis on monoculture reforestation, can cause severe degradation of wildlife habitat productivity, destruction of berry producing areas, and loss of medicinal plant sites.

2. Increasing demands for recreational hunting and fishing opportunities from urban dwellers place strains on already limited wildlife resources, reducing their availability for Aboriginal people.

3. Traditional wild rice and berry harvesting practices are being pushed aside by mechanical harvesting and more efficient rice and berry farming techniques.

OVERCOMING THE BARRIERS

Aboriginal communities have tried to deal with these barriers to resources in various ways and with different degrees of success. A review of several case examples will bring out the more important issues Aboriginal communities face. Other examples highlight the steps that some communities have taken to deal with the problems they have encountered. From these examples we identify common threads and suggest how the Royal Commission may assist in overcoming the barriers.

KLUSKUS INDIAN BAND (BRITISH COLUMBIA)

The Kluskus Indian Band in the central interior of British Columbia has been trying to acquire a tree farm licence or other forms of area-based forest tenure from the B.C. government since 1976. Partly as a defence against anticipated intrusions of large-scale industrial forest operations, the Band sought a forest tenure arrangement that would allow limited timber harvesting while respecting other forest values the Band depends upon. They have not been successful.

At one stage in the 1970's, in an apparent attempt to appease the Band's protests, the Band was given the opportunity to become a logging contractor for a large forest industry. It soon withdrew, finding that the forestry practices involved turned out the be the same as those the Band had been protesting. In the late 1980's the Band made formal application for an area-based tree farm licence (TFL) in its traditional area. The proposal was based on a forest management plan that it had commissioned - a plan designed to suit the aspirations of the Band, allowing limited timber harvesting while protecting primary sustenance activities and making allowances for a potential tourism business. The TFL proposal was rejected by the province, although other possibilities were suggested.

The Band has received employment opportunities in silviculture from the province, has been encouraged to bid on other forestry work, and has been offered a volume-based timber licence on a portion of its traditional area. But the Band feels there are no guarantees that the integrity of the forests and land will be respected; nor that there will be anything else to harvest at the end of the five-year licence period. The Band is frustrated by the division that seems to exist between its philosophy of holistic forest management and the province's technical philosophy that the Band perceives to be one driven by a profit motive.

There appears to have been a lack of flexibility in provincial timber management policies and regulations that would allow incorporation of the Kluskus' long-range vision of a traditional way of life combined with limited timber harvesting. On the other hand, the Kluskus objectives may be too restrictive to permit economically viable timber operations.

LITTLE RED RIVER CREE NATION (ALBERTA)

The rapid pace of industrial development in northern Alberta has raised serious concerns among the First Nations in the Treaty 8 region. Oil and gas exploration, tar sands developments and, more recently, the granting of large timber leases to supply a sudden expansion of the pulp and

paper industry all have raised apprehensions among First Nations in the Athabasca and Peace River valleys. First Nations in the region are seriously concerned about the damaging effects to wildlife and fish habitat, water quality for domestic use, sites of cultural importance - indeed to their entire way of life.

First Nations believe that their treaty rights to hunt, fish and trap for food are being compromised. They believe that their Treaty rights imply a corollary right to have fish and wildlife habitat maintained at reasonable levels. It follows that they believe they have a concurrent right to be directly involved in the natural resource management process - not just as another public interest group - but as partners with the Alberta government. The Little Red River Cree Nation, as well as the Whitefish Lake Nation, have submitted proposals to Alberta seeking renewable resource co-management by Aboriginal people. They believe that the co-management process they propose will allow for adjustments in resource management plans and strategies through joint planning and consultation to give greater emphasis to Indian rights, roles and values. They believe that the province has a legal obligation to involve Treaty 8 First Nations in this co-management. This position is based on the *Sparrow* (1990) decision of the S.C.C. that made it clear to governments that aboriginal rights to resources are second only to resource conservation requirements; that damage to aboriginal rights must be minimized; and that consultations with Aboriginal peoples are required before changes to regulatory regimes are made. The First Nations have proposed an integrated resource management planning process to accommodate objectives of industrial development with the treaty rights of Indian people. To add weight to its proposal, the Little Red River Cree have taken it to the Environment Committee of the Grand Council of Treaty 8 seeking the Committee's endorsement.

The co-management regime proposed by the Little Red River Cree Nation "does not mean or imply any change in respective rights and prerogatives of governance held by Alberta, Canada or Indian Band governments...." (Little Red River Cree Nation, 1991:8). They see the development of intergovernmental structures with delegated authority and responsibility for interpretation of policy together with some roles for First Nation people in implementing, monitoring, evaluating and modifying administrative practices. However, some statements made by the Band's spokesmen do imply that the joint planning and management role sought would involve a sharing of resource management decision-making with the province.

From Alberta's perspective there is concern about what First Nations mean when the term "co-management" is used. If it were to imply surrender of resource management decision-making powers, the province would not be willing to cooperate. The province would be more comfortable if the term "cooperative management" were used instead of "co-management". If First Nation involvement were to mean an advisory role for Indian people, the province appears willing to listen. At the present time, for example, a public involvement process and a parallel aboriginal process have been established to advise on management plans and operations of the Alberta Pacific Forest Industries Inc. (Alpac).

There is a lack of trust on both sides. The First Nations do not have trust in government to respect and protect their rights and interests; the government does not trust the intentions or forest management abilities of the First Nations. History can be drawn on to support both positions. Certainly, the water quality problems downstream from the oil sands operations in

the Fort McMurray area and downstream from pulp mills on the Peace River testify to unfulfilled promises. The province must be encouraged to recognize that its First Nations are not just public interest groups, but First Nations with unique rights that are not being fully met.

FORT McMURRAY BAND (ALBERTA)

The Fort McMurray Band is represented on the Forest Management Task Force established by Alpac to get feedback from Aboriginal groups that may be affected by the company's logging plans. The Band discovered that Alpac's initial plans called for logging in the immediate vicinity of its reserve and that proposed cutting blocks were considered too large and buffer zones along watercourses too narrow to protect wildlife habitat. The plan did not provide adequately for the protection of sacred areas or special wildlife sites such as eagle nesting locations and bear denning areas. The Band requested a one mile wide buffer zone around its reserve. Alpac's revised plan provided for this buffer zone; and negotiations with the firm have provided the Band with a special planning role for the buffer zone and the right to do the logging in the zone.

While the Fort McMurray Band feels that it has made some progress in having its interests responded to, it remains concerned about the future and the continuation of its traditional way of life. It took a year to convince Alpac to do a traditional land use study in the area. The Band believes that such a study should be a formal obligation in all forest management agreements issued by the province to the forest industry, and that the industry should be obliged to obtain and act on native advice on harvesting designs near their communities. The Band believes that forest management plan provisions for wildlife are inadequate in that they do not provide for undisturbed corridors for the movement of moose and caribou and the provisions for buffer zones along watercourses are considered too narrow.

MAMO ATOSKEWIN ATIKAMEKW ASSOCIATION (QUEBEC)

The Atikamekw and Montagnais peoples of central Quebec are dependent on the traditional lifestyle of hunting and trapping. They also continue to make significant use of traditional medicines from local plants in the forest. The Atikamekw have exclusive trapping rights and all-season hunting and fishing rights in the Reserve a Castor Abitibi-Est. This Reserve, in the Chibougamau - La Tuque - St. Michel des Saints - Senneterre region, is one of a series of reserves set up some years ago by the province for the exclusive trapping use of Aboriginal people. Three Atikamekw communities, Obedjiwan, Weymontachie and Manouane, all have extensive trapping territories within this forest region.

All is not well in the region. The Quebec government has issued a number of forest management licences referred to as CAAFs (contrats d'approvisionnement et d'amenagement) and the Atikamekw are concerned about the fate of wildlife habitat, their traplines, portages, berry picking areas, and cultural sites. They believe that their entire way of life will be jeopardized unless industrial forest management is integrated with their own needs.

To protect their interests, the Mamo Atoskewin Atikamekw set about preparing an integrated forest management plan. Trappers were interviewed to develop an inventory base of wildlife resources, important wildlife sites, traplines, portages, and cultural sites. All these data were

entered into a geographic information system (GIS) for display and planning purposes. Two reports have been submitted to the Quebec government by the Mamo Atoskewin Atikamekw Association, but apparently no response has been received. The Aboriginal community seeks the opportunity to work with the province in developing truly integrated resource management plans that will respect the objectives of both the Aboriginal people and the forest industry.

Some of the difficulties being experienced by the Mamo Atoskewin Atikamekw Association and the province of Quebec in coming to grips with integrating management of traditional-use resources and timber resources may be of a political nature. It is the view of the Atikamekw that the province does not wish to take any steps in responding to the resource management interests of the Mamo Atoskewin that would imply any recognition of aboriginal rights. If such concerns could be put to one side however, there does seem to be an opportunity for cooperative planning that would recognize the objectives of all sectors - government, industry and the people who live in the area. It is suggested that the Royal Commission urge both the province and the Aboriginal people to work together, without prejudice to any aboriginal rights issues that may be in the background, and jointly develop an integrated forest management plan that would both guide the industry and provide the Aboriginal people with a sustained resource base. Surely this can be done, recognizing the province's subscription to the principles of sustainable development.

GRAND COUNCIL OF THE CREE (QUEBEC)

Cree communities within the region covered by the James Bay and Northern Quebec Agreement are disturbed about practices employed under the *Forest Act* to allocate and regulate timber harvesting and management in their territory. First, actions under the *Forest Act* do not always seem to respect requirements under other Quebec legislation. Under the *Act* respecting land in the public domain, for example, land use plans are required, to which forest management plans supposedly should conform. A land use plan still did not exist for the region when timber supply and forest management agreements (commonly referred to as CAAFs) were issued under the *Forest Act*. While, in 1990, a draft land use plan had been circulated and commented on by both the Forest Committee of the Grand Council of the Cree and the James Bay Advisory Committee on the Environment, it had not been revised to take into account land use by the Cree before the CAAFs were issued. (It is to be noted that both the Cree Regional Authority and the James Bay Advisory Committee on the Environment are recognized bodies established pursuant to the James Bay and Northern Quebec Agreement. The former is a Cree organization with representation from communities affected by forestry impacts while the latter has equal representation from the federal and Quebec governments and the Cree.)

Second, it appears that the review of proposed CAAFs under the *Forest Act* is complicated by the approval practices employed by the Ministère des Forets. While a CAAF has virtually a perpetual life, carrying a term of 25 years renewable every five years, a long-term management plan apparently is not required before the first five year plan is submitted and approved. Review of a short-term plan without the reference context of a long-term plan is a formidable task. More important, according to the James Bay Advisory Committee on the Environment, are concerns that the Ministère des Forets is dividing land into forest management units that seem to have little relation to the borders of Cree hunting and trapping territories. Annual allowable

cut levels calculated by the ministry are based solely on sustained yield of timber. Wildlife habitat areas are not identified; nor do five-year plans contain information on protective measures suggested by major users of the environment.

It would appear that the Ministère des Forets does not take full account of the recommendations of either the James Bay Advisory Committee on the Environment or the Cree Regional Authority. The Royal Commission may wish to recommend to governments that, recognizing the potentially major impacts of commercial timber management on other forest values and uses, agencies responsible for forest management should be required to make their timber management plans compatible with, if not part of, integrated resource management plans.

An additional frustration of the Cree First Nations is that they are unable to expand their forestry operations beyond those Category 1 lands in which they have full resource use rights. To expand operations into other areas by obtaining a CAAF from the Ministère des Forets, they would have to operate a processing plant. It would be of assistance to the Cree, and aboriginal firms in other parts of Canada, if provincial long-term forest licensing requirements were to be modified. The present requirement that a licensee operate its own wood processing facility to qualify for a forest management agreement is financially and technically difficult for many aboriginal firms. Modification of regulations to permit forest management agreements for firms in joint ventures with companies that possess processing facilities would be of considerable assistance to Aboriginal communities.

TANIZUL TIMBER LIMITED

In the 1970's the Tl'azt'en Nation (formerly known as the Stuart-Trembleur Band), in the Fort St. James area of central British Columbia, opted to pursue economic development for its people through the forest sector. Seeking to create on-the-job training and employment opportunities close to home; enhance the community's economic and social benefits; and to place it in some control over forest use decisions for its traditional territory, the Tl'azt'en decided to seek a tree farm licence (TFL) from the British Columbia Ministry of Forests. It was successful in its bid and received its TFL in 1981. The TFL is operated by Tanizul Timber Ltd., owned by six members of the Nation in trust for the entire community.

To obtain the licence, the Tl'azt'en combined some 2 500 hectares of its Indian reserve with 49 000 hectares of provincial Crown lands. To complete that commitment, special federal regulations under the *Indian Act* had to be prepared to allow for management of the Indian reserve portion of the TFL under terms of the B. C. *Forest Act* and Regulations. A second unusual characteristic of the TFL was that it excluded the operation of wood processing facilities - the B.C. officials believing there was already enough milling capacity in the region. As a consequence, Tanizul Timber has been selling its logs on the open market. This situation has now changed and Tanizul Timber is completing a sawmill so that it may profit from value-added manufacturing.

Tanizul began with outside professional assistance to prepare its proposal for the TFL and prepare logging and management plans. It has drawn on federal financial assistance programs to help acquire capital equipment and provide training for its own people. It has moved

vigorously through training and experience to encourage members of the Tl'azt'en community to assume roles in the firm. The two principal logging contractors employed by Tanizul are owned by community members and more than half the 80 jobs in logging, road construction and reforestation are filled by Band members or other Aboriginal people (Hopewood, 1988).

Tanizul has successfully weathered two recessions in the forest industry but faces a difficult set of problems closer to home. It has to operate according to B.C. Ministry of Forests regulations and some of these do not fit well with the traditional activities of some members of the community or with the holistic management philosophies of community Elders (Simpson, 1992). Road construction, clearcutting, and reforestation requirements, all placing emphasis on timber production, have led to reduced fur harvests: and all five trapping territories in the TFL area are licensed to community members. Logging roads have made the area more accessible, increasing hunting competition from recreational hunters from outside the community. Some of the problems of integrating industrial forestry with Aboriginal ethics and traditional pursuits remains unsolved. They may require further consideration within the Tl'azt'en Nation. They may require more understanding by the province of the long-term social and economic values of Aboriginal peoples' traditional lifestyles. They may require some modification of provincial timber management regulations to improve their compatibility with Aboriginal cultural values.

NORSASK FOREST PRODUCTS LIMITED

In the 1980's, the Meadow Lake Tribal Council took advantage of the receivership of a local sawmill to join forces with the mill's employees to purchase the mill and assume the former company's forest management licence agreement (FMLA). The new company, NorSask Forest Products, which uses only softwoods in its sawmill, has joined forces with a pulp manufacturing firm interested in establishing a mill that would use hardwoods. In 1990, NorSask Forest Products and Millar Western Pulp Mill Limited became partners. A new firm, Mistic Management Ltd., jointly owned by NorSask and Millar Western, with the Meadow Lakes District Chiefs Investment Company and employees of the sawmill equal majority shareholders, was set up to operate the timber limits.

At this early stage of operations Mistic Management relies on a non-Aboriginal forestry and technical staff; but already some 20 percent of the logging is by the Meadow Lake Tribal Council Logging Company, and this proportion is expected to increase.

Conflicts have arisen between the logging practices of Mistic Management as prescribed by the province and members of some First Nations in the FMLA area who are concerned about maintaining traditional employment in hunting, trapping and fishing. Part of Mistic Management's role is to resolve these conflicts. Four forestry advisory boards have been set up with representation from the company, the local Bands and the provincial forestry administration. Two more are planned. The advisory boards deal with problems between timber harvesting plans and trapping and hunting interests. The boards may place restrictions on forest management plans, although the province retains the power of final decision. The road to truly integrated resource management is not an easy one.

MATHAS COLOMB FIRST NATION - MANITOBA MOOSE AND WOODLAND CARIBOU CO-MANAGEMENT AGREEMENT

This agreement (Appendix 1) is one of several wildlife management agreements in place or being developed in the prairie provinces. The Agreement provides for a management board, with equal representation from the First Nation and the Manitoba government. The Board, operating by consensus to the extent possible, coordinates the sharing of data and other information, recommends moose and caribou harvest levels and allocations, recommends on management techniques and is to prepare a long-term moose and caribou management plan for the area based on both scientific and traditional knowledge.

SIPANOK AREA MANAGEMENT AND DEVELOPMENT AGREEMENT

The Sipanok Area Management and Development Agreement (SMADA) exemplifies what can be accomplished in building a cooperative spirit among treaty Indians, other resource using members of the community and provincial resource management officials. The Agreement, signed in September, 1992 between the Province of Saskatchewan and the Red Earth and Shoal Lake Bands of the Cree Nation, stands as a "first" in that province by setting out principles and an administrative system for cooperative management of forests, fish, furbearers and other wildlife resources. Objectives are to establish a framework for cooperative renewable resource management in the 1260 square mile (3250 sq km) area, ensure consultation between parties and develop methods for First Nations participation in resource inventories and allocation of harvests. The new Agreement replaces one that had only gone as far as to establish a special wildlife management area with exclusive trapping privileges reserved for members of the two bands.

The new agreement recognizes that the First Nations have a unique role in the management and use of renewable resources on Crown lands in the area. It subscribes to principles that renewable resource management programs should be sustainable and that employment of First Nations people in resource management and economic development opportunities should be enhanced. At the same time, it recognizes that renewable resource uses by the general public should be maintained and that a consultation process with all interest groups should be set up. The agreement confirms the province's legislative and regulatory jurisdiction over renewable resource matters, but it does provide for delegation of some responsibilities through sub-agreements.

The Agreement will be supervised by a Co-management Council with the chairmanship alternating between the Province and a representative of either the Red Earth or Shoal Lake Bands. Council membership is drawn from the province, each Band, the Federation of Saskatchewan Indian Nations, each of the rural municipalities of Hudson Bay and Moose Range, the general public and the federal government. The SMADA Economic Development Board with members from each Band and the province will recommend and carry out the programs approved under sub-agreements.

Under a separate bilateral accord with the two Bands, the federal government will defray the participation costs of the two Bands in the Co-management Council and the Economic Development Board.

It is expected that the SMADA will serve as a model for additional cooperative renewable resource management agreements between the Saskatchewan government and other Aboriginal communities in the province. While the province retains final authority for management decisions, there will be opportunities to delegate responsibilities for some programs, allowing the Red Earth and Shoal Lake Bands to play more vital roles in managing the resources they depend upon.

F.S.I.N. - SASKATCHEWAN MOU ON WILDLIFE

In May, 1993, the Federation of Saskatchewan Indians, the Province of Saskatchewan, the Canadian Wildlife Federation and the Saskatchewan Wildlife Federation signed a Memorandum of Understanding on Wildlife Management (Appendix 2). The MOU recognizes that the parties have common interests in wildlife management and that common approaches may need to be developed while respecting constitutional rights of First Nations. It provides a stronger role for Saskatchewan First Nations in management of wildlife resources through co-management activities, including joint management boards, intercultural exchange, sharing of data, and employment of Indian people in baseline studies, research, and as wildlife officers under the *Wildlife Act*.

While the MOU does not alter the province's jurisdiction over wildlife, it does provide for lessening of frictions between First Nations, recreational hunting interests and the province. It also provides for direct roles for First Nations in advising, conducting research and implementing wildlife management programs. The MOU demonstrates what can be accomplished when First Nations act together and deal with a province with one voice. Governmental agencies often find it difficult to respond adequately to the complaints or concerns of individual communities; but when these concerns are integrated and presented as a single package, they often receive higher priority in the scheme of things and solutions follow.

THE TEME-AUGAMA ANISHNABAI - ONTARIO MOU and the WENDABAN STEWARDSHIP AUTHORITY

The Teme-Augama Anishnabai (TAA) of northeastern Ontario have had a long land claim dispute with the federal and Ontario governments, claiming that their ancestors had not been party to the Robinson-Huron Treaty of 1850. In recent years, as development, particularly logging, pushed further into the disputed territory, the TAA filed "cautions" under the *Land Titles Act* asserting ownership of 110 townships. After other attempts to remove the cautions failed, Ontario launched a court action in 1978 seeking a number of declarations, one being that the TAA had no interest in or to the townships in question. A Supreme Court of Ontario decision in 1984 went against the TAA, as did their appeal to the Supreme Court of Canada. That decision, however, did state that the Crown had failed to comply with some of its obligations and had thereby breached its fiduciary obligations to the Indians.

The upshot of the long and tortuous struggle has been the signing of a Memorandum of Agreement between the Teme-Augama Anishnabai and Ontario in 1990 with addendums in 1991 and 1993 (Appendix 3). There is now a commitment to negotiate an agreement in principle as the basis for a Treaty of Co-existence. That treaty will deal with principles of stewardship,

jurisdiction and TAA representation on decision-making and advisory bodies for the TAA's traditional territory. It will also identify candidate areas for shared decision-making and consider suitable land tenure and resource sharing arrangements for the TAA.

On a more immediate basis, the MOU established the Wendaban Stewardship Authority "to plan, decide, implement, enforce, regulate and monitor all uses of and activities on the land within ..." four townships where resource developments are of particular concern to both parties. The Wendaban Stewardship Authority is a true co-management partnership. It has equal representation appointed by both parties and a neutral non-voting chairperson appointed by mutual agreement. Guiding principles for the Authority include the primary land stewardship goal of "Sustained Life wherein the natural integrity of the land and of all life forms therein and thereon are maintained".

The history leading to the Teme-Augama Anishnabai - Ontario MOU is sad testimony to more than 100 years of adversarial actions by Canadian governments against Canada's Aboriginal people, but it does offer lessons for the future. For Aboriginal people, persistent effort and speaking with one voice can eventually gain redress for past wrongs committed against them. For government, the costly and demeaning adversarial approach to aboriginal or treaty affairs can be successfully replaced with sensitive fair dealing.

THE ALGONQUINS OF BARRIERE LAKE - QUEBEC PARTNERSHIP

The long history of the Algonquins of Barrière Lake has been well documented by Chief Matchewan (1989). Very briefly, they have attempted to maintain a traditional lifestyle in an area only a few hour's drive from Canada's capital city while being continually buffeted by the encroachment of industrial and recreational interests of others. The first of a series of dams was built in their territory in 1871 to facilitate log driving operations and produce hydroelectric power. The original dam was replaced by a series of larger dams beginning in 1928. Logging operations have become ever more damaging to wildlife habitat as more timber species became marketable and logging methods more efficient. Although the Province of Quebec established a hunting reserve for exclusive use of the Indian people in 1928, the building of a highway and growing pressures for recreational hunting led the Province to withdraw a significant portion of it in 1940 for non-Indian use. The capacity of the environment to produce the wildlife and fish that the Algonquins depend on is seriously threatened, while the pressures of recreational hunting continues to grow.

Searching for a lasting solution, the Algonquins of Barrière Lake have chosen to try to work out an accommodation whereby commercial forest management would be able to continue, but in harmony with protection of wildlife habitat and the minor timber needs of the Algonquin people. They have sought a resource management partnership for their traditional territories with application of the principles of "sustainable development", first put forward by the Bruntland Report on Environment and Development, and now subscribed to by Canada and the provinces. On August 22, 1991, the Algonquins of Barrière Lake, the Government of Quebec and the Government of Canada entered a Trilateral Agreement to prepare a draft integrated renewable resources management plan and to propose means to carry it out (Appendix 4). The Agreement covers an area of some 10,000 sq. km of traditional Algonquin territory.

Key elements of this Trilateral Agreement make it unique among relationships between Aboriginal peoples and governments.

1. A true partnership is provided in which the "special representatives" appointed by each party to supervise the trilateral process are guaranteed to "have sufficient authority to make decisions and to apply the provisions of the present Agreement". Decisions related to the work under the Agreement are to be by consensus of the Special Representatives.

2. The Agreement calls for preparation of a "draft integrated management plan ..... with the objective of sustainable development".

3. The Agreement provides for the identification and "provisional protection (up to the end of the process) of the sensitive zones and the territory so as to minimize the impact of forestry activities on the traditional activities of the Algonquins of Barrière Lake".

4. The Agreement offers the opportunity to combine traditional environmental knowledge with modern technical skills in the formulation of the management plan.

5. Both Quebec and the Algonquin of Barrière Lake agree "to negotiate an agreement on the carrying out of the recommendations" to be contained in the integrated management plan.

Implementation of the Agreement has not been without problems. Quebec has existing agreements with forest industries providing for timber harvesting in the area. Current Quebec laws and regulations do not provide for the degree of environmental protection that the interim measures of the Algonquin - Quebec management plan would provide for. Quebec felt that its rules should prevail at least until the end of the planning process and was reluctant to accept the interim measures proposed. A primary issue was the width of buffer zones that should be left unharvested along watercourses. The impasse was submitted to a special mediator, a judge of the Quebec Superior Court.

The mediator's report expressed the view that the Trilateral Agreement is, if not a treaty, a "solemn agreement ... (which) must always be omnipresent when the CAAFs (Quebec's forestry agreements) are granted by the Ministry of forests to private entrepreneurs" (Paul, 1992). He also found that the CAAF granted to one firm did not respect the Trilateral Agreement. He recommended that the Special Representatives be given full powers to carry out the Agreement, that the sensitive areas for interim protection be identified and protected in the existing CAAF, that the Agreement be given precedence in the management of the Agreement area, and that a conflict resolution mechanism be put in place.

In spite of the mediator's report, considerable effort was required under his guidance to solve the fundamental issue of whether or not the existing laws and regulations of the Province should prevail over the Agreement. In the end, Quebec found a way, by having its Special Representative report to the Executive Council rather than to individual ministers and by giving its Special Representative authority to work directly with the logging companies operating in the

area to change the norms of their operations to meet interim requirements under the Trilateral Agreement.

The partnership between the Algonquins of Barrière Lake and the Province has been maintained. The possibility of modifying provincial timber management policies to incorporate the needs of of the Barrière Lake community in a truly integrated renewable resource management plan remains in place.

RESOURCE ACCESS INITIATIVES IN BRITISH COLUMBIA

The relationships between Aboriginal communities and the provincial government in British Columbia differ from the rest of Canada since treaties exist with only a few First Nations on Vancouver Island and in the northeastern corner of the province. For most of the province, land and other aboriginal rights have never been defined. The province's recent decision to recognize together with recent court decisions, especially *Sparrow* and *Delgamuukw*, have led to important initiatives affirming Aboriginal peoples' access to resources. Since the British Columbia scene is so different from the rest of Canada, these initiatives are discussed separately. NAFA suggests, however, that the new cooperative measures between First Nations and B.C. could fit well in other provinces. It should not be necessary for provinces to be confronted with the threat of land claims before adopting innovative ideas to respond to the needs of Aboriginal people for access to resources.

JOINT STEWARDSHIP

In the last year or so, a confusion of terms has come to the fore to describe resource management cooperation between the B.C. government and First Nations. "Joint Stewardship" appears to be the preferred term, but it is a rather generic term that would encompass other terms like "co-management" or "co-operative management". It is defined as:

> "A framework for British Columbia's government-to-government relations with First Nations on all aspects of land and resource management within traditional territories, including cultural resources such as archaeological sites and ethnographic sites. Joint stewardship will operate outside or parallel to formal treaty negotiations."[15]

Interim principles to guide joint stewardship policy development and operations include

1. First Nations are recognized to have a *sub generis*, or unique legal interest in land.

2. Joint stewardship is an essential component of effective land and resource management.

3. First Nations will play an integral part in developing and implementing policy on joint stewardship of land and resources.

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[15] Joint Stewardship, Ministry of Aboriginal Affairs, July 20, 1992

4. Joint stewardship will recognize both traditional and technical aspects of resource management, bringing together two different methods of decision making.

5. Joint stewardship will respect existing legal rights of non-aboriginal British Columbians.

6. Joint stewardship will preserve the government's ability to exercise its powers under statute.

7. Measures taken under joint stewardship will vary according to the nature of the particular aboriginal interests concerned.

8. Joint stewardship will facilitate participation by First Nations in land and resource management. It will not involve vetoes or moratoria, unless the parties agree that a particular, limited action is necessary to protect certain defined aboriginal interests. Where third parties are involved, they will be consulted.

9. Joint stewardship arrangements will provide the means for First Nations participation within the financial constraints of British Columbia.

10. Joint stewardship will be without prejudice to arrangements concluded in treaties.

Several joint stewardship agreements have been signed and others are in various stages of negotiation. They may involve various provincial ministries, depending on their subject matter. One, with the Xax'lip First Nation, is described here and attached as Appendix 5 to give the Royal Commission a perception of the cooperative resource management ventures contemplated by the province.

XAX'LIP FIRST NATION JOINT STEWARDSHIP AGREEMENT

The Xax'lip First Nation, in the Lillooet area, entered a joint stewardship agreement and a related memorandum of understanding on joint natural resource initiatives in July, 1992 (Appendix 5). The Joint Stewardship Agreement applies to any disposition and use of land, water and resources within the Xax'lip's traditional territory. It provides for the following elements of joint stewardship:

1. Increased involvement for the Xax'lip in land and resources disposition;

2. Integration of Xax'lip traditional knowledge in decision-making;

3. Recognition of Xax'lip decision-making processes;

4. Notification and information on proposed land and resource dispositions;

5. Receipt of Xax'lip positions on proposed dispositions;

6. Structures and processes to seek consensus between government and the Xax'lip First Nation;

7. A joint dispute resolution mechanism.

The Agreement provides for an advisory committee to develop detailed arrangements for effecting the Agreement.

The Memorandum of Understanding, signed under the umbrella of the Agreement on Joint Stewardship, is designed to foster employment and training opportunities for the Xax'lip people and to develop cooperative resource management initiatives. Specifically the MOU provides for:

1. The joint undertaking of an integrated resource management plan for the Xax'lip territory;

2. Ministry of Forests summer employment for a number of Xax'lip persons;

3. Ministry of Forests contracts for roadside slashing, fence building, silviculture, etc.;

4. A small Ministry of Forests timber sale licence for training purposes;

5. Ministry of Forests assistance to the Xax'lip in applying for a four-year timber sale under the B.C. Small Business Enterprise Program;

6. Ministry of Forests assistance in Xax'lip discussions with a local lumber company respecting possible contracts, employment and joint opportunities;

7. A joint feasibility study of a proposal to use logging wood waste in value added manufacture.

The MOU also provides for a small fisheries project, possible wildlife management opportunities for the First Nation and assistance in identifying business opportunities and related plans, seminars and training.

The agreements between the Xax'lip and the province should go a long way in overcoming resource management issues while the treaty making process is under way. The preparation of an integrated resource management plan should ensure protection of Xax'lip cultural and traditional uses of their territory and the provisions for assistance in securing and operating timber sale licences will help the Xax'lip to get on even footing with non-aboriginal timber operators.

FIRST NATIONS FORESTRY COUNCIL

Responding to suggestions of the Intertribal Forestry Association of British Columbia (IFABC), the province established a Task Force on Native Forestry in 1990. The mandate of the Task Force was to document the extent of native participation in the forest sector, identify the

constraints to their participation and recommend ways to increase it. The Task Force reported to the Ministers of Forests and Aboriginal Affairs within a year. Among its recommendations were: priority allocations of available annual timber harvests to First Nations forestry ventures; the negotiation of targets for First Nations participation in the forestry sector, including native tenure allocations; the negotiation of partnerships between the province, forest industry and First Nations allowing the latter to become full and active partners in forest resource management; and establishment of a First Nations Forestry Council to facilitate implementation of the Task Force's recommendations.

The province responded in early 1993, establishing the First Nations Forestry Council with representation from First Nations, the provincial government and the forest industry. Major elements of the Council's mandate are: to assist the government in outlining policies to increase First Nations forest tenures, assist in the development of government-industry-First Nations joint ventures, assist in the development of a First Nations silviculture program; and assist in the development of a First Nations forestry education program. While the Council has only begun its work, there are grounds for optimism.

The experience in British Columbia suggests that Aboriginal communities in other provinces could develop a more effective voice for dealings with government and industry on resource management if they were to come together and form strong provincial forest resource associations. The IFABC has done its work in stimulating and consolidating the views of First Nations on forest issues; and both the province and the industrial sector see advantages in strengthening cooperation with First Nations.

THE PRINCE ALBERT MODEL FOREST

The Prince Albert Model Forest is one of a series of model forest resource management projects initiated and partly funded by Forestry Canada. It stands as a unique attempt to move away from single purpose uses of the forest environment through development and use of integrated resource management plans.

The Prince Albert Tribal Council, Montreal Lake Indian Band, Lac La Ronge Indian Band and the Federation of Saskatchewan Indian Nations are full partners in the Model Forest program along with Weyerhaeuser Canada Ltd. (the major forest industry operating in the area), the Prince Albert National Park of the Canadian Parks Service, and the Saskatchewan Department of Environment and Resource Management. Three of the seven member Model Forest Partnership Management Board of Directors are First Nation representatives.

Significantly, First Nations people will be considered an integral component of the forest ecosystem. An important element of the information being developed for the area includes inventories of First Nations' current and historical cultural activities in the Model forest area. Interviews with individuals will attempt to capture the knowledge and perceptions of First Nations people who have sustained ecosystems in the area for centuries. The recognition and inclusion of First Nation uses of traditional lands will give the plan its unique characteristics.

Job opportunities for First Nations people will be increased through their employment on special logging and silvicultural projects to be undertaken as part of the model forest planning process. The planning process may also identify long term employment opportunities for First Nations workers.

While there are legislative and policy constraints to integrated resource management in the area, an important component of the work plan includes attempts to deal with conflict resolution. For example Road Closure Game Preserves and the Candle Lake Game Reserve, in which hunting is not permitted, are legislated under the Saskatchewan *Wildlife Act* and Regulations. Uses of the Prince Albert National Park are regulated under the *National Parks Act* and policies thereunder. Weyerhaeuser Canada holds a Forest Management Licence Agreement from Saskatchewan granting it the rights to harvest certain volumes of timber and requiring it to perform certain forest management responsibilities. The Indian bands in the area have treaty rights. The key to the eventual successful implementation of the Model Forest Integrated Resource Plan will depend in large measure on how successfully the partners modify their individual mandates to accommodate the interests of other partners.

While it is too early in the process to judge the success of the Prince Albert Model Forest, it does mark a watershed in forest resource management in that a concerted effort is being made to develop a plan that will truly integrate the interests of the different users, including the historic and current uses of First Nations.

CONCLUSIONS AND RECOMMENDATIONS

The situations confronted by the Kluskus in B.C., the Fort McMurray Band in Alberta, or the Algonquins of Barrière Lake are not new. Aboriginal communities in Canada have seen themselves and their territory encroached upon, their traditional ways of life threatened or destroyed and their opportunities to participate in Canada's natural resource industries kept to a minimum since Europeans first arrived in North America.

As described in some of the case examples we have outlined, however, Aboriginal peoples' influence on forest resource management decisions has improved in recent years. Provinces are more inclined to consult, sometimes setting up formal advisory or cooperative management structures to assist in forest resource management decisions when either aboriginal or treaty rights are at stake. In two instances that NAFA is aware of, the Wendaban Stewardship Authority in Ontario and the Algonquins of Barrière Lake Trilateral Accord in Quebec, First Nations have succeeded in becoming full partners in resource planning and decision-making with provincial governments. The invitation to the consultation or decision-making table has been hard won, however, usually coming only after demonstrations, road blocks, threats of court challenges or court decisions. NAFA submits that a framework and an environment for cooperation is now possible for greater access to renewable resources. The adversarial political process can be put aside by both the provinces and Aboriginal people, and replaced with a new spirit of cooperative management.

The framework parameters have been laid in *Sparrow* and related decisions of the courts. In *Sparrow*, Chief Justice Dickson admonished that the fiduciary responsibility of governments includes the duty to justify their resource management regulations in relation to their impacts on Aboriginal people. In part, the justification would require that the impacts on aboriginal rights should be as small as possible, that the Aboriginal people should be consulted before development begins, and that compensation should be made available if expropriation of aboriginal rights were involved. Bartlett (1991) has argued, with respect to resource development in general, that the same fiduciary obligation rests with provincial governments when they propose to lease or licence timber harvesting rights in areas where land claims have not been settled or in areas where treaty land entitlements have yet to be fulfilled. NAFA submits that the same requirements for accommodation exists where treaty rights for hunting, trapping, fishing and other traditional activities are likely to be affected by proposed resource developments on Crown lands in traditional territories of First Nations.

The courts have described aboriginal and treaty rights as *sub generis* or unique. However, if a comparison is needed, NAFA invites the Royal Commission to view treaty rights of First Nations in Crown lands as somewhat analogous to, but superior to, the easement rights that a public utility, such as a power corporation, might hold over private property in urban areas. Most urban home owners find that the official survey of their lots shows that a public utility has an easement across the back or along one side of the homeowner's lot. The easement gives the utility the right to run its lines over the property and to access them when they are in need of service. The property owner still owns the land under easement but his use of it cannot interfere with the utility's power lines or its access to them.

The jurisdiction of provinces over Crown lands is similarly burdened by First Nations' treaty rights, rights negotiated between nations. NAFA submits that the very uniqueness of these rights carries the implication that they cannot be interfered with without the consent of the First Nations involved. Section 35(1) of the *Constitution Act* (1982) protecting and affirming aboriginal and treaty rights makes that clear.

Since their fiduciary duty requires governments to act for the benefit of the Aboriginal people, NAFA submits that this can only be accomplished to the satisfaction of all concerned if the Aboriginal community is welcomed to the consultation table as a partner in decision-making. By this, NAFA does not imply a veto for the Aboriginal community, but we do imply partnership participation in developing the terms and conditions of forest management licences and approval of forest management plans of licensees. The Joint Stewardship Agreement between the Xax'lip First Nation and British Columbia and the planning agreement between the Algonquins of Barrière Lake and the province of Quebec are examples.

In practical terms, what does NAFA's proposal involve? In the forest development example, it would first permit the identification of special places of spiritual or cultural significance and protection from logging. Second, it would allow for the identification of the most important wildlife habitat areas that should be treated with special care. These might include wintering areas of deer or moose and buffer zones along watercourses to protect furbearer habitat. Third, it would provide for participation in determining road locations, timber harvest layouts, reforestation procedures, and other activities that could impact on wildlife habitat and populations. Fourth, it would provide for employment opportunities for members of the Aboriginal community in the forest development operations. Fifth, it would provide for First Nation forestry businesses to gain forest tenures in their traditional territories.

The last two provisos is based on two arguments. First, we are mindful that in the *Sparrow* decision the S.C.C. admonished that: "the phrase 'existing aboriginal rights' (in S.35 of the *Constitution Act (1982)* must be interpreted flexibly so as to permit their evolution over time". NAFA suggests that such evolution has occurred and that Aboriginal people do harvest timber for manufacture into lumber and other products for their use.

Second, both the federal and provincial governments have issued numerous public statements and policies to the effect that they see employment opportunities and economic development of Aboriginal communities as major priorities of government. How better to fulfil their fiduciary obligations to act for the benefit of Aboriginal communities , and to meet their own objectives of economic development for their populations, than to provide for employment of Aboriginal people in natural resource developments on Crown lands?

> *NAFA recommends that the Royal Commission urge the federal and provincial governments to act on their fiduciary responsibilities by negotiating cooperative forest management partnerships with Aboriginal peoples that will integrate the values and needs of Aboriginal communities with the resource management policies of governments and industry.*

In 1992, all the provinces, and the federal government subscribed to the Canada Forest Accord and the National Forest Strategy. They adopted the concept of sustainable forest development and committed themselves to establishing "new partnerships that will reflect the importance of forests to Aboriginal people, maintain and enhance cultural and spiritual values, and facilitate expanded economic opportunities" (Canada Forest Accord, 1992). In the Strategy to implement the Accord, the governments adopted four principles related directly to Aboriginal people. One recognized that forest management practices should make provisions for the rights of Aboriginal people who rely on the forests for their livelihood. A second declared that self-sufficiency of Aboriginal communities requires increased access to resources and business development assistance. The third stated that Aboriginal people have an important and integral role in planning and managing forest resources within areas of traditional use. The fourth principle linked sustainable forest management with the need for cooperative resolution of land claims and issues of Aboriginal self-government.

It is recommended that the Royal Commission commend the federal and provincial governments and Canadian forest industry associations on their adoption of the National Forest Strategy and urge them to implement the framework for action, namely that:

- *The federal government cooperate with aboriginal forestry associations to develop a comprehensive Aboriginal Forest Strategy that respects the shared beliefs and aspirations of Aboriginal people, and addresses the regeneration of reserve lands, the empowerment of communities to manage their forest resources and the development of models for sustainable forest management;*

- *Governments ensure that the development and application of legislation and policies governing the management of forest lands respect constitutional provisions for aboriginal and treaty rights;*

- *Governments cooperate with aboriginal organizations to encourage business development through improved access to capital, technology transfer and infrastructure support;*

- *Governments cooperate with aboriginal organizations and communities to complete strategic reviews of business opportunities in the forest-based economy that are consistent with traditional uses and values;*

- *Aboriginal forestry associations and the federal government complete a strategy to address the training and employment needs of Aboriginal people, in accordance with their forest values; and that*

- *Post-secondary and professional educational institutions broaden their programs to reflect the Aboriginal land ethic as well as the constitutional status and positions of the Aboriginal people of Canada.*

Aboriginal communities entering the forest industry have found it difficult to combine timber management with maintenance of traditional forest uses. The Kluskus Indian Band found

provincial timber licence harvesting requirements too onerous to meet their other needs. The Tl'azt'en Nation is struggling to harmonize the regulatory and economic demands of timber harvesting with the needs of the community's trappers. The whole issue of integrated resource management is proving to be a difficult one, easy to talk about, but difficult to implement.

Provinces should find it useful to experiment with the concept of integrated resource management at the operational level The Model Forest program, of which the previously described Prince Albert Model Forest is an example, is basically a research and planning activity. From NAFA's perspective, establishment of operational integrated forest management areas would be the next logical step. Provinces should consider establishing a new category of forest land licensing for integrated forest resource management. NAFA believes that this new category of license should be directed to Aboriginal communities since Aboriginal communities have unique rights to land and resources in their traditional territories; provinces have fiduciary duties to Aboriginal people; and since it would be in the provinces' interests to foster Aboriginal participation in the forest industry.

> *NAFA recommends that the Royal Commission urge provinces to establish a special forest tenure category for integrated resource management by Aboriginal communities in their traditional territories.*

Much of the economically accessible forest area is already under long-term renewable licence arrangements to large forest industries, making it difficult for provinces to make timber available to Aboriginal firms. The renewable feature of these licences suggest that these industries will have to be encouraged to cooperate if Aboriginal firms are to have an opportunity to participate.

> *NAFA recommends that provinces be encouraged to enter into arrangements with their large forest licensees to provide for forest management partnerships with Aboriginal firms in the licence areas that are within traditional territories of Aboriginal communities.*

Noting that some provinces have found their allowable annual cut calculations to be too high, requiring periodic downward revisions, there would appear to be room for flexibility in harvesting requirements for some licensees. Experimentation with lower harvesting rates, smaller logging areas, and longer maintenance of areas left unlogged might permit better harmonization of forest uses without undue impact on logging costs and revenues.

> *It is recommended that the Royal Commissions encourage provinces to provide for more flexibility in their timber management policies and regulations, even to the point of reducing annual allowable cut requirements, to allow greater harmonization of timber and Aboriginal-use forest management.*

To ensure that forests are managed on a sustainable basis, environmental assessments have become a part of the forest management planning process. NAFA believes that the assessment and planning process must include traditional land use studies if they are to be complete and if governments are to live up to their commitments in the national forest strategy.

NAFA recommends that the Royal Commission urge the provinces and the federal government to make Aboriginal land use studies a requirement of all forest management plans.

Aboriginal communities find that the wood processing facility prerequisite for forest management agreements acts as a fundamental barrier to their attempts to enter the forest industry. NAFA understands the desire of provinces to ensure that timber harvested reaches an appropriate manufacturing plant, but we suggest that other arrangements, such as partnership or joint ventures between a forest operating company and another firm that does possess a wood processing facility would respond to provincial needs while, at the same time, remove the barrier faced by many aboriginal firms.

NAFA recommends that the Royal Commission urge provinces to modify processing plant requirements for forest licence applicants to allow applicants to enter partnerships or other contractual arrangements with firms operating wood processing facilities.

To compete effectively with the many interest groups seeking access to forest resources, and to exercise their rightful place as people with a unique interest in the forests, Aboriginal communities should be encouraged to speak with one strong voice in their dealings with governments. Divisions among Aboriginal communities may inadvertently provide a province with an excuse for inaction. The successes in 1993 of the Intertribal Forestry Association of B.C. in achieving the First Nations Forestry Council and of the Federation of Saskatchewan Indians in its Memorandum of Agreement on Wildlife attest to the advantages flowing from Aboriginal communities working together.

NAFA recommends that the Royal Commission urge Aboriginal communities to strengthen their organizations and negotiate issues of national or province-wide concern with a single voice.

NAFA recommends that the Royal Commission urge Aboriginal communities with interests in forest resources to form province-wide technical forestry associations to work with provincial governments to achieve the policies and programs that would support aboriginal forestry.

Over the last decade many of the First Nations with reserves have taken advantage of federal/provincial Forest Resource Development Agreements (FRDAs). The program provided for some forest inventories, management plans, and reforestation of reserve forests; and it provided the limited opportunity for First Nation workers to gain training and practical work experience in forestry activities, thereby improving their employability with forestry firms and provincial governments. Over the years, however, it has become obvious that FRDAs have been inadequate to meet the reforestation requirements of Indian reserves or a standard of forest management which should be expected of a fiduciary. In the November 1993 report to Parliament, the Auditor General pointed out that the federal government has not provided the level of support needed.

In its 1993 budget, the federal government announced that it would no longer participate in the federal/provincial Forest Resource Agreements. This would cause real difficulties for First Nations if this cancellation were to extend to the Indian Forest Lands component of the program. The Minister of Indian Affairs and Northern Development and the Minister of Natural Resources should be reminded that Indian reserves are a federal responsibility and that if the federal government is to withdraw from the federal/provincial forestry agreements, it remains a federal responsibility to ensure that the Indian lands component of the program is continued.

NAFA recommends that the Royal Commission remind the federal government of its responsibilities to manage Indian lands for the benefit of First Nations and to ensure that the forestry development program for Indian lands is continued; and that

- *The objectives of the Indian Forest Lands Program be modified, in consultation with aboriginal forestry groups, to clearly reflect and integrate traditional resource values of Aboriginal communities with objectives of timber production;*

- *The federal government provide for delivery of the Indian Forest Lands Program by Indian organizations;*

- *The Department of Indian Affairs and Northern Development (DIAND), in consultation with the Department of Natural Resources, work with aboriginal forestry groups to develop a Statement that delineates its responsibilities, both statutory and fiduciary, and those of Indian bands in relation to Indian reserve forests;*

- *DIAND should develop an operating plan to implement its responsibilities as defined through the above process;*

- *The federal government ensure that adequate funding is made available for completion of forest inventory, management plans, and reforestation of Indian lands as quickly as possible; and*

- *DIAND should ensure that adequate forest management expertise is available to enable it to discharge its responsibilities for Indian lands consistent with the preceeding recommendations.*

The Supreme Court of Canada has ruled that the federal government should adopt an advocacy role to advance the interests of First Nations. Although the preponderance of Crown lands are under provincial control and management, the federal government could and should assist Aboriginal associations and individual First Nations in their endeavours to gain access to forest resources in the public domain. It is quite inappropriate and a shirking of responsibility for the federal government to take the position that it is unable to help because forest resources fall within the jurisdiction of the provinces. It would be to the federal government's advantage to assist First Nations' economic and cultural development through opportunities in the forest resource sector.

NAFA recommends that the Royal Commission urge the federal Minister of Indian Affairs and Northern Development to give tangible and continuing support to Aboriginal peoples' regional and national forest resources associations; and

NAFA recommends that the Royal Commission urge the federal Minister of Indian and Northern Affairs Development that Canada strongly assist aboriginal forest resources associations and individual First Nations in their attempts to gain forest tenure from individual provinces.

Since time immemorial, the forests have met the material, cultural and spiritual needs of Aboriginal communities. Aboriginal peoples see themselves as part of the natural environment and they have an intimate knowledge of the forest ecosystems in which they live. There is an inextricable link between the economic and cultural well being of Aboriginal communities on the one hand and forest resource management and tenure policies of governments on the other hand. How better to assist First Nations in achieving goals of self-reliance and economic independence than to provide them with opportunities to be partners in the management and use of forest resources?

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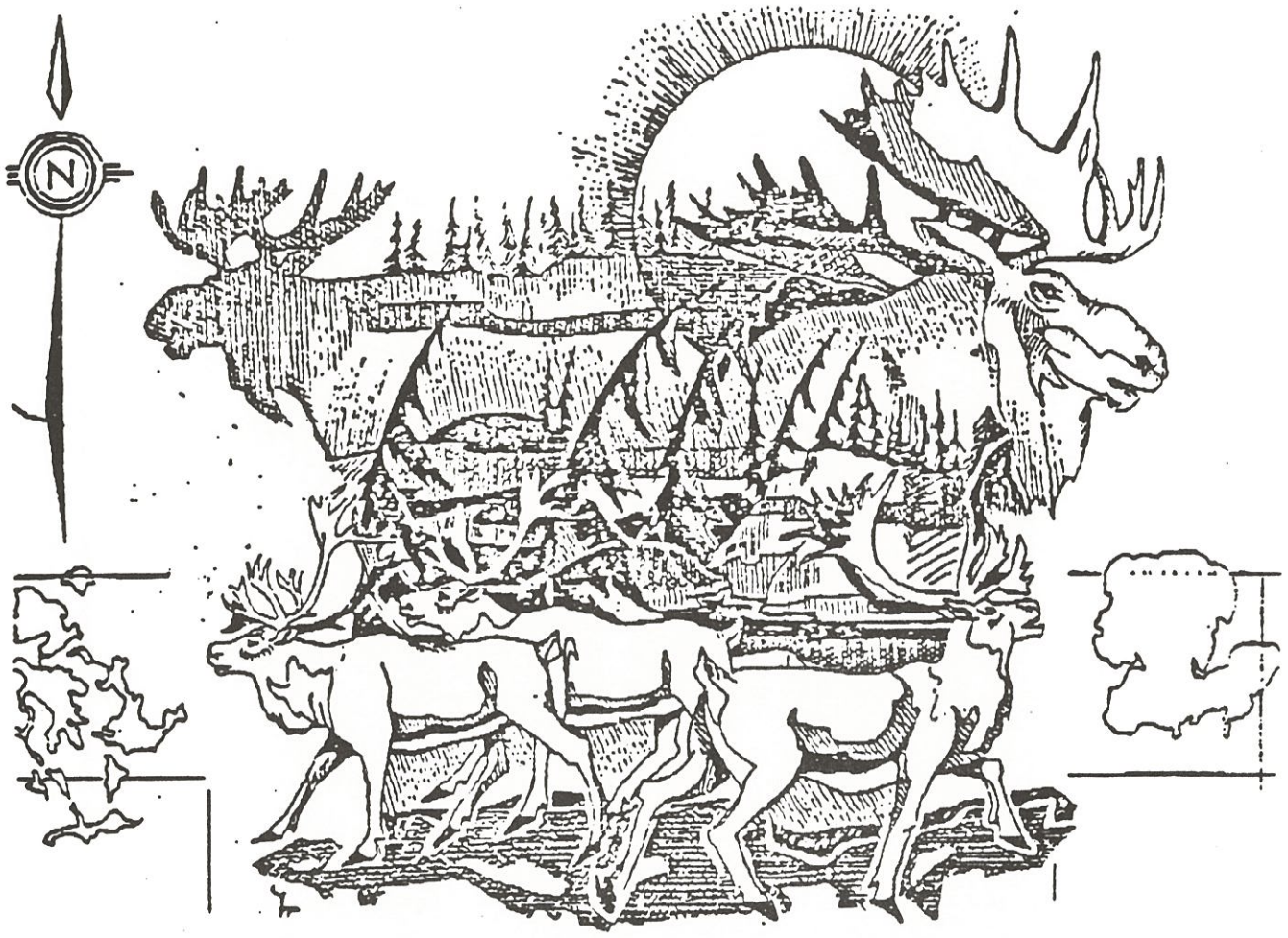
APPENDIX 1

MATHIAS COLOMB FIRST NATION

GOVERNMENT OF MANITOBA



MOOSE AND WOODLAND CARIBOU

CO-MANAGEMENT AGREEMENT

October 8, 1991

Moose and Woodland Caribou Co-Management Agreement Dated October 8, 1991

BETWEEN:

THE MATHIAS COLOMB FIRST NATION as represented
by the Chief and Council,

(called the "First Nation"),

- and -

THE GOVERNMENT OF MANITOBA as represented
by the Minister of Natural Resources

(called "Manitoba").

WHEREAS:

A. The First Nation and Manitoba recognize the value of joint long range planning with input from effected communities to safeguard the moose and woodland caribou and their habitats for the use and enjoyment of future generations;

B. In this way, the effect of proposed developments in an area can be taken into account and managed to enhance conservation and environmental protection in the interests of the First Nation and Manitoba;

C. The First Nation and Manitoba are committed to a process of meaningful effective co-management as a demonstration to other areas and a starting point for comprehensive resource co-management in the future;

The Parties Agree As Follows:

SECTION 1 - TERM OF AGREEMENT

1. This Agreement comes into effect on the date of signature and shall continue for a period of ten (10) years unless terminated before that time or extended beyond that date under Section 9.

SECTION 2 - GENERAL PRINCIPLES

2. The following general principles shall be considered in the application of this Agreement:

(a) the hunting and fishing rights of First Nation members as protected by the Constitution of Canada shall be recognized;

(b) it is in the best interests of Manitoba and the First Nation to provide for conservation through cooperation;

(c) the Minister of Natural Resources of Manitoba, in accordance with relevant legislation, has the responsibility for the appropriate management of Natural Resources in Manitoba;

(d) any recommendations from the Mathias Colomb Moose/Woodland Caribou Co-Management Board, as established by this Agreement, are subject to the approval of Manitoba and the First Nation; and

(e) recommendations which require voluntary restrictions by the First Nation and its members are subject to community support and traditional wisdom.

SECTION 3 - MANAGEMENT AREA

3(1) This Agreement applies to the Mathias Colomb Moose/Woodland Caribou Management Area ("the Management Area") set out in Schedule "A".

3(2) The parties may agree in writing to change the boundaries of the Management Area.

SECTION 4 - ESTABLISHMENT OF BOARD

4(1) Manitoba and the First Nation agree to establish "the Mathias Colomb Moose/Woodland Caribou Management Board" ("the Board") in accordance with the following subsections.

4(2) The Board shall be comprised of

(a) three members appointed by the First Nation; and

(b) three members appointed by Manitoba.

4(3) The Board shall elect a Chairperson and a Vice-Chairperson from its membership in accordance with clause 5(c). The Chairperson and the Vice-Chairperson (when assuming the responsibilities of the Chairperson) shall be non-voting members of the Board, and the

organization which appointed the member acting as Chairperson or Vice-Chairperson may appoint a replacement member who will be a voting member of the Board.

4(4) The parties may agree to increase the membership of the Board to include representatives of other resource user groups with interests compatible to those of Manitoba and the First Nation.

4(5) The Board may invite other organizations or persons to attend Board meetings as observers. It is contemplated that these organizations or persons may include: Department of Indian Affairs and Northern Development, Assembly of First Nations, Swampy Cree Tribal Council and Manitoba Keewatinowi Okimakanak. These observers shall not be entitled to vote at meetings of the Board.

4(6) The Board may invite representatives of resource user industries to attend meetings as observers and to provide information and make presentations as the Board may consider appropriate. These organizations may include REPAP, Manitoba Trappers Association and the Manitoba Lodge and Outfitters Association. These representatives shall not be entitled to vote at meetings of the Board.

SECTION 5 - RULES OF PROCEDURE OF BOARD

5. The Board shall operate in accordance with the following rules of procedure:

(a) the Board shall meet at least twice per year, but may meet more often as necessary to achieve its objectives;

(b) the first meeting of the Board shall be held at a time and place mutually agreed to by Manitoba and the First Nation;

(c) at the first meeting, the members of the Board shall elect a Chairperson and a Vice-Chairperson by secret ballot of a majority of the Board members. The Chairperson shall preside at all meetings, and in the absence of the Chairperson, the Vice-Chairperson shall assume the responsibilities of the Chairperson;

(d) the term of office of a member of the Board, including the Chairperson and the Vice-Chairperson, shall be for a period of five (5) years. Members of the Board are eligible for reappointment for an additional term or terms. If any member is unable or unwilling to complete his or her term of office, the organization which appointed the member shall designate a replacement member to serve the remainder of the term;

(e) meetings may be convened by the Chairperson at a time, date and place to be determined by the Chairperson. The notice of the meeting shall be delivered, mailed, telephoned or provided by fax not less than fifteen (15) days before the meeting is to take place;

(f) notwithstanding clause (e), meetings may be held at any time without formal notice if all members are present or those absent have waived notice or have signified their consent in writing to the meeting being held in their absence;

(g) a quorum of the Board shall consist of at least four (4) voting members of the Board of which at least two members must have been appointed by each of Manitoba and the First Nation;

(h) decisions of the Board shall be by consensus wherever possible but, where a vote is required, a majority vote of the voting members shall constitute a decision of the Board;

(i) members shall not vote by proxy;

(j) the Board shall have formal meetings at least twice per year;

(k) the Board may establish or dissolve committees as it deems necessary to carry out its functions and may set the terms of reference for those committees;

(l) the Board may identify a person as Secretary and Minutes of all meetings shall be prepared and circulated among the members of the Board. The Minutes shall contain all recommendations made by the Board; and

(m) the Board may make By-laws not inconsistent with this Agreement to govern its proceedings.

SECTION 6 - RESPONSIBILITIES OF BOARD

5. The role and responsibility of the Board shall be:

(a) to make recommendations on all matters in the Management Area pertaining to moose and woodland caribou and their habitats;

(b) to monitor moose and woodland caribou and their habitats to ensure the maintenance and enhancement of the herds;

(c) to initiate and maintain public information and education projects particularly at the community level, respecting moose and woodland caribou;

(d) to coordinate the sharing of data and other information pertaining to moose and woodland caribou;

(e) to assess demand for moose and woodland caribou;

(f) to make recommendations of permissible harvest of moose and woodland caribou, and allocations of this harvest amongst the various users;

(g) to recommend management techniques, including but not limited to, enforcement, voluntary restrictions, resource road management, refuges, wildlife management areas or other special designations as may be needed;

(h) to produce a long-term moose and caribou management plan based on scientific and traditional information and community consultation and including short and long-term population goals;

(i) to initiate special projects, upon request, related to moose, woodland caribou and their habitat;

(j) to provide a communication and information link with other co-management boards which are established or may be established in Manitoba;

(k) to initiate programs and recommendations which recognize the special needs and status of woodland caribou in Manitoba and Canada; and

(l) to conduct public meetings to provide information and hear public concerns.

SECTION 7 - ANNUAL REPORT

7. The Board shall prepare an Annual Report setting out a summary of Board activities during the preceding year and including moose and

woodland caribou population status reports and estimated harvest reports. A copy of the Annual Report shall be presented to the First Nation and the Minister of Natural Resources and interested members of the public.

SECTION 8 - FINANCIAL

8(1) Each of the parties shall be responsible for the costs of the voting members of the Board appointed by it. The costs of the non-voting Chairperson, of the Vice-Chairperson when assuming the responsibilities of the Chairperson, and of the Secretary to the Board shall be shared equally by the parties.

8(2) The Board shall develop an annual operating budget to cover miscellaneous costs such as telephone, mail, printing and other communications, to be shared equally by parties and not to exceed a total of $2,000.00 per year.

8(3) The Board may seek financial support for its work from other organizations.

8(4) The Board shall review and develop project proposals, including cooperative ventures with non-government organizations, to be submitted to the parties for approval. Any costs of these proposals shall be shared equally by each of the parties.

SECTION 9 - REVIEW - TERMINATION - EXTENSION - AMENDMENT

9(1) Either party may terminate this Agreement at any time by providing fourteen (14) days notice in writing to the other party. That notice shall also provide reasons for termination.

9(2) The parties agree that the Agreement will be reviewed after the fifth year of the Agreement to ensure that it is meeting its objectives.

9(3) The parties may, by agreement in writing, extend the term of this Agreement.

9(4) The parties may, by agreement in writing, amend any provision of this Agreement, which amendments may include extending this Agreement to other wildlife species.

SECTION 10 - NOTICES

10(1) Any notice or other communication to the First Nation under this Agreement shall be in writing and shall be delivered personally to the First Nation or an officer or employee of the First Nation or sent by registered mail, postage prepaid, to:

MATHIAS COLOMB FIRST NATION
Pukatawagan, Manitoba
R0B 1G0

10(2) Any notice or other communication to Manitoba under this Agreement shall be in writing and shall be delivered or sent by registered mail, postage prepaid, to:

MANITOBA NATURAL RESOURCES
Wildlife Branch
1495 St. James Street
Winnipeg, Manitoba
R3H 0W9

Attention: Director of Wildlife

10(3) Any notice or communication sent by registered mail shall be deemed to have been received on the third business day following the date of mailing. If mail service is disrupted by labour controversy, notice shall be delivered personally.

This Agreement has been executed by the Minister of Natural Resources on behalf of the Government of Manitoba and by the First Nation (by its duly authorized representative) on the dates noted below.

SIGNED IN THE PRESENCE OF:

THE GOVERNMENT OF MANITOBA

_____
WITNESS

_____
MINISTER OF

DATE: _____

FOR THE FIRST NATION

_____
WITNESS

_____

_____
WITNESS

_____

DATE: _____

Department of Justice
Approved as to form

Name _____

Date _____

APPENDIX 2

Memorandum of Understanding on Wildlife Management

DRAFT

This Memorandum of Agreement and Understanding

Made This _____ Day Of _____, 1993

BETWEEN: The Federation of Saskatchewan Indians Inc., a body corporate pursuant to the laws of Saskatchewan, otherwise known as the Federation of Saskatchewan Indians, representing the Chiefs of Saskatchewan in Assembly, hereinafter referred to as:

"The FSIN"

AND The Government of Saskatchewan as represented by the Minister of Environment and Resource Management, and the Minister of Indian and Métis Affairs, hereinafter referred to as:

"Saskatchewan"

AND The Canadian Wildlife Federation Inc. a body corporate pursuant to the laws of Canada hereinafter referred to as:

"CWF"

AND The Saskatchewan Wildlife Federation Inc., a body corporate pursuant to the laws of Saskatchewan, hereinafter referred to as:

"SWF"

WHEREAS the Parties agree that, in addition to existing governmental activity in wildlife management, a common, practical, developmental approach is desirable in respect of wildlife and habitat development and management.

AND WHEREAS common approaches to wildlife and wildlife habitat development and management may need to be developed and pursued which respect the Constitutional rights of Indian people while at the same time satisfying the long-term interests of all people of Saskatchewan;

AND WHEREAS the Parties have a common interest in protection, preserving, conserving and developing wildlife and their habitats;

AND WHEREAS the "FSIN Wildlife Development and Conservation Strategy", as it pertains to wildlife, contains practical avenues for both Indian developments and co-management systems;

AND WHEREAS the Parties respect the traditional Indian viewpoint that the earth is the foundation which provides nourishment, shelter, medicine and comfort for people, and that man must harmonize his actions with nature;

AND WHEREAS there is a mutual understanding of the current threats confronting wildlife and their habitats, furthermore, the Parties acknowledge that more information is required in order to determine effective responses and monitoring systems in respect of such threats; and in order to address these issues there is need for long-term planning, close cooperation, and the coordination of some wildlife and wildlife habitat management activities by the Parties;

AND WHEREAS this document is a record of the Parties' intentions and is not intended to create legally enforceable regulations;

AND WHEREAS this document is to be considered in context with the Memorandum of Understanding on wildlife matters whose signatories are the FSIN and Canada (Indian Affairs and Northern Development)

Now Therefore it is Hereby Agreed as Follows:

1. **THAT** the intention of this document is to state general principles and to provide a broad framework for future agreements. It is a record of the Parties' intentions, and is not intended to be a treaty or to create legally enforceable obligations.

2. **THAT** the Parties will base their joint wildlife conservation and development activities on the following principles:

a) Conservation is integral to the survival of Indian and non-Indian people.

b) Indian people are entitled to define and exercise their culture and to blend their culture with contemporary wildlife management practices. In this regard, Indian Elders have a valuable role to play.

c) In managing wildlife species, priority should be given to the protection, development and perpetuation of wildlife species and their supporting habitats.

d) It is desirable for the parties to engage in co-management activities to promote wildlife population levels, and to attempt to ensure that traditional, subsistence, and recreational uses of wildlife resources can be blended and coordinated.

e) The sharing of wildlife population data and information will result in a common wildlife database to assist the Parties in their common goal of preserving and managing wildlife and wildlife habitats.

f) Immediate and ongoing measures are required to foster inter-cultural exchange and the sharing of information respecting wildlife conservation and management.

g) It is desirable to involve Indian First Nations and Indian people in base-line studies and research activities involving wildlife conservation and development.

h) It is desirable to employ Indian people in the area of wildlife management, and to train Indian people as "wildlife officers", as they are defined in the Wildlife Act, R.S.S. 1978, c. W-13.1.

i) Where wildlife population data indicates that harvesting of a species of wildlife would endanger that species (or a sub-population thereof), then Saskatchewan Indian First Nations, where their interests are concerned, should be involved in plans, policies or measures designed for the protection, development, and management of the wildlife species concerned, and participate in joint activities designed to promote wildlife population levels.

j) Saskatchewan Indian First Nations, having an interest in the conservation and preservation of wildlife, require financial and technical resources to develop and maintain either Indian-specific or co-managed wildlife conservation activities.

k) The primary purpose of establishing joint wildlife and habitat management activities is to contribute to better overall wildlife resource development and utilization.

3. **THAT** the Parties endeavour to undertake, in good faith and without legal obligation, the following areas of joint activity in respect of wildlife and wildlife habitat development, protection, conservation and management:

a) The establishment and maintenance of a joint consultation and communications process by way of participation on a standing "Indian Wildlife Development Round Table";

b) The coordination of policy and planning activities;

c) The sponsorship of joint workshops and seminars, and the development of materials, for the purposes of public awareness and education;

d) The coordination of resources for joint projects, studies or activities;

e) The provision of support and assistance to First Nation wildlife and wildlife habitat initiatives and joint activities to promote wildlife and wildlife habitat management;

f) To develop and promote the use of selected co-management activities which will recognize an integral role to be played by the Saskatchewan Indian First Nations;

g) To develop and promote the establishment and use of joint management boards for the management of wildlife and wildlife habitat;

h) To share data and information in respect of wildlife and wildlife habitat, where practical and feasible;

i) To provide advice and assistance in the formulation of legislation, policies and management systems;

j) To promote the employment of Indian people in the area of natural resource management, and the training of Indian people as "wildlife officers" as defined in the Wildlife Act, R.S.S. 1978, c. W-13.1.;

k) To develop guidelines regarding conservation and utilization of wildlife resources.

4. **THAT** the parties agree that the Province is not responsible for any expenses associated with this document other than the expenses of the Province's representatives.

5. **THAT** all reports, summaries or other documents created jointly by the Parties pursuant to this document shall become the joint property of all Parties hereto and may be used in their respective endeavour and pursuits.

This Represents Our Mutual Covenants and Understandings Arrived

At This _____ Day Of _____ A.D., 1993.

THE GOVERNMENT OF SASKATCHEWAN

per: _____
Minister of Environment and Resource Management

per: _____
Minister of Indian and Métis Affairs

Federation of Saskatchewan Indians, Inc.

per: _____

per: _____
(affix corporate seal)

Canadian Wildlife Federation

per: _____

per: _____
(affix corporate seal)

Saskatchewan Wildlife Federation

per: _____

per: _____
(affix corporate seal)

APPENDIX 3

MEMORANDUM OF UNDERSTANDING

WHEREAS Ontario and the Teme-Augama Anishnabai agree to work toward a Treaty of Co-Existence so that our peoples can live in harmony:

AND WHEREAS Stewardship of the land will form a Fundamental Basis of Co-Existence;

AND WHEREAS the Stewardship of the Teme-Augama Anishnabai Homeland is crucial to the future of all peoples of Ontario:

AND WHEREAS participation of the Teme-Augama Anishnabai is essential:

THEREFORE, INITIALLY, IT IS RESOLVED THAT for the four townships of Delhi, Acadia, Shelburne, and Canton:

a) *a Stewardship Council will be created:*

b) *the Council will be made up as follows: 50% Council members appointed by the Teme-Augama Anishnabai and 50% appointed by Ontario, and a neutral chair agreed to by both Ontario and the Teme-Augama Anishnabai:*

c) *no timber licences will be issued without the approval of the Stewardship Council;*

d) *the parties agree to establish an evaluation process:*

e) *the parties agree to jointly review the results of this evaluation to facilitate their consideration of the possibility of extending the concept of shared stewardship to n'Daki-Menan.*

An interim bi-lateral process is agreed to. It involves:

a) *the Teme-Augama Anishnabai examining and consulting with the Ministry of Natural Resources on the Latchford and Temagami Crown Management Unit Plans:*

b) *the Teme-Augama Anishnabai making recommendations as to how the plans should be modified:*

c) *the Ministry of Natural Resources undertaking to modify the plans where feasible.*

The Ministry of Natural Resources will provide the Teme-Augama Anishnabai with the timber management plans covering the balance of the Teme-Augama Anishnabai lands with a view to further consultation and modification possibilities for 1991 and beyond.

FURTHER IT IS RESOLVED THAT core funding for three years consistent with the above will be provided to the Teme-Augama Anishnabai to meet their monetary needs for the Stewardship Council, the bi-lateral process as stated herein, and the Treaty Negotiation process.

FINALLY, it is agreed that all three processes will proceed concurrently.

IN WITNESS WHEREOF this agreement has been executed on behalf of the TEME-AUGAMA ANISHABAI by

Chief Gary Potts

Chief Rita O'Sullivan

on behalf of HER MAJESTY THE QUEEN
in right of the Province of Ontario by

The Honourable Lyn McLeod
Minister of Natural Resources

The Honourable Ian Scott
Minister Responsible for Native Affairs

DATED this 23rd Day of April, 1990.

ADDENDUM

ADDENDUM TO THE MEMORANDUM OF UNDERSTANDING MADE APRIL 23, 1990 BETWEEN THE TEME-AUGAMA ANISHANABI AND THE PROVINCE OF ONTARIO.

WHEREAS the Teme-Augama Anishnabai and the Province of Ontario (hereinafter Ontario) entered into a Memorandum of Understanding on April 23, 1990, hereinafter called the MOU, in which the Teme-Augama Anishnabai and Ontario agreed to the creation of a Stewardship Council;

AND WHEREAS Ontario intends to legislatively fulfil its commitment to the terms of the MOU regarding the Stewardship Council;

AND WHEREAS the Teme-Augama Anishnabai and Ontario agree to work together to determine the most appropriate legislative means of implementing the terms of the MOU regarding the Stewardship Council;

AND WHEREAS the Teme-Augama Anishnabai and Ontario wish to add provisions to the MOU in order to jointly begin the process of establishing and making operational a Stewardship Council to be known as the Wendaban Stewardship Authority;

AND WHEREAS the Teme-Augama Anishnabai have selected six (6) members to participate in the Wendaban Stewardship Authority;

AND WHEREAS Ontario has selected six (6) members to participate in the Wendaban Stewardship Authority;

AND WHEREAS the Teme-Augama Anishnabai and Ontario have agreed to the joint selection of a chairperson for the Wendaban Stewardship Authority;

AND WHEREAS this addendum is supplemental to the MOU dated April 23, 1990, between the same parties;

AND WHEREAS the parties intend to add provisions to the MOU in the manner set out below:

SCHEDULE A

WENDABAN STEWARDSHIP AUTHORITY
TERMS OF REFERENCE

The Stewardship Council shall be known as the Wendaban Stewardship Authority and shall operate in accordance with the Terms of Reference described below:

1. MANDATE

   1.1 The Wendaban Stewardship Authority shall monitor, undertake studies of, and plan for, all uses of and activities on the land within its area of jurisdiction, and report its findings from time to time to the Teme-Augama Anishnabai and Ontario.

   1.2 It is the intention of the Teme-Augama Anishnabai and Ontario to assign responsibility to the Wendaban Stewardship Authority to plan, decide, implement, enforce, regulate, and monitor all uses of and activities on the land within its area of jurisdiction.

2. AREA OF JURISDICTION

   2.1 The area of jurisdiction of the Wendaban Stewardship Authority shall include the geographic townships of Delhi, Shelburne, Canton and Acadia.

3. MEMBERSHIP

   3.1 The Wendaban Stewardship Authority shall be comprised of equal representation of the two parties, with one-half of the members appointed by the Teme-Augama Anishnabai and one-half of the members appointed by the Province of Ontario.

3.2 The Teme-Augama Anishnabai and the Province of Ontario, upon mutual agreement, shall appoint a non-voting chairperson.

3.3 The Government of Ontario shall appoint six (6) members and the Teme-Augama Anishnabai shall appoint six (6) members. All initial appointments shall be for a one year term.

3.4 Following one year of operation of the Authority, the Teme-Augama Anishnabai and the Province of Ontario shall review the terms of the appointments.

4. FUNDAMENTAL PRINCIPLES

4.1 In fulfilling its mandate the Wendaban Stewardship Authority shall adhere to the following principles:

(a) the primary goal of land stewardship is Sustained Life wherein the natural integrity of the land and of all life forms therein and thereon are maintained;

(b) uses of and activities on the land will follow the principle of Sustainable Development;

(c) to meet the above principles, co-existence between the Teme-Augama Anishnabai and the people of Ontario is necessary; and

(d) within these principles, a public involvement process will be established by the Authority.

5. FRAMEWORK FOR PROCEEDING

5.1 The Wendaban Stewardship Authority shall hold a minimum of four meetings annually.

5.2 All meetings of the Wendaban Stewardship Authority shall be open to the public with the exception of those meetings called in camera by the chairperson.

5.3 A quorum shall be eight members, excluding the chairperson.

5.4 The Wendaban Stewardship Authority shall reach decisions by consensus. Consensus shall be agreement by no less than two-thirds of the membership of the Authority, excluding the chairperson.

6. OPERATIONAL GUIDELINES

6.1 The Wendaban Stewardship Authority shall establish its operating procedures.

6.2 The Wendaban Stewardship Authority may establish an office and hire such staff as is necessary to carry out its functions and duties.

6.3 The Wendaban Stewardship Authority may request the secondment of staff from the Province of Ontario or the Teme-Augama Anishnabai, with the concurrence of the contributing party, to carry out specific duties and tasks.

6.4 The Province of Ontario shall provide sufficient financial support to the Wendaban Stewardship Authority so that it may perform its duties, in accordance with an approved budget.

6.5 The Wendaban Stewardship Authority shall prepare and submit its budget to the Province of Ontario and to the Teme-Augama Anishnabai Council for approval.

6.6 The Wendaban Stewardship Authority shall submit an audited annual financial statement to the Province of Ontario and to the Teme-Augama Anishnabai Council.

7. ROLE OF THE CHAIRPERSON

7.1 The Chairperson shall be responsible for:

- calling meetings;
- preparing reports of meetings;
- establishing meeting agendas;
- reporting to the Teme-Augama Anishnabai and the Province of Ontario;
- directing staff
- liaison with the public and media;
- compliance with the Terms of Reference of the Authority;
- calling in-camera meetings, with reason;
- building consensus amongst members of the Authority;
- calling votes.

7.2 The Chairperson shall conduct meetings in an objective and unbiased fashion.

7.3 The Chairperson may recommend the use of alternative techniques for achievement of consensus, which may include:

(a) appointment of a fact-finder;
(b) appointment of a facilitator;
(c) establishment of a process of non-binding arbitration; and
(d) any other non-binding techniques for decision-making.

8. AMENDING PROCEDURE

8.1 The Terms of Reference of the Authority may be amended with the consent of the Province of Ontario and the Teme-Augama Anishnabai.

9. APPEAL PROCESS

9.1 The Wendaban Stewardship Authority shall make recommendations to the Teme-Augama Anishnabai and Ontario regarding appeal procedures for inclusion in the intended new legislation.

10. INTERPRETATION

10.1 The establishment of the Wendaban Stewardship Authority and the participation of the Teme-Augama Anishnabai and the Province of Ontario in it is without prejudice to the position of either in the land claim and the settlement or other disposition of it.

10.2 Sustained Life shall mean:

The enduring cycle whereby currently living organisms live, then must die, fall to the earth, become decomposed, be combined with elements from earth, air, and water to give continuing life to the land, including all biological life forms within it. Sustained life emphasizes the self-renewal of the land through the life, death and recycling of current life to provide nutrients in combination with earth, air, and water that will support continuous life.

10.3 Sustainable Development shall mean:

Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

NOW THEREFORE:

1. The MOU is amended by adding the provisions contained in Schedule "A";

2. All other provisions of the MOU shall remain the same;

3. The MOU, as amended hereby, shall continue in force.

IN WITNESS WHEREOF the parties hereto have executed this addendum on behalf of the Teme-Augama Anishnabai by

Chief Gary Potts

Chief Rita O'Sullivan

on behalf of HER MAJESTY THE QUEEN
in right of The Province of Ontario by

Bud Wildman

C.J. (Bud) Wildman
Minister of Natural Resources
Minister Responsible for Native Affairs

DATED this 23 day of May, 1991.

WITNESS:

S. B. FEILOE

Addendum to Memorandum of Understanding made April 23, 1990 between the Teme-Augama Anishnabai ("TAA") and the Province of Ontario ("Ontario") and to the Addendum Thereto Made May 23, 1991 by the Parties:

1. ***Agreement in principle:*** The TAA, which includes the Temagami Band, and Ontario commit to negotiate an agreement in principle with respect to the matters set out below within the next 120 days. The Agreement in Principle will form, among other things, the basis of a "Treaty of Co-Existence".

2. ***"Treaty of Co-Existence":*** The "Treaty of Co-Existence" will involve stewardship of the land mass outlined in Appendix "A" referred to as N'Daki Menan. The parties will work towards a "Treaty of Co-Existence" by:

   (a) negotiating general principles of stewardship of N'Daki Menan;

   (b) negotiating the jurisdiction of and representation on decision-making and advisory bodies and the terms of agreements to share in decision-making with respect to the southern 2/3, on the basis that the TAA will share in stewardship in the southern 2/3;

   (c) identifying candidate areas in the southern 2/3 in which the TAA will share in any new decision-making bodies, which areas will be subsequently independently evaluated and may be expanded;

   (d) considering suitable land tenure and resource-sharing arrangements to assist the TAA to return to self-sufficiency and to support any new decision making bodies;

   (e) identifying TAA "Development Lands" within the southern 2/3; and

   (f) negotiating a plan to implement the Agreement in Principle and a process for monitoring and reporting to the parties on implementation.

3. ***Cautions on N'Daki Menan:*** Conditional upon reaching an Agreement in Principle, which can only occur after approval by the TAA in assembly, by July 31, 1993, the TAA agree to take all necessary steps to effect a release of the land cautions and to abandon all appeals in relation to the cautions with respect to N'Daki Menan at that date or, in the case of the northern 1/3 of N'Daki Menan, at an earlier date in accordance with clause 5 below.

4. ***Comprehensive Planning Council (CPC):*** Upon signing of this addendum, the parties agree as an interim measure to facilitate TAA participation in the existing CPC by:

   (a) Appointing a TAA co-chair;

   (b) appointing up to four additional members of the TAA to the CPC;

   (c) providing the TAA full access to materials produced by the CPC;

   (d) providing the TAA with an opportunity to review and comment upon said materials and to consider such reasonable changes as may assist the CPC in fulfilling its mandate; and

   (e) requiring the CPC to provide its recommendations on planning to both Ontario and the TAA.

   The TAA to undertake to use their best efforts to ensure that the CPC's activities can be completed by March 31, 1994 unless otherwise extended by agreement.

5. ***Bilateral processes with respect to the northern 1/3 of N'Daki Menan:*** With respect to the approximately northern 1/3 of N'Daki Menan (see Appendix "A") the parties commit to negotiate within 30 days of the signing of this addendum, bilateral processes to provide for TAA input and participation respecting decisions affecting stewardship of the northern 1/3. Upon agreement concerning such bilateral processes the TAA agree to take all necessary steps, to effect a release of the land cautions and to abandon all appeals in relation to the cautions in the northern 1/3 of N'Daki Menan.

6. ***Release:*** Upon execution of the "Treaty of Co-Existence" a release or releases in any reasonable form required by Ontario from all claims and liability including any claims and liability arising from the Supreme Court of Canada decision of August 15, 1991 or relating to the Robinson-Huron Treaty will be provided by the TAA to Ontario.

7. ***Compensation:*** The parties agree to negotiate the amount and nature of any compensation payable to the TAA for past grievances and breaches by the Crown of its obligations to the TAA. It is acknowledged by the parties that Canada has a role to play in the provision of compensation to the TAA and that nothing herein derogates from Canada's fiduciary obligations.

8. ***Consultation:*** The parties will engage in full public consultation with regard to the matters in Article 2 of this addendum.

9. ***Funding***: Additional funding for up to one year will be provided by Ontario to the TAA.

10. *Government of Canada*: The parties agree to undertake all measures necessary to secure the involvement of the Government of Canada because, among other reasons, its participation may be legally necessary under the Constitution of Canada in order to implement the provisions of the Agreement in Principle and is, in the opinion of Ontario, necessary to conclude a "Treaty" within the meaning of section 35 of the Constitution Act, 1982.

IN WITNESS WHEREOF the parties hereto have executed this Addendum this 27th day of April, 1993.

On Behalf of the **TEME-AUGAMA ANISHNABAI** by

Chief Gary Potts

Chief Gary Potts

Chief Rita O'Sullivan

Chief Rita O'Sullivan

On Behalf of **HER MAJESTY THE QUEEN**
in right of the **Province of Ontario** by

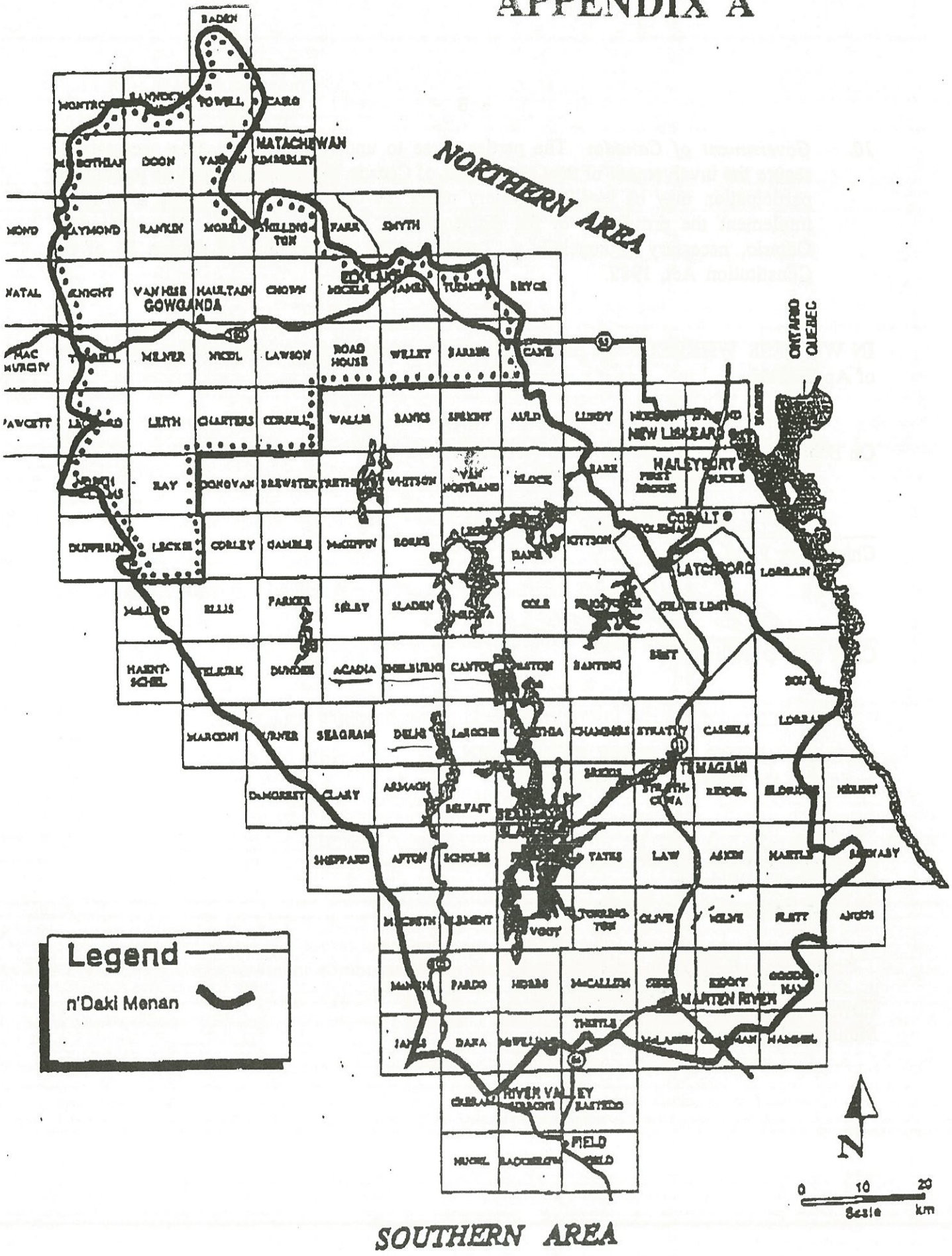
Bud Wildman

C. J. ("Bud") Wildman
Minister Responsible for Native Affairs

Howard Hampton

Howard Hampton
Minister of Natural Resources

APPENDIX A


NORTHERN AREA
MATACHEWAN
GOWGANDA
NEW LISKEARD
HAILEYBURY
COBALT
LATCHFORD
TEMAGAMI
MARTEN RIVER
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QUEBEC
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SOUTHERN AREA

APPENDIX 4

TRILATERAL AGREEMENT

THIS AGREEMENT IS MADE BETWEEN:

The Algonquins of Barriere Lake (having an administrative office at Rapid Lake reserve), represented by their duly authorized Chief, Mr. Jean-Maurice Matchewan;

AND

The Gouvernement du Québec, represented by Mr. Christos Sirros, Minister for Native Affairs, and Mr. Gil Rémillard, Minister for Canadian Intergovernmental Affairs, Mr. Albert Côté, Minister of Forests and Mr. Gaston Blackburn, Minister of Recreation, Hunting and Fishing (hereinafter referred to as "Québec");

AND

The Government of Canada, represented by Ms Monique Landry, Minister of State for Indian Affairs and Northern Development (hereinafter referred to as "Canada").

WHEREAS the Brundtland report put forward the notion of sustainable development;

WHEREAS Québec and the Algonquins of Barriere Lake wish to ensure, on the territory currently used by the latter and included in Annex 1 and in Annex 2, the rational management of renewable resources in view of making possible, with a concern for conservation, their versatile utilization, and the pursuit of the traditional activities by the Algonquins of Barriere Lake;

WHEREAS Québec and the Algonquins of Barriere Lake wish to engage in the preparation of a draft integrated management plan for renewable resources (forests and wildlife) within the framework of a pilot project, in view of making sustainable development possible in the above-mentioned territory;

WHEREAS the experience gained as a result of this pilot project can be applied to other territories in Quebec;

WHEREAS Québec has already expressed the desire to work with the Algonquins of Barriere Lake in the preparation of this management plan;

WIIEREAS Québec has taken certain measures making it possible to carry out this management plan;

WIIEREAS Canada, having a special fiduciary responsibility towards the Algonquins of Barriere Lake, wishes to support them in this undertaking;

WHEREAS the Algonquins of Barriere Lake and Hydro-Québec are examining the possibility of studying the impacts of the operation of the Baskatong, Cabonga and Dozois reservoirs;

THEREFORE THE PARTIES AGREE TO THE FOLLOWING:

1. The parties within their respective jurisdictions, agree to initiate a trilateral process in view of enabling Québec and the Algonquins of Barriere Lake to prepare a draft integrated management plan for renewable resources (forests and wildlife) with regard to the territory included in Annex 2 and to propose means to carry out the plan. The plan will be prepared with the objective of sustainable development.

2. Within the framework of the trilateral process, the following is to be carried out:

   Phase one: the analysis of existing data and, when required for the completing of information, the inventory of renewable natural resources (forests and wildlife) within the perimeter of the territory included in Annex 2 of the present agreement, a study of their utilization, potential and the impacts and the interaction of activities related to their exploitation and development;

   The works contemplated by phase one will be done in two stages:

   a) with respect to that part of the study area covered by vertical lines in Annex 2 of the present Agreement (study area A), the works will commence immediately; and

   b) with respect to that part of the study area covered by diagonal lines in Annex 2 of the present Agreement (study area B), the works will commence within one year from the date this agreement comes into force.

   However, the parties agree that the Algonquins of Barriere Lake may propose the exchange of any part or parts of the territory within study area A for any part or parts of the territory of equal size within study area B.

   Phase two: the preparation, with regard to the territory included in Annex 2, of a draft integrated management plan for renewable resources as defined in section 1, for the purpose of making their sustainable development possible.

   The special representatives may, proceeding from the draft integrated management plan, put forward management principles that could apply on the territory viewed by Annex 1.

   Phase three: the formulation of recommendations for the carrying out of the draft plan prepared by Québec and the Algonquins of Barriere Lake during phase two; these recommendations may aim at modifying, in the territory included in Annex 2, management and exploitation methods, administrative and contractual adjustments and amendments to regulations or laws.

   The special representatives may, proceeding from the draft integrated management plan, put forward management principles that could apply on the territory viewed by Annex 1.

3. In the framework of the trilateral process, each party assumes its own representation costs.

   Common costs of organization (offices, secretary, etc.) are shared in equal parts by the parties.

   The costs of expertise and professional services are shared in equal parts by Québec and the Algonquins of Barriere Lake.

   At the request of the Algonquins of Barriere Lake, Canada agrees to pay for all costs incurred by the Algonquins of Barriere Lake.

   Québec and Canada agree to reimburse the Algonquins of Barriere Lake, up to an amount of 338,000 $, costs related to the subject of the present Agreement incurred by them prior to the signing of this agreement. The Algonquins of Barriere Lake recognize having already received to that effect an amount of 55,000 $ by Québec and an amount of 182,000 $ by Canada. The reimbursement of the remaining amount, that is 101,000 $, shall be made in equal shares by Québec and Canada within 30 days of the signing of this Agreement by all parties, on submission of invoices.

4. Each of the parties will appoint a special representative mandated to represent them within the framework of the trilateral process. The parties guarantee that their respective representatives will have sufficient authority to make decisions and to apply the provisions of the present Agreement in accordance with the sharing of responsibilities provided for in section 6. The parties agree to appoint their representatives within the three days following the signing of this agreement.

5. The special representatives of Québec and of the Algonquins of Barriere Lake will supervise the work of the task force appointed to identify, within the perimeter of the territory specified in article 2, measures to harmonize the conduct of forestry activities with the traditional activities of the Algonquins of Barriere Lake, as well as the sensitive zones which should be protected more especially in a provisional manner. The special representatives when deemed possible, obvious and necessary may extend outside of the latter one or some sensitive zones identified within the study area specified in article 2. This is the task force that was mentioned in the letter of August 27, 1990, addressed to Mr. Jean-Maurice Matchewan by Messrs. Albert Côté and John Ciaccia and it will include the members to be identified by the Algonquins of Barriere Lake.

   The special representatives shall forthwith upon being appointed develop detailed terms of reference for the task force.

   The task force will make a report by ~~August 15~~ November 30, 1991 to the special representatives containing recommendations for the provisional protection (up to the end of the process) of the sensitive zones and the territory so as to minimize the impact of forestry activities on the traditional activities of the Algonquins of Barriere Lake.

6. a) The special representatives appointed, pursuant to section 4, by the three parties must:

      1) supervise the trilateral process and ensure that it functions efficiently;

2) guarantee constant liaison and cooperation between them and the technical personnel, the political representatives and the senior officials;

3) develop a practical process and a work plan to make the trilateral process work;

4) identify the financial requirements for the smooth functioning of the trilateral process.

b) The special representatives of Québec and of the Algonquins of Barriere Lake must:

1) identify the studies and inventories that are required to be made;

2) identify requirements in expertise and professional services;

3) develop detailed terms of reference for, and supervise the work of, the task force contemplated in section 5;

4) formulate a draft integrated management plan and recommendations for the carrying out of the plan as required in section 2; and

5) formulate recommendations to Québec and to the Algonquins of Barriere Lake concerning the follow-up required on the report submitted by the task force contemplated in section 5.

7. The decisions related to the works contemplated in section 6 a) of this Agreement are reached by consensus of the special representatives of the three parties.

The decisions related to the works contemplated in section 6 b) of this Agreement are reached by consensus of the special representatives of Québec and the Algonquins of Barriere Lake.

Both Québec and the Algonquins of Barriere Lake agree to examine seriously the recommendations contemplated in paragraphs 4 and 5 of section 6 b) that will be submitted to them by the special representatives and to negotiate an agreement on the carrying out of the recommendations retained.

8. The work calendar for the special representatives is as follows:

- at the latest on ~~August 15~~ November 30, 1991:

submission of the report of the task force mentioned in section 5 regarding the provisional measures in the sensitive zones and the territory;

- at the latest on ~~September 1st~~ December 15, 1991:

recommendations by the special representatives of Québec and the Algonquins of Barriere Lake regarding follow-up on the task force report;

- Spring of 1994:

tabling of a draft integrated management plan for renewable resources;

- Autumn of 1994:

  recommendations by the special representatives of Québec and the Algonquins of Barriere Lake regarding the carrying out of the draft integrated management plan for renewable resources.

  beginning of negotiations between Québec and Algonquins of Barriere Lake in view of an agreement on the carrying out of the recommendations retained.

9. Nothing in this Agreement or annexes prejudices the rights of each of the parties.

   Nothing in this Agreement or annexes is to be interpreted as creating, recognising or denying rights under section 35 of the Constitution Act of 1982.

10. This Agreement is binding on the parties and shall be in force when signed by all the parties.

    It will terminate on May 26, 1995.

ALGONQUINS OF BARRIERE LAKE

Date

Chief Jean-Maurice Matchewan

Witness

QUÉBEC

Date

Christos Sirros

Gaston Blackburn

Albert Côté

Gil Rémillard

Witness

CANADA

Date

Monique Landry

Witness

APPENDIX 5

Joint Stewardship Agreement
between
The Xax'lip First Nation
and
Her Majesty the Queen
In right of the
Province of British Columbia (the Province)

Whereas:

The Xax'lip First Nation asserts aboriginal rights, title, and interests with respect to their traditional territory;

The Xax'lip First Nation and the Province agree that the matter of aboriginal rights, titles and interests can best be settled through the Treaty Commission process.

the Xax'lip First Nation has primary responsibility for the maintenance of Xax'lip values and traditions and the well-being of Xax'lip people;

the Xax'lip people have accepted the unique responsibilities bestowed upon them by the Creator, to serve for all time as custodians of the lands, waters and resources of the Xax'lip traditional territory;

the Xax'lip First Nation and the Province wish to recognize and protect a way of life that is based on an economic and spiritual relationship between the Xax'lip people and their traditional territory;

the Xax'lip First Nation and the Province wish to achieve agreement respecting their relationship with one another regarding their respective roles in the management of land and resources in the Xax'lip traditional territory; and

WATERS

the Xax'lip First Nation and the Province wish to establish joint stewardship arrangements which will seek consensus on decisions respecting land and resources in the Xax'lip traditional territory.

WATERS

Therefore be it resolved that:

1.0 Scope:

1.1 In this agreement, traditional territory means that area outlined on the map attached as appendix A which area is asserted by the Xax'lip First Nation as the traditional territory of the Xax'lip People.

1.2 This agreement shall apply to the traditional territory.

1.3 This agreement shall apply to any license, permit, or other disposition and the use of land, water and resources in the traditional territory, including, but not limited to the following uses:

1.3.1 road construction and maintenance,
1.3.2 mining exploration and development,
1.3.3 harvesting of resources, including fish and wildlife, and forests
1.3.4 uses of water, including hydro electric projects
1.3.5 dispositions of land, including fee simple interest from crown grants,
1.3.6 telecommunications,
1.3.7 research projects,
1.3.8 public utilities, including public utility corridors, and
1.3.9 such other matters as the parties may agree to from time to time.

2.0 Joint Stewardship:

2.1 The parties intend to develop detailed joint stewardship arrangements respecting the matters set out in 1.3.

2.2 The detailed joint stewardship arrangements shall:

2.2.1 increase Xax'lip First Nation involvement in dispositions of land and resources in the traditional territory,

2.2.2 integrate the traditional knowledge of the Xax'lip people with the technical knowledge existing in government and the Xax'lip First Nation ,

2.2.3 recognize the decision making process of the Xax'lip First Nation in structuring the participatory processes for resource decision making,

2.2.4 provide notification and information to the Xax'lip First Nation on proposed dispositions of land and resources in the traditional territory as necessary for the Xax'lip First Nation to make an informed decision,

2.2.5 seek the Xax'lip First Nation position with respect to the proposed disposition in the traditional territory,

2.2.6 provide structures and processes which will seek to reach a consensus between the Xax'lip First Nation and government within a reasonable period of time on proposed dispositions of land, water and resources in the traditional territory,

2.2.7 provide a joint dispute resolution mechanism to resolve disputes respecting land, water and resource dispositions in the traditional territory,

2.2.8 enable the parties to respond to applications for the disposition of land, water and resources in the traditional territory within a reasonable period of time.

2.3 The parties shall take steps to encourage the Government of Canada to participate in this agreement.

3.0 Advisory Committee:

3.1 To assist in developing the detailed joint stewardship arrangements, within seven (7) days of the signing of this agreement, the Province and the Xax'lip First Nation shall establish a resource management advisory committee to make recommendations to the Xax'lip First Nation and the Province on the details for the joint stewardship arrangements between the parties.

3.2 The advisory committee shall consist of four members, two of whom shall be appointed by the Xax'lip First Nation and two of whom shall be appointed by the Province.

3.3 The parties shall consult each other regarding their respective nominees.

3.4 The Province will provide Fifteen Thousand Dollars ($15,000.00) to the Xax'lip First Nation in the form of a contribution agreement to support the Xax'lip First Nation's participation in the advisory committee.

3.5 The advisory committee shall report to the parties within three (3) months of the signing of this agreement.

3.6 The parties may agree to engage a facilitator to assist the advisory committee in performing its function.

3.7 The costs of the facilitator, up to a maximum of $5,000.00, shall be borne by the Province.

3.8 The coordinating Ministry of the Province's nominees on the advisory committee shall be the Ministry of Aboriginal Affairs.

3.9 The advisory committee shall endeavour to operate on a consensus basis.

3.10 The meetings of the advisory committee shall take place, to the extent practicable, in the Xax'lip First Nation traditional territory.

3.11 The advisory committee shall conduct their deliberations in a manner that facilitates a free exchange of ideas in searching for solutions that maximize the best interests of both parties.

3.12 Positions advanced and solutions proposed by each advisory committee representative shall be without prejudice to the parties who nominated them.

3.13 The advisory committee shall make recommendations on:

3.13.1 guidelines, criteria and timelines for the review of dispositions of land, water and resources in the traditional territory,

3.13.2 means of providing the Xax'lip First Nation with necessary information on applications for the disposition of land, water and resources in the traditional territory,

3.13.3 means of providing effective participation by the Xax'lip First Nation (and other First Nation's as appropriate) in the review of government legislation, regulations, policies and programs respecting the use of land, water and resources,

3.13.4 the adequacy of the existing resource information data available on the traditional territory,

3.13.5 means of recognizing the decision making process of the Xax'lip First Nation in structuring participatory processes for resource decision making,

3.13.6 means of integrating the traditional knowledge of the Xax'lip people with the technical knowledge existing in government and the Xax'lip First Nation,

3.13.7 developing education initiatives to increase the parties mutual understanding of their respective resource decision making processes,

3.13.8 what mechanisms are most appropriate for the effective participation of the Xax'lip First Nation on the various applications for the disposition of land, water and resource interests in the traditional territory,

3.13.9 achieving coordinated community based, effective and efficient processes for reviewing dispositions of land, water and resources in the traditional territory,

3.13.10 the most appropriate joint dispute resolution mechanisms to resolve disputes respecting land, water and resources in the traditional territory,

3.13.11 the resources required and available to support the effective participation of the Xax'lip First Nation in joint stewardship arrangements.

3.13.12 the resources required and available to the Province to implement the recommendations,

3.13.13 such other issues related to the land, water and resources as the advisory committee deems appropriate.

~~3.13.13 such other issues related to the land, water and resources as the advisory committee deems appropriate.~~

3.14 The parties agree to establish such structures and processes as are necessary to implement the recommendations of the advisory committee which are approved by the parties.

4.0 Without prejudice.

4.1 This agreement shall not prejudice any aboriginal rights, titles or interests of the Xax'lip First Nation, nor any treaty rights, that may be negotiated for the Xax'lip First Nation.

Signed at the Fountain Valley
July 6th, 1992

For the Xax'lip First Nation

Chief Roger Adolph

For the Province

Honourable Andrew Petter
Minister of Aboriginal Affairs

Memorandum of Understanding
between
Xax'lip First Nation
and
Her Majesty the Queen
In right of the
Province of British Columbia (the Province)
on Joint Natural Resource Initiatives

1.0 Objective:

1.1 To foster employment and training opportunities for the Xax'lip people associated with the management of natural resources within the Xax'lip First Nation traditional territory.

1.2 To develop cooperative resource management initiatives within the Xax'lip First Nation traditional territory.

2.0 Resource Management Plan:

Phase I

2.1 The Province and the Xax'lip First Nation shall jointly undertake the development of an Integrated Resource Management Plan for the Xax'lip First Nation traditional territory.

2.2 The project shall be divided into two phases. Phase I will commence July 15, 1992 and will consist of the following:

2.2.1 collation of existing inventories and resource plans for all the Province's Ministries,

2.2.2 review of resource management and use of the traditional territory by the Xax'lip First Nation,

2.2.3 integration of traditional Xax'lip First Nation resource data, and

2.2.4 development of the terms of reference for Phase II of the Resource Management Plan by the Province and the Xax'lip First Nation .

2.3 The budget for Phase I shall be $50,000 comprised of contributions of $25,000 each from the Ministry of Forests and the Ministry of Aboriginal Affairs.

2.4 The Ministry of Aboriginal Affairs contribution shall fund the Xax'lip First Nation participation in Phase I.

Phase II

2.5 The terms of reference referred to in 2.2.4 shall be negotiated by the parties to this Memorandum of Understanding.

2.6 The terms of reference shall include:

2.6.1 timelines for completion of the plan,
2.6.2 a process for public involvement,
2.6.3 a process for the review of existing resource uses, and
2.6.4 the projected costs of conducting Phase II including the identification of resources to support the Xax'lip First Nation participation.

3.0 Forestry Initiatives:

Employment:

3.1 Subject to budgetary approval, the Ministry of Forests shall employ 4 native persons during the summer of 1992 under its Native Orientation Program in the Lillooet District.

3.2 The Ministry of Forests and other Ministries as appropriate and the Xax'lip First Nation will cooperate in facilitating the training and development of Xax'lip First Nation members so that they will have access to the employment opportunities set out in 3.1 and 3.3.

Economic Opportunities:

3.3 Subject to budgetary approval, the Ministry of Forests shall enter into contracts with the Xax'lip First Nation in the Fountain Valley to carry out the following:
3.3.1 roadside slashing,
3.3.2 fence building and repairing,

3.3.3 slashing stock trails,
3.3.4 burning landings,
3.3.5 grass seeding,
3.3.6 maintaining recreation sites, docks, ski trails, and
3.3.7 silviculture.

3.4 After September, 1992, the Ministry of Forests shall, in accordance with Section 18 of the Forest Act, and upon receipt of an application by the Xax'lip First Nation, offer a timber sale license of up to 2000 m3 in the Xax'lip First Nation traditional territory to the Xax'lip First Nation, for training purposes.

3.5 The Ministry of Forests shall assist the Xax'lip First Nation in applying for Small Business Enterprise Program Sales. In particular, a value added S.B.F.E.P. sale of approximately 120,000 m3 over 4 years in the Lillooet T.S.A. to be offered for sale in January, 1993.

3.6 The Ministry of Forests shall make best efforts to facilitate discussions between the Xax'lip First Nation and Ainsworth Lumber Ltd. with respect to contract, employment and joint opportunities.

3.7 The Ministry of Economic Development, Small Business and Trade and the Xax'lip First Nation shall jointly undertake a feasibility study to review the Xax'lip First Nation proposal to utilize logging wood waste in value added manufacture.

3.8 The Ministry of Economic Development, Small Business and Trade shall contribute $20,000. to the feasibility study.

4.0 Fish and Wildlife Initiatives:

4.1 The Ministry of Environment, Lands and Parks shall undertake, in consultation with the Xax'lip First Nation, the following projects in the Xax'lip First Nation traditional territory:
4.1.1 spawner enumeration, and
4.1.2 stream improvement.

4.2 The combined budget for the projects set out in 4.1 shall not exceed $20,000

4.3 The projects described in 4.1, shall provide 2 months employment for three Xax'lip First Nation members to be selected jointly by the Ministry and the First Nation.

4.4 The Ministry of Environment, Lands & Parks and the Xax'lip First Nation shall explore opportunities for First Nation involvement in;
- 4.4.1 enhancement of the mule deer range,
- 4.4.2 development of wildlife inventories, and
- 4.4.3 supplementary student training for technical and enforcement fields.

5.0 General

5.1 The Ministry of Economic Development, Small Business and Trade, through Regional Development Personnel, will assist the Xax'lip First Nation and Xax'lip First Nation members in:
- 5.1.1 identifying business opportunities,
- 5.1.2 developing business and community development plans,
- 5.1.3 applying for financial and business assistance from existing federal and provincial programs, including DINA's, CEIC, DFO co-management incentives program and any provincial business assistance program,
- 5.1.4 providing business training seminars
- 5.1.5 providing community leadership training, and
- 5.1.6 providing community development workshops.

5.2 The parties will explore other opportunities in agriculture and aquaculture.

5.3 The parties will investigate potential federal programs to assist these initiatives, including Forest Canada's program to support First Nation forest management.

Joint Undertaking with respect to the Fountain Valley Road
between
The Xax'lip First Nation
and
Her Majesty the Queen
In right of the
Province of British Columbia (the Province)

Whereas: the parties have entered into a Joint Stewardship Agreement and a Memorandum of Understanding on Joint Natural Resource Initiatives, and

the parties wish to achieve an interim arrangement respecting access on the Fountain Valley Road.

The parties agree that:

1.0 This undertaking will come into effect on the date of signature of the Joint Stewardship Agreement and the Memorandum of Understanding on Joint Natural Resource Initiatives.

2.0 Subject to 3.0 and unless otherwise agreed by the parties, this undertaking will continue in force until a permanent agreement has been reached between the Xax'lip First Nation and the Province with respect to the Fountain Valley Road.

3.0 In the event that the technical advisory committee, established pursuant to 3.0 of the Joint Stewardship Agreement, fails to report to the parties within three (3) months of the signing of the Joint Stewardship Agreement, or in the event that Joint Stewardship arrangements are not entered into thereafter, this undertaking shall terminate notwithstanding 2.0, unless the parties agree to an extension.

4.0 This undertaking is without prejudice to the question of the ownership and jurisdiction of the Fountain Valley Road as it traverses Xax'lip First Nation reserves in the traditional territory.

5.0 The public shall have access to use the Fountain Valley Road.

6.0 The parties agree to monitor the traffic on the Fountain Valley Road commencing on the date of signature of this undertaking.

7.0 Within three (3) months of the signing of this undertaking the parties shall review existing Xax'lip First Nation bylaws and interests with respect to the Fountain Valley Road and the laws of general application which apply to the Fountain Valley Road with a view to standardizing them to the satisfaction of the parties, including such measures required for implementation. The review shall consider the results of the monitoring set out in 7.0.

8.0 Unless otherwise agreed to by the parties, construction and maintenance on the Fountain Valley Road shall be in accordance with the agreement dated October 16, 1990 between the Xax'lip First Nation and the Ministry of Highways and Transportation, attached as Appendix A to this undertaking.

9.0 the Xax'lip First Nation agree to remove all "Private Road" signs within the Fountain Valley Road right of way.

10.0 The parties shall participate in negotiations in an attempt to reach a permanent agreement with respect to the ownership and jurisdiction of the Fountain Valley Road.

11.0 This undertaking is without prejudice to any aboriginal rights, titles or interests of the Xax'lip First Nation.

Signed at the Fountain Valley
July 6th, 1992

For the Xax'lip First Nation

Chief Roger Adolph

For the Province

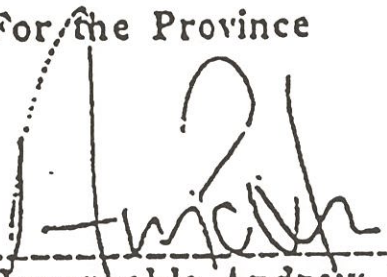
Honourable Andrew Petter
Minister of Aboriginal Affairs

Signed at the Fountain Valley,
July 6th, 1992

For the Xax'llp First Nation

Chief Roger Adolph

For the Province



Honourable Andrew Petter
Minister of Aboriginal Affairs