

**“A War without Bombs”: The Government’s Role in Damming and
Flooding of Lac des Mille Lacs First Nation**

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By Howard Adler

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“The loss of land, and the loss of [wild] rice, and the loss of the livelihood that we had there, that I guess, and the loss of family connections, relationships, extended family, [it’s] just almost like there was a war, we don’t have those family connections. Yeah it’s just, almost like there was a war... without bombs, but other ways, things happened. Yeah, it’s almost like it was a war but without bombs and rifles, because families were taken away and they’re separated and you don’t know who and your land is devastated, things are lost, and you don’t know whether you should turn left or right, and you have to go to a new place to live where you’re not wanted there either, it’s devastating, it’s a catastrophe”

Respected Elder Shirley Churchill
Lac des Mille Lacs First Nation

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LIST OF ABBREVIATIONS

AO	Archives of Ontario
CAS	Children's Aid Society
CPR	Canadian Pacific Railway
HBC	Hudson's Bay Company
INAC	Indian and Northern Affairs Canada
LAC	Library and Archives Canada
LDMLFN	Lac des Mille Lacs First Nation
MNR	Ministry of Natural Resources
OC	Order in Council
SC	Statutes of Canada
TARR	Treaty and Aboriginal Rights Research

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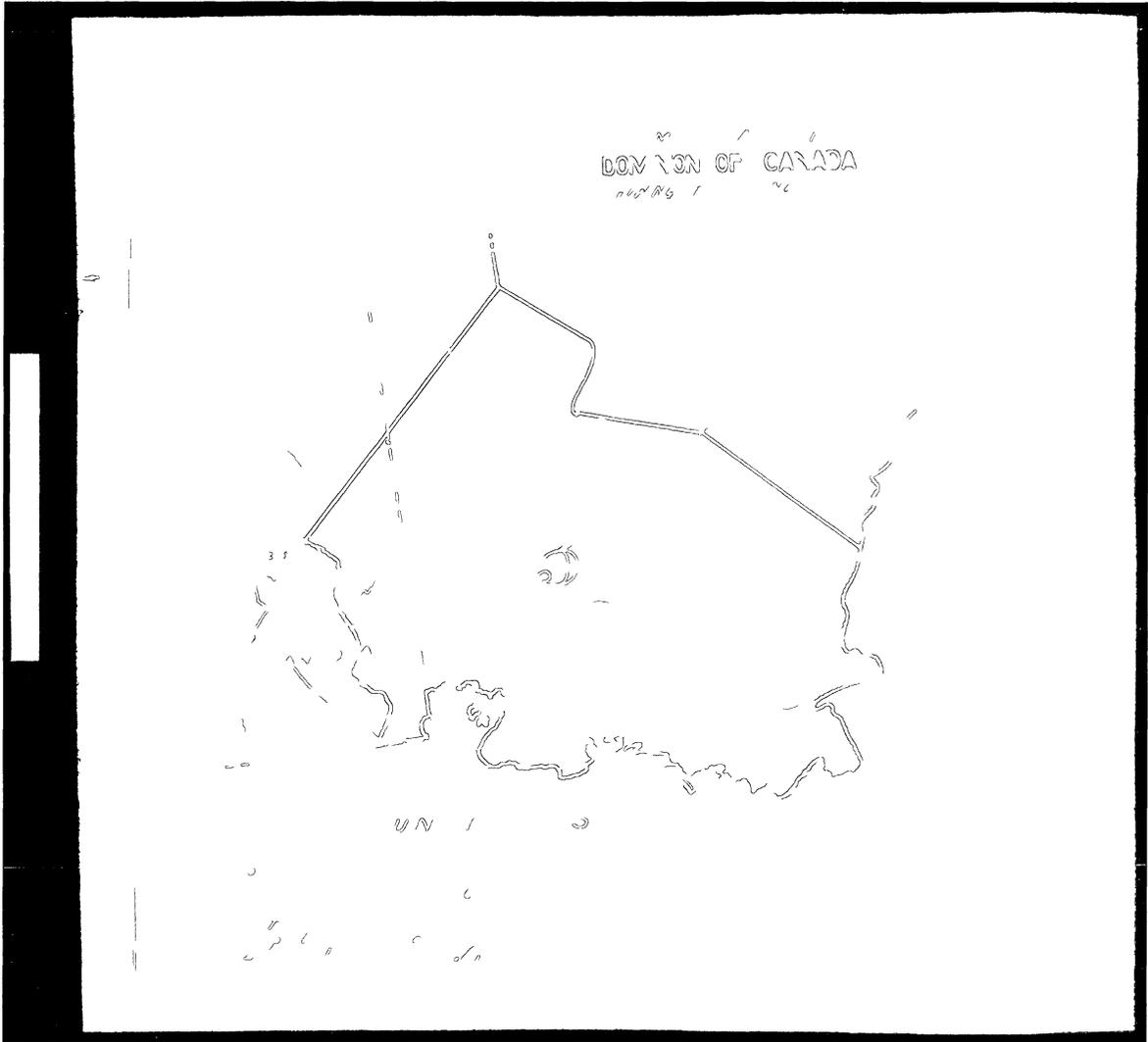


Figure 1 Map Showing Treaty No.3, 1908¹

¹LAC, RG10, Volume 2313, File 62509-3A, pt. 1, Microfiche NMC82696, 1908.

CHAPTER ONE

Introduction

“It’s like a war, but without bombs”, are the words that respected Ojibwa Elder Shirley Churchill used to describe what it has been like for her to live in Canada as a member of Lac des Mille Lacs First Nation. During war, people can be separated from family members, lose their homes and everything they have ever owned, be dispossessed from their land, become refugees, and forced to leave for another country where they don’t know the language or culture. In a word, people can lose the ability to determine their own future, and I suppose, there are even some people who might benefit. In this respect, war is an apt metaphor for the community of Lac des Mille Lacs First Nation and their experience under the colonial rule of Canada.

This thesis argues that Ontario’s Ministry of Lands and Forests, and/or Canada’s Department of Indian Affairs, were indifferent, complicit, negligent, and ultimately responsible for the construction of dams that flooded and damaged the Lac des Mille Lacs First Nation’s traditional territory, resources, and reserve lands, resulting in the dispersal of their community. It is also argued that the federal government failed in its treaty obligations to manage reserve lands for the benefit of the Lac des Mille Lacs First Nation. In order to fully understand how governments have been responsible, and how the federal government has breached its treaty obligations, it is necessary to examine the context in which the Lac des Mille Lacs dams were built. For that reason, this thesis will identify and examine the political environment, and the events that are related to, or led to, the construction of these dams. This thesis also aims to determine the roles of the federal and provincial governments in the construction of these dams, the regulation of

water levels, and the ways that each level of government acted in response to knowledge that damage might occur to reserve lands and Ojibwa resources, or knowledge that damage was occurring to reserve lands and Ojibwa resources. In order to understand the importance of this history, it is necessary to have a rudimentary knowledge of how the contemporary Lac des Mille Lacs First Nation has been affected by the dispersal of their community. As a result, this thesis will address the diasporic nature of the contemporary Lac des Mille Lacs First Nation community. This thesis also uses, and discusses, an Indigenous methodology, and will be situated within the decolonial discourse.

In terms of the scope of this thesis, it will focus on the context in which two dams were built on the outlet of Lac des Mille Lacs, at the headwaters of the Seine River. A dam was constructed in the 1872 – prior to the Treaty 3 agreement in 1873 – for the purposes of navigation along the Dawson Route¹. Accordingly, this thesis will examine the pre-treaty political climate, and the manner in which Lac des Mille Lacs First Nation adhered to Treaty 3 through the Shebandowan Adhesion. An Industrialist named Edward Wellington Backus, for the purposes of generating hydro electricity further downstream, constructed another dam in 1923. Consequently, this thesis will discuss companies owned by Backus that built dams and flooded other Ojibwa reserves, prior to the damming and flooding of Lacs des Mille Lacs First Nation. It was Ontario's Ministry of Lands and Forests that issued waterpower leases and licenses of occupation, permitting Backus's company's to build dams and control water levels on the Seine River. Therefore this thesis will also examine the St. Catherine's Milling case, and its implications, as it resulted in the systemic failure of the constitutional division of powers between provincial and federal governments to consider Treaty rights.

¹The Dawson Route, or the Red River Route, will be discussed in greater detail in Chapter 2.

Although there were at least two other dams constructed on the outlet of Lac des Mille Lacs – the Hogan dam for timber purposes, and the Ontario dam for hydroelectric purposes – they will not be the focus of this thesis. Not much is known about the Hogan dam, and during the research process only a few sources that mention it, or that are related to it, were found. Although there are many sources on the Ontario dam, it is simply beyond the scope of this paper. The Backus dam was chosen as the focus, since the Ontario dam was also constructed in similar contexts, that is, for hydroelectric purposes, and connected to the division of powers between federal and provincial governments. Moreover, as a result of flooding from the Backus dam, many families had already left the reserve by 1928, with even more reported to have left by 1944.² The construction, use, and control of the Ontario dam, can be thought of as simply a continuation of government complicity and negligence exhibited throughout government management of reserve lands during construction and operation of the Backus dam.

Lac des Mille Lacs First Nation is an Anishinaabe, or Ojibwa community, historically located in the Treaty 3 area, or in the Ontario-Minnesota boundary waters area. After Treaty 3 was negotiated in 1873, the First Nation's territory was described as encompassing an area from "the district to the North" of Lac des Milles Lacs "lying along the Height of Land between that lake and the waters of the Nipegon and Lac Seul".³ According to community Elders, the First Nation also used lands to the west of the lake along the Seine River, and south into what became Quetico Provincial Park. In

²Joan Lovisek, "The Lac des Mille Lacs Tragedy: Anatomy of a Century of Flooding", in *Sacred Lands, Aboriginal World Views, Claims, and Conflicts* (Ed. Jill Oakes, Edmonton, Canadian Circumpolar Institute Press, 1998) 135, 136.

³Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories, Including the Negotiations on which they were Based and Other Information Relating Thereto* (Originally

Railroad constructed between 1881 and 1885.⁶ When the initial reserves were plotted out in 1875, the Lac des Mille Lacs Ojibwa were allotted a farming reserve on Lac des Mille Lacs, and to the west of that lake, a “wild lands” reserve at the confluence of the Seine and Fire Steel Rivers.⁷ By 1899, dams built for the Dawson Route were reported to have “fallen into decay”⁸, and by 1911, the “Hogan brothers” had acquired a ten-year lease for timber berths on the south shore of Lac des Mille Lacs.⁹ The brothers apparently built an unlicensed dam, the “Hogan dam”, described as a “160 foot rock barrier” with an accumulation of “leaves and debris”, which was situated on or near the site of the former Dawson dam, and controlled by milling and timber company’s operating on the lake.¹⁰ Although Ontario was not included in Treaty 3 negotiations, the province’s Ministry of Lands and Forests would eventually play a significant role in the regulation of resources in the territory, including waterpower. In the 1920’s, under the aegis of the Ministry, companies owned by Industrialist Edward Wellington Backus were permitted to build

⁶Wikipedia, “Canadian Pacific Railway”,

http://en.wikipedia.org/wiki/Canadian_Pacific_Railway#Building_the_railway.2C_1881.E2.80.931885

⁷It was a common practice for First Nations to get two reserves for different uses. LAC, RG2, Series 1, pccoc 164(b), S.J. Dawson, to Governor General in Council, “Description of Reserves to be set aside for certain Bands of the Salteaux Tribe of Ojibbeway Indians, under Treaty No. 3”, typed copy, February 27, 1875.

⁸McInnes, 36.

⁹AO, RG75, Order in Council 67/358, “Extending time to Hogan to cut timber on Lac des Mille Lacs”, November, 15, 1911.

¹⁰Treaty and Aboriginal Rights Research of Grand Council Treaty #3 [TARR], Lac des Mille Lacs Band, Upsala, Ontario, “Lac des Mille Lacs Dam”, 1956. *See Also:* William McKeown (Conservation Officer), *A History of Lac des Mille Lacs Area*, from Bob Thompson, Ministry of Natural Resources, Fish and Wildlife [Thunder Bay Brodie Resource Library: #12 History-Thunder Bay & District], 1960. *And:* Ministry of Natural Resources [MNR], Lac des Mille Lacs Lake Management Plan, Background Information and Planning Options, Thunder Bay, 1989, 38. *Note:* The 1956 TARR report and McKeown’s 1960 account, both state that the Hogan sawmill was established in the 1870’s, and that the Hogan brothers dammed the lake. Neither source specifies exactly when the Hogan dam was built, yet they seem to imply it was during the 1870’s. However, it appears that the Hogan Brother’s were operating in the area around the same time as the Savanne Lumber Company, and, according to an 1895 report, at that time the Savanne Lumber Company’s sawmill was in mid-construction. It is likely that the Hogan dam was constructed sometime after the Dawson dam had fallen into a state of disrepair, and that the above sources are confusing the Dawson dam with the Hogan Dam. *See Supra Note 9;* And Archibald Blue, “Tour of Inspection Northwestern Ontario” in *Report of the Bureau of Mines*, (Ontario, Bureau of Mines, Toronto, 1895 Report, Published in 1896), 113.

various dams along the Seine River, including one at the outlet of Lac des Milles, that is, the “Backus dam”. Later, when iron ore was mined from beneath Steep Rock Lake in the 1940’s, it required the construction of numerous dams, the diversion of the Seine River, and the use of the Backus dam to hold water back from the Seine.¹¹ Soon after, when the waterpower lease to the Seine River expired in 1946, control of the Backus dam reverted back to Ontario. In 1952, to facilitate the Steep Rock Lake developments, Ontario replaced the Backus dam with a concrete dam, that is, the “Ontario dam”. After more than 80 years of enduring the unnatural regulation of water levels, in 1956 the Lac des Mille Lacs Ojibwa were described as being “scattered, living wherever there are conditions that will enable them to make a livelihood”.¹² Today, the Ontario dam still continues to regulate water levels on Lac des Mille Lacs and is controlled by private interests under an agreement with the Ontario Ministry of Natural Resources.¹³

This thesis will first discuss existing literature, and then outline how this research project has used an Indigenous methodology, which will include the perspectives of community members. Chapter 2 will then focus upon the context in which the Dawson Dam was built, delving into the history of Treaty 3 negotiations, and make an analysis of the Shebandowan Adhesion through which the Lac des Mille Lacs Ojibwa joined Treaty 3. Chapter 3 will outline the context in which the Backus dam was built, including an overview of the St. Catherine’s Milling Case, and the resulting federal-provincial division of powers, a discussion of Backus’s previous industrial activities that flooded other Ojibwa reserves and traditional lands, and an examination of the role of both levels of

¹¹J.A. Lovisek, “Lac des Mille Lacs ‘Dammed and Diverted’: An Ethnohistorical Study”, in *Actes Du Vingt-Cinquieme Congres Des Algonquistes*, (Ed. William Cowan, Ottawa: Carleton University, 1994), 307.

¹²TARR, Newsletter, “Reservation Days” and “The Original Inhabitants of Upsala Township”, 1956.

¹³“Seine River Watershed Information”, <http://www.seineriverwmp.com/index.html>

government, before, during, and after damming and flooding on Lac des Mille Lacs.

Chapter 4 will not be a conclusion; it will present a summary, and discuss how Canada's specific claims policy relates to Lac des Mille Lacs First Nation's claim. Additionally, it will discuss how flooding is inter-related with other government policies that also contributed to the dispersal of the Lac des Mille Lacs community.

LITERATURE REVIEW

Over the course of this research, I consulted a large assortment of historical sources. The following literature review is organized into two sections: "The need for critical analysis of the Shebandowan Adhesion", and "Government politics, policies and procedures". The review offered here does not focus on every possible source on these subjects as they relate to this thesis; instead it discusses a cross section of sources that show the characteristic parts of these topics, and the sources that were found most relevant for this study. This review also aims to illustrate areas where research on certain topics has been lacking.

The need for critical analysis of the Shebandowan Adhesion

Treaty 3 was signed on October 3, 1873, at the Northwest Angle of the Lake of the Woods by twenty-four Chiefs representing the boundary waters Ojibwa, and Indian Commissioners Simon James Dawson, Joseph Albert Norbert Provencher, and Alexander Morris on behalf of the "Dominion of Canada" and "Her Majesty the Queen". Ten days later, on October 13, 1873, three Chiefs¹⁴, Pay-ba-ma-chas (Rat McKay), Re-ba-quin, and

¹⁴ The following source, where applicable, lists English and Ojibwa names for each of these Chiefs: LAC, RG 10, Volume 3645, File 7935. John McIntyre, Indian Agent, Fort William, to Sir John A. Macdonald, Superintendent General of Indian Affairs, January 6, 1882.

Me-tas-so-que-ne-skank (Big Pierre/Chief Peter), agreed to the terms of Treaty 3 under what is known as the “Shebandowan Adhesion”.¹⁵

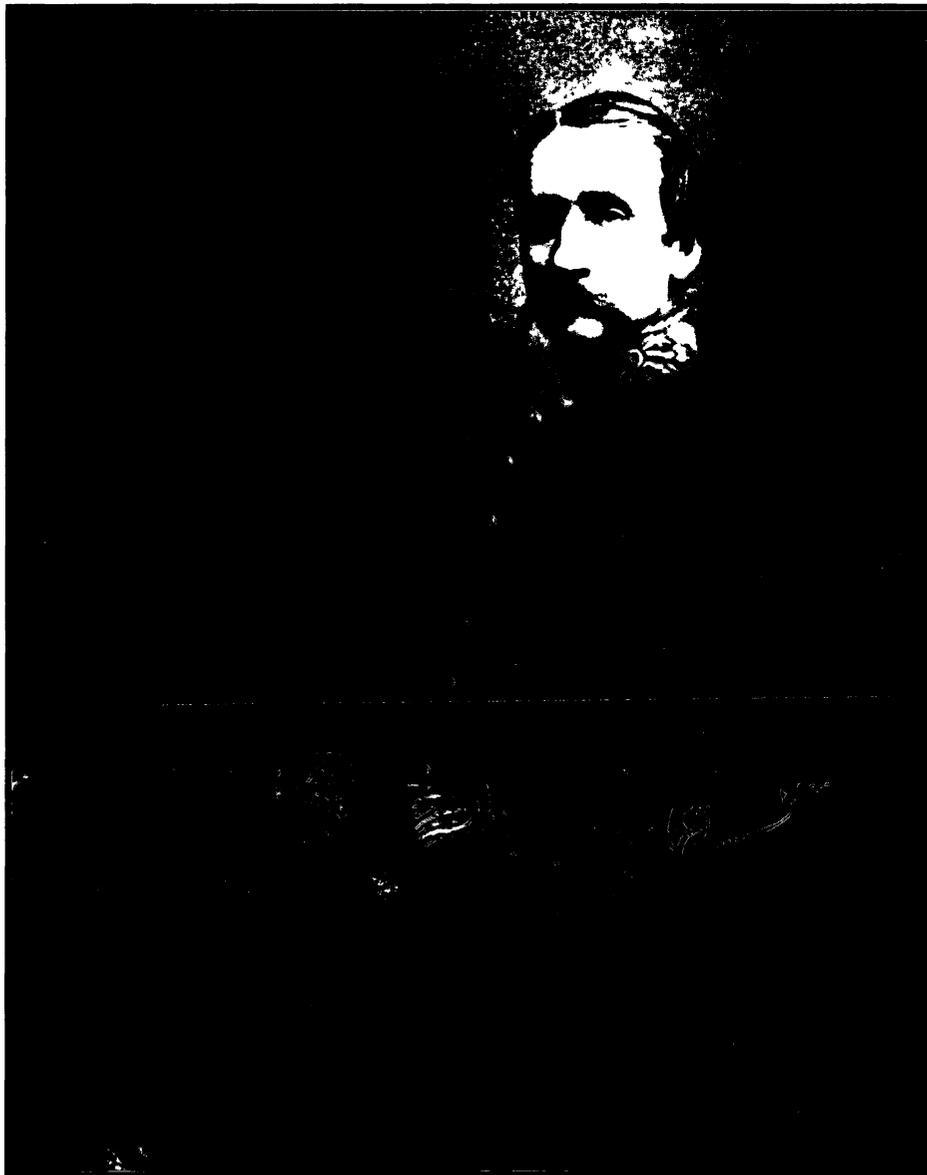


Figure 3 Lieutenant Governor and Indian Commissioner, Alexander Morris¹⁶

¹⁵ Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories, Including the Negotiations on which they were Based and Other Information Relating Thereto* (Originally published in 1880 by Belford's, Clarke & Co. of Toronto, Edition Reprinted by Coles Publishing Company, Toronto, 1971), 320-326.

¹⁶ LAC, C-052090.

Many scholars have pointed out the disparity between the official written text of Treaty 3, and the extant accounts which documented the negotiation process and detailed the terms agreed upon. For example, one such scholar Kathi Kinew, notes that “the printed Federal government version of the treaty is silent about wild rice and states that hunting and fishing will be subject to regulation”, yet according to “corroborative documents” (such as the Paypom Treaty¹⁷, an article in the *Manitoban*¹⁸, and reports and letters of S.J. Dawson), they “state that ‘the Indians shall be free as by the past for their hunting and rice harvest’”.¹⁹ Prolific scholars of the historical Minnesota-Ontario boundary waters Ojibwa, Tim Holzkamm, Leo Waisberg, and Joan Loviesk, also point out this discrepancy. They write that:

...reserves were to be set aside and hunting and fishing rights protected. The text of the Treaty as published by Canada is sometimes at variance with the agreement as it was explained to the chiefs. One of the significant disparities was the

¹⁷ The Paypom Treaty, also referred to as the *Manito Mazina'igaan*, or sacred document by the Ojibwa, are notes that were apparently made for Chief Powassin at the Treaty signing. According to a notation on the Paypom document itself, it was given by Chief Powassin to C.G. Linde in 1906. It is now in the possession of Allan Paypom, an Ojibwa Elder from Washagamis Bay. Author David McNab believes the Paypom document to be one of three English copies of Joseph Nolin's original notes taken in French. Nolin was a Métis present at the negotiations and requested by the Ojibwa to take notes. See: “The Paypom Treaty”, *The Grand Council of Treaty #3* (Kenora: Grand Council Treaty #3, Oct 3, 1873), <http://www.gct3.net/grand-chiefs-office/gct3-info-and-history/paypom-treaty/>; David T. McNab, “Hearty Co-operation and Efficient Aid, The Métis and Treaty #3”, in *The Canadian Journal of Native Studies* (Vol. 3, no.1, 1983), 134; Kathi Avery Kinew, “Manito Gitigaan: Governance in the Great Spirits Garden, Wild Rice in Treaty #3 from Pre-Treaty to the 1990's”, in *Papers of the Twenty-Sixth Algonquian Conference*, ed. David H. Pentland (University of Manitoba, Winnipeg, 1995), 186 .

¹⁸ This article was published in the newspaper the *Manitoban* on October 18, 1873, and describes the negotiations at the Northwest Angle. Morris referred only to the author as a “short-hand reporter”.

¹⁹ Kinew, “Manito Gitigaan”, in *Papers of the Twenty-Sixth Algonquian Conference*, 186.

unauthorized inclusion in the printed text of government regulatory control over fisheries.²⁰

Likewise, historian David McNab has noted that there has been a lack of critical and comprehensive study on the participation of the Métis in Treaty 3, and that “Morris’s view that the Métis from Manitoba had a pivotal role in the final negotiations... has sometimes been commented on without being critically examined”.²¹ McNab states that “Morris’s comment that he had received ‘hearty aid and efficient co-operation’... was misleading”²² and that this comment “does not reflect what actually happened in the Treaty #3 negotiations. It reflects Morris’s views on the character of the Métis ‘race’”.²³ The most glaring evidence in support of McNab’s argument that the Métis were instead acting in their own interests, is that on the final day of negotiations, after the Métis had been invited into the Ojibwa council, the Ojibwa leaders not only kept to their original demands but also made additional demands that the Métis of Fort Francis be admitted into the treaty.²⁴

One purpose for highlighting the works of Treaty 3 scholars Kinew, Holzkamm, Waisberg, Lovisek and McNab, is simply to point out the fallibility of the written accounts of the Treaty 3 negotiations, and of the written Treaty 3 document itself. Similar to the scrutiny of these scholars, it is apparent that there has been no critical analysis of the standard explanations for the absence of the Chiefs who signed the Shebandowan Adhesion from the main Treaty 3 negotiations held in 1873 at the

²⁰ Tim Holzkamm, Leo Waisberg, and Joan Lovisek, “Rainy River: Heartland of the Grand Council Ojibway”, in *Sacred Lands: Aboriginal World Views, Claims, and Conflicts*, (Publication No.43, Canadian Circumpolar Institute, 1998), 111.

²¹ McNab, “Hearty Co-operation and Efficient Aid”, 132.

²² *Ibid.*, 145.

²³ *Ibid.*, 146.

²⁴ *Ibid.*, 144.

Northwest Angle of The Lake of the Woods. Other than a cursory analysis, the research of the scholars listed above has given sparse attention to the Shebandowan Adhesion, however, this is not unusual. For example, a search was made for treatment of the Shebandowan Adhesion in works by leading historians and scholars on the history of Treaty 3, and on the historical boundary waters Ojibwa. Primarily research by: Joan A. Lovisek, Leo G. Waisberg, Tim E. Holzkamm, David T. McNab, Barry S. Cottam, Dennis H. McPherson, Wayne E. Daugherty, Michael M. Pomedli, Brian Walmark, Alison F. Dacey, Sarah J. Mainville, Kathi Avery Kinew, as well as the *Treaty Research Report—Treaty 3 (1873)* by Joan Holmes & Associates, considered to be a ‘definitive guide’. Yet none of the works by these authors that were consulted, contain more than a passing discussion of the Shebandowan Adhesion. Indeed, if they even mention the Shebandowan Adhesion, they only make uncritical accounts reiterating the standard explanations for why the Adhesion took place. For example, works concerning Treaty 3 by McPherson²⁵, Mainville²⁶, and kinew²⁷, do not even mention the Shebandowan Adhesion. While Daugherty’s 1986 *Treaty Research Report: Treaty no.3*, cites only commissioner Dawson’s report on the Adhesion, stating that “upon conclusion of the treaty commissioner Dawson journeyed to Shebandowan Lake to obtain the adhesion of *two bands* that were unable to attend the negotiations at the Northwest Angle, these bands had indicated in advance that they would accept whatever terms were negotiated”

²⁵Dennis H. McPherson, "Transfer of Jurisdiction for Education: A Paradox in Regard to the Constitutional Entrenchment of Indian Rights to Education and the Existing Treaty no. 3 Rights to Education", (LLM Thesis, University of Ottawa, 1997).

²⁶Sara J. Mainville, "Treaty Councils and Mutual Recognition Under Section 35", (Indigenous Law Journal, Volume 6, Issue 1, Fall 2007).

²⁷Kathi Avery Kinew, "Manito Gitigaan, Governing in the Great Spirit's Garden: Wild Rice in Treaty # 3 – an example of indigenous government, public policy making and inter-governmental relations between the Boundary Waters Anishinaabeg and the Crown, 1869-1994", (Phd. Thesis, University of Manitoba, 1995).

[emphasis added].²⁸ Similarly, Walmark's 1993 study *Alexander Morris and the Saulteaux: The Context and Making of Treaty 3*, only briefly mentions that after the treaty was signed, "Dawson left for Shebandowan Lake to obtain the adhesion of a band not represented at the North-West Angle negotiations." [emphasis added]²⁹ Although three bands had in fact signed the Shebandowan Adhesion, neither Daugherty nor Walmark bother to note the correct number of bands.

Chapter 2 will critically analyze the standard explanations for the absence of the Shebandowan Chiefs from the main treaty negotiations, as described in the material which documents those proceedings. This is a fairly difficult and imprecise task, because, as Lovisek has observed:

Unlike the negotiations at Northwest Angle in which extensive documentation concerning the understandings of the Ojibway leaders were recorded, when Lac des Mille Lacs First Nation [as well as Sturgeon Lake and Seine River First Nations] entered Treaty #3 by the Shebandowan Adhesion, no such documentation concerning their understandings or concerns has been found.³⁰

Due to this lack of documentation most scholarly research on Treaty 3 has largely ignored the Shebandowan Adhesion, or simply assumed accurate the information conveyed by Morris and Dawson in their official reports, along with what was reported in the newspaper the *Manitoban*. Although this lack of documentation and scholarly discussion make any attempt to critically analyze the Adhesion a difficult and imprecise task, it also indicates the need, and importance of such an undertaking. Moreover, having

²⁸Wayne E. Daugherty, "Treaty Research Report: Treaty no.3", (Ottawa: Treaties and Historical Research Centre, Department of Indian Affairs and Northern Development, 1987) [no page numbers in document].

²⁹Brian Walmark, "Alexander Morris and the Saulteaux: The Context and Making of Treaty 3 , 1869-73", (Graduate Thesis, Lakehead University, 1993) 106.

³⁰Joan Lovisek, "The Lac des Mille Lacs Tragedy: Anatomy of a Century of Flooding", in *Sacred Lands: Aboriginal World Views, Claims, and Conflicts*, ed. Jill Oakes, Rick Rowe, and Kathi Kinew (University of Alberta, Canadian Circumpolar Institute, 1998), 131.

a better understanding of the way that this adhesion took place is relevant for understanding the political environment in which pre-treaty damming and flooding on Lac des Mille Lacs occurred.

Government Politics, Policies and Procedures

For a general overview of damming and flooding of Lac des Mille Lacs reserve lands, practically the only published research specifically addressing this history are articles written by ethnohistorian Joan A. Lovisek. Both *Lac des Mille Lacs 'Dammed and Diverted': An Ethnohistorical Study*,³¹ and *The Lac des Mille Lacs Tragedy: Anatomy of a Century of Flooding*,³² are excellent sources that detail each dam constructed on the outlet of Lac des Mille Lacs. *Lac des Mille Lacs Tragedy* highlights governments and private company's involvement with these projects, complaints from the Ojibwa about flooding, and how their resources were affected. *Dammed and Diverted* examines nineteenth century fur trade reports in the Treaty 3 area, and the way the Ojibwa responded to natural occurrences of high water levels, concluding that they employed a system of "resource switching to resources which were not as vulnerable to high water changes", and that the Lac des Mille Lacs Ojibwa would have made a "similar adaptation" from flooding caused by the Dawson dam.³³ Both articles detail the reasons why dams were built on Lac des Mille Lacs: the Dawson dam to assist in navigation along the Red River Route, later replaced or reinforced by lumber industries on the lake, the Backus dam for E.W. Backus's industrial activities downstream, and the Ontario dam

³¹Joan Lovisek, "Lac des Mille Lacs 'Dammed and Diverted': An Ethnohistorical Study", in *Actes Du Vingt-Cinquieme Congres Des Algonquistes* (Carleton University, Ottawa, 1994).

³²Joan Lovisek, "The Lac des Mille Lacs Tragedy: Anatomy of a Century of Flooding", in *Sacred Lands: Aboriginal World Views, Claims, and Conflicts*, ed. Jill Oakes, Rick Rowe, and Kathi Kinew (University of Alberta, Canadian Circumpolar Institute, 1998).

³³Lovisek, "Dammed and Diverted", 294, 298.

that used the lake as a storage basin to assist Steep Rock Lake's iron ore developments. Lovisek's works are invaluable sources drawn upon throughout this study for a variety of reasons, and they generally help to conceptualize and understand the overall sequence of events related to the damming and flooding of Lac des Mille Lacs reserve lands and resources.

Chapter 3 largely focuses on government politics, policies and procedures that are interrelated with the context in which damming and flooding occurred on Lac des Mille Lacs. This studies discussion of the St. Catherine's Milling case – a rivalry between Ontario and the federal government over control of resources, and resulting in the modern-day governmental division of powers – relies on works by legal historians Barry S. Cottam³⁴, Anthony J. Hall³⁵, Donald B. Smith³⁶, Peter Kulchyski³⁷, and Kent McNeil³⁸. Both Hall and Cottam's works are particularly useful as they clarify the attitudes and arguments of both the federal and provincial government in this case. They also present thorough overviews of the case's escalation from provincial, to federal courts, and eventually to the British Judicial Committee of the Privy Council. And Hall, as well as McNeil, both illustrate how the decisions made in this legal case embedded ideas of social Darwinism and "Victorian notions of racial hierarchy into the cement of

³⁴Barry S. Cottam, "Indian Title as a 'celestial Institution': David Mills and the St. Catherine's Milling Case" in *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, (Winnipeg, University of Manitoba Press, 1991).

³⁵Anthony J. Hall, "The St. Catherine's Milling and Lumber Company versus the Queen: Indian Land Rights as a Factor in Federal-Provincial Relations in Nineteenth-Century Canada", in *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, ed. Kerry Abel and Jean Friesen (University of Manitoba Press, 1991)

³⁶Donald B. Smith, "Aboriginal Rights a Century Ago", in *The Beaver*, (February/March 1987, V.67:1).

³⁷Peter Kulchyski, "St. Catherine's Milling", in *Unjust Relations: Aboriginal Rights in Canadian Courts*, (Toronto, Oxford University Press, 1994).

³⁸Kent McNeil, "Social Darwinism and Judicial Conceptions of Indian Title in Canada in the 1880's", in *JOW*, (January 1999, Vol. 38, NO.1).

government relations with Native [peoples]”.³⁹ While Smith and Kulchyski provide useful criticism of the failings of federal negotiators to thoroughly argue certain points that may have changed the outcome of the case.

The discussion in this thesis of a dam constructed in Fort Francis between 1905 and 1909, and of an ‘Indian removal policy’ – whereby the federal government acceded to provincial demands that some reserves be cancelled – draws upon Alison F. Dacey’s thesis *Treaty 3: Failure of the Canadian Government to protect Native Treaty Rights 1905-20*⁴⁰, and Lovisek, Holzkamm and Waisberg’s article *Ojibwa Reservations as ‘An Incubus upon the Territory’: The Indian Removal Policy of Ontario, 1874-1982*.⁴¹ Dacey’s thesis provides an in-depth analysis of a dam constructed in Fort Francis by a company owned by E.W. Backus, the Ontario and Minnesota Power Company, which flooded nearby reserves on the Rainy River. Particularly useful for this study, is Dacey’s analysis of the federal and provincial governments negligence to consider or protect Ojibwa treaty rights during this situation. Lovisek, Holzkamm and Waisberg’s article *An Incubus upon the Territory*, is also heavily drawn upon for this section. It provides a concise overview of the cancellation of Ojibwa reserves, which Ontario demanded of the federal government in exchange for their agreeing to confirm the rest of the reserves in the Treaty 3 area. The authors notion of these events as an ‘Indian removal policy’, is also borrowed in this chapter to explain the pervasiveness of the Ojibwa being continually displaced from their lands.

³⁹Hall, 269.

⁴⁰Alison F. Dacey, “Treaty 3: the failure of the Canadian Government to Protect Native Treaty Rights 1905-20”, MA Thesis, Lakehead University, 1993.

⁴¹Leo G. Waisberg, Joan A. Lovisek, and Tim E. Holzkamm, “Ojibwa Reservations as ‘An Incubus upon the Territory’: The Indian Removal Policy of Ontario, 1874-1982”, in *Papers of the Twenty-Seventh Algonquian Conference*, Ed. David H. Pentland (University of Manitoba, Winnipeg, 1996).

Notes on terminology

Throughout this thesis, I use the term ‘Aboriginal’ inclusively to denote First Nations, Inuit, and Métis in Canada. For the sake of brevity and consistency I generally use the term ‘Ojibwa’ rather than ‘Anishinaabe’, although I tend to prefer the latter term because it is the way the Ojibwa have always referred to themselves. Often I use the term ‘boundary waters Ojibwa’, to refer to the Ojibwa in the Minnesota-Ontario border area, and in the Treaty 3 area. I also use the term ‘Shebandowan Ojibwa’ to refer specifically to the three First Nation’s – Sturgeon Lake, Seine River, and Lac des Mille Lacs – that adhered to Treaty 3 through the Shebandowan Adhesion. But I also include Lac La Criox First Nation under this term due to their historical kinship and political ties with the bands that signed the Shebandowan Adhesion. I also use the term ‘Indian’ in certain contexts, such as when referring to an ‘Indian Reserve’, or to an ‘Indian removal policy’, and the term ‘Indigenous’ when discussing an Indigenous methodology that is applicable internationally.

THEORY AND METHODS

Waabzheshi Noodem, Niizaatikoong Ndoojiba, Wagwaachawin Ndizhinkaaz. I have just introduced myself in Anishabemowin, the Ojibwa Language. I wrote that my clan is Marten, that I come from The Place of the Poplars (the Ojibwa name for Lac des Mille Lacs reserve 22A1), and my Ojibwa name. In Linda Tuhiwai Smith’s *Decolonizing Methodologies*, she writes that “Indigenous methodologies tend to approach cultural protocols, values and behaviours as an integral part of methodology” and that Indigenous scholars and researchers “position

themselves quite clearly as Indigenous researchers... grounded politically in specific Indigenous contexts and histories".⁴² Traditionally, Anishinaabe clan systems were (and are) very important, and Chiefs were known to sign treaties with drawings of their doodem, or clan.⁴³ Since this thesis aims to use an Indigenous methodology, I have started this section by first identifying my clan, and by introducing myself in Anishinaabemowin. Yet this opening, by itself, does not entirely or accurately ground me politically in a "specific Indigenous context and history". As Anh Hua writes in *Diaspora and Cultural Memory*, it is "important to be cautious of diasporic discourses that tend to homogenize differences" and that "diasporic identities are often creolized, syncretized, and hybridized".⁴⁴ Don't let the Ojibwa writing fool you, among other things, I am an urban raised, "mixed-blood", Bill C-31, pass-as-white, son of Jewish and Ojibwa parents. Technically, I do not come from Lac des Mille Lacs, as I was born and raised in southern, Ontario, but this is not unusual as virtually no members of Lac des Mille Lacs First Nation who were born after the 1950's are able to say that they come from Lac des Mille Lacs without feeling conflicted in some way. It is common knowledge amongst many band members that the construction of dams at the outlet of Lac des Mille Lacs negatively affected our community's ability to live on our reserve, and that this is why our community has

⁴²Linda Tuhiwai Smith, "Decolonizing Methodologies: Research and Indigenous Peoples" (University of Otago Press, New Zealand, 1999), 15, 4.

⁴³Heidi Bohaker, "Nindoodemag: The Significance of Algonquian Kinship Networks in the Eastern Great Lakes Region, 1600–1701", in *William and Mary Quarterly* (3d Series, Volume LXIII, Number 1, January 2006).

⁴⁴Anh Hua, "Diaspora and Cultural Memory", in *Diaspora, Memory, and Identity: A Search for Home*, Edited by Vijay Agnew, (Toronto: University of Toronto Press 2005), 194, 197.

been dispersed all across Canada for at least fifty years. This point leads to my relationship to the research topic I have chosen.

In Shawn Wilson's *Research is Ceremony*, he writes that an Indigenous methodology entails "accountability to relationships", and that this can be "put into practice through choice of research topic, methods of data collection, form of analysis, and presentation of information"⁴⁵ Essentially, this methodology privileges accountability to the Indigenous group being researched, and not just the researchers academic institution.⁴⁶ Addressing Wilson's point regarding accountability, part of the reason why I chose to research the history of damming and flooding of Lac de Mille Lacs reserve lands, was from a desire to point an accusatory finger at each instance in which government may have failed to act properly, were negligent, or were culpable for the dispersal of our community. However, it eventually became apparent that there was more to the research process. As the *Handbook of Critical and Indigenous Methodologies* explains, a "critical Indigenist pedagogy" can "empower indigenous peoples to make colonizers confront and be accountable for the trauma's of colonization".⁴⁷ Likewise, according to Mi'Kmaq scholar Marie Battiste "[d]ecolonisation cannot be achieved without taking into consideration the historical context that has created the fragmentation of identity and community".⁴⁸ This research then, can be thought of as a necessary part of the decolonization

⁴⁵Shawn Wilson, "Research Is Ceremony: Indigenous Research Methods", (Fernwood Publishing, Halifax and Winnipeg, 2008), 7.

⁴⁶Norman, K. Denzin, and Yvonna S. Lincoln, "Critical Methodologies and Indigenous Inquiry", in *Handbook of Critical and Indigenous Methodologies*, Ed. Denzin, Lincoln, and L.T. Smith (2008), 10.

⁴⁷Denzin, and Lincoln, 12.

⁴⁸Marie Battiste, "Decolonising University Research", in *Justice Pending: Indigenous Peoples and Other Good Causes*, Ed. Gudmundur Alfredsson, and Maria Stravropoulou, (Martinus Nijhoff Publishers, 2002), 39.

process of our First Nation, that by telling and critiquing the history of our dispossession from our lands, it can allow us to better understand the “fragmentation” of our community.

Than again, as Smith points out, working in a decolonizing framework, “[t]aking apart the story, revealing underlying texts, and giving voice to things that are often known intuitively does not help people to improve their current condition”, while it “provides words, perhaps, an insight that explains certain experiences... [it] does not prevent someone from dying”.⁴⁹ Acknowledging this point – that research that involves writing the story of a dispossession from lands will not necessarily result in any actual benefit to the dispossessed group in the real world – leads to questions concerning how the research conducted for this thesis can improve the “current conditions” of Lac des Mille First Nation. In what ways can “revealing underlying texts”, or writing about the subtleties of government negligence and culpability in the dispersal of our community, result in any substantial benefit? Since “critical personal narrative is a central genre of contemporary decolonizing writing”⁵⁰, to help answer these questions, I think it will be useful to examine a poem written by my brother, Nathan Adler, which I think paints an accurate picture of our First Nation:

They Argue

about the up-coming Elders Gathering. What makes an Elder? Is it merely age, or something more? And whether or not the age should be lowered to fifty-five in-line with Anishinaabe life expectancy.

They argue about what should be done with the money from the Flood Claim Compensation. Should it be divided up amongst the membership, or should the chief and

⁴⁹Smith, 3,

⁵⁰Denzin, and Lincoln, 13.

council (with membership input), decide how the money is spent, and can they be trusted? This issue divides us. All the money, couldn't put us back together.

They argue about who is sleeping with whom, a white man in a position of power. nepotismgreedfavouritismcorruptiongossipjealousysuspicion.

mixed blood "white children" running around the reserve. I've seen your grandchildren,

You're one to talk. Your grand-kids are just as pale as mine. They have just as much a right to be here.

Internal/external racism, fear, insecurity, 90210 on speed. In our community, no one feels like they belong. Someone else, always knows more than you do. Everyone feels, out of the loop.⁵¹

These words are loaded with the experiences and the contemporary issues facing Lac des Mille Lacs First Nation. The line "no one feels like they belong. Someone else, always knows more than you do", could be a direct quote from many of the interviews conducted with community member for this thesis. For example, band member Mary Ellen Kuurila, said that "we're totally displaced, you know, then I find because we're not communicating and talking, you know, people feel left out and they think that somebody else knows more than they do, and I feel that has built up a lot of anger".⁵² As my brother's poem suggests, our community is more than just physically divided, just as "all the money couldn't put as back together", neither could all the words in this thesis. No matter what I write here, our community will still be divided, both physically from our reserves and traditional lands, and in countless ways, from each other. This issue of being separated from family, extended family, and one's entire community, was a prominent subject that was repeatedly mentioned during interviews. For example, Elder Shirley Churchill described her experience living in a dispersed community:

⁵¹Nathan Adler, "All Teeth" (poetry collection), <http://www.our-story.ca/nathan-adler.html>, 2010.

⁵²Mary Ellen Kuurila, Interview by Author, Audio Recorded, Murillo, Ontario, July 26, 2008.

I've felt alienated from relatives that I should have been close to, and it's hard to get to know people eh, you feel alienated, you're a stranger when you're coming back. When I first came back from Kenora, back to the area, Tom and George and them they were really friendly, Charlie and my dad, that was good, but as far as the female parts of the group and the children, [they] were alienated. But I'm familiar with your mom [Mae Adler, nee Peters] eh, because we were in school together [at Cecilia Jeffrey Residential School]. It's almost like we're sisters being brought up in a school eh, even people that are from other reserves, we're more connected [with them] than people from [our own community] that we got separated from, it's a real damage actually, even to this day, you talk to them but you're not really that close"⁵³

Mae Adler, when asked about how her life, and the Lac des Mille Lacs community as a whole, has been effected by not having a community situated on the reserve, discussed:

I haven't known a lot of my relatives, there's many I haven't met probably, I probably have some that I don't know very well, and then being away as well all the new ones that are born you don't know them, you know, you kind of loose track of people, who you're related to, and who you're not related to...you don't have that community support or that family support if your all dispersed all over the place, at one time you would have had relatives or extended family to help you out...my father took off, I remember when he took off, and we were without food for quite a while, and finally friends came and helped us out, and then we were, we actually went to the residential school, because my mother couldn't work and, you know, raise three children at the same time...my mother couldn't, didn't have anyone right around who could just take us over, my grandfather was getting up there in age, and he was re-married... [was that the reason you went to residential schools?]. . . because my father took off, yeah, my mother used to work and bring in a lot of, she had a couple of jobs, but when he was gone she could no longer do that...[so they didn't come and take you?]. . . no she took us there, me and my sister, my brother she kept for a while... if we had been living out there [on LDML reserve] it might have been easier, because I think my mother was quite capable of getting food for us herself, you know, like snaring rabbits, fishing, if we had housing there she wouldn't have had to pay rent...

Christine Primeau, when asked if she thought her experience in foster care was connected to the Lac des Mille Lacs community being dispersed, and if she thought other band member had similar experiences, explained:

⁵³Shirley Churchill, Interview by Author, Audio Recorded, Thunder Bay, Ontario, July 21, 2008.

I think the sense of family, was lost when they were pushed off the reserve, I think that it caused them to find a new means of life, and engage into a society they were unfamiliar with... they were led easily down different paths, I think that rather than having the strength to stay with their family, and develop that bond... some family members ventured further into different cities, so there was that loss of family connection... my mom couldn't deal with being in a larger community, and because she didn't have the support of her family members and some of the family member on my moms side that she did rely on for support were in the same position she was, so I think a lot of my cousins and stuff were sheltered by other family members, but unfortunately I wasn't, I was put out to CAS, and it wasn't a volunteer move by my parents, they came in and took me in the middle of the night... there was no protection for me, and there was really no protection for my mom either because she didn't know the system... my brother as well we were both going through the same thing, we were both put into foster care...⁵⁴

Audrey DeRoy, when asked about how people from Lac des Mille Lacs First Nation were effected by the flooding of their reserve, described:

...[a] death of their spirit and who they are, I would say that, even though they're walking, but it created a death within themselves, you know, that's the way I see it anyway, because my mother I see how many times she was displaced... from Lac de Mille Lacs, and then moving to Kashabowie, being not with her own people... she ended up being forced to marry a non-native man... and all of her sisters ended up with guys that were non-Aboriginal, and they were doing the right thing by marrying them because then they lost their [Indian status] rights, right, and then when that man died, she was displaced again because they kicked her of his land... so she's been displaced how many times...⁵⁵

Mary Ellen Kuurila (Audrey's sister), when asked where her family was from, and how flooding and dispersal currently effects the Lac des Mille Lacs community, discussed:

"My mother, when her husband died and she moved back to Kashabowie... in the late 60's, she married Mr. DeRoy, and then she had my sister Audrey, Lee, and Ameal, so then our parents died in a car accident together in 1969, so then from there we got put into children's aid, I was 14, and when I got married when I was 19... my husband and I raised my three younger brothers and sisters... my cousin, her mother died, and she was put into family foster homes, and suffered abuse... you're not able to communicate or even know who your family members are... like Esther I didn't know she was from Lac des Mille Lacs... I think you know,

⁵⁴Christine Primeau, Interview By Author, Audio recorded, Thunder Bay, July 22, 2008.

⁵⁵Audrey DeRoy, Interview by Author, Audio and Video Recorded, at Fort William Historical Park, Thunder Bay, July 25, 2008.

we probably pass people all the time and you don't even know you're related to them... it's cause we don't have a home, we're all, we don't have that option... I don't know fully, like, all our extended family, and then I think all these years we've missed out, like on all the traditional things that we did, you know, probably all the stories that our relatives would have told us, and you know even medicine wise, spiritual knowledge, and you know, probably their stories about our ancestors, like they're all, you know, spread out all over, so that's not even shared as much...⁵⁶

Barbara Romanica when asked how she, and her family, have been effected by Lac des Mille Lacs First Nation not having a community situated on the reserve, explained:

...thirty years, forty years, you don't even know who they are, it's like, you know, meet them, and you might meet them twenty years later, so you don't know that person at all anymore, you don't know your aunts and uncles anymore, it's all like... it's like being an immigrant from Europe, you know, coming here and you lose all that, and you don't go back for thirty of forty years... you only keep in touch with letters or whatever, but as life goes on you lose, you know, children are born and deaths happen and your not there to grieve, or to celebrate, or to do those things...⁵⁷

Clearly, every facet of peoples lives have been affected by damming, flooding of reserve lands and traditional territory, and the resulting dispersal of the Lac des Mille Lacs community. Everything from the loss of family relationships, deterioration of community ties, to alcoholism, assimilation, and loss of Indian Status, it can all be linked to the dispersal of the community. Yet what is more, based upon the stories shared by community members, it seems quite clear that the lack of a strong social network, in essence, the lack of a cohesive community, left Lac des Mille Lacs families more vulnerable to becoming institutionalized in residential schools and foster care. One way that I genuinely think this thesis research could improve the “current conditions” of Lac des Mille First Nation is by contributing, if only in a

⁵⁶Mary Ellen Kuurila, Interview by Author, Audio Recorded, Murillo, Ontario, July 26, 2008.

⁵⁷Lois Romanica, Barbara Romanica, Gladys Mychasiw, John Heafey, Ann Doef, Group Interview by Author, Video Recorded, Lac des Mille Lacs First Nation Elders Gathering, Thunder Bay, April 9 to 11, 2010.

small way, to rebuilding family connections, and the sense of community that has been so eroded. However, before this process can be explained it is necessary to understand the methods of data collection used for this project, and the way in which information has been disseminated back to the community.

Recall that Wilson's view of an Indigenous methodology entails "accountability to relationships" which can be "put into practice through choice of research topic, methods of data collection, form of analysis, and presentation of information". The methods of data collection used in this thesis have been twofold. The first method relied upon gathering secondary sources, as well as archival material, including historical documents, reports, maps, photographs, drawings, newspaper articles, as well as letters and various correspondences. The second method of data collection was through optional audio or video recorded interviews with Elders and community members.⁵⁸ Considering that the Lac des Mille Lacs First Nation's community is *dispersed* with band members living as far away as British Columbia and the United States, conducting interviews could have presented a challenge. However, a majority of community members currently reside in northwestern Ontario. Accordingly, interviews were conducted in or near the city of Thunder Bay, Ontario, in July 2008, during the First Annual Lac des Mille Lacs First Nation Traditional Powwow, and during a visit to this city in February of 2009. This thesis also draws upon interviews I conducted with Elders on behalf of the band during the April 2010 Lac des Mille Lacs First Nation Elders Gathering in Thunder Bay. Several interview participants volunteered after this research project was publicly announced over the loud speaker

⁵⁸In the Interviews process I followed Ojibwa protocols, such as offering tobacco to Elders, gift giving, and smudging with medicine. Additionally, it seemed appropriate that at most interviews, my Mom and/or my Brother were present, and sometimes even my Grandmother.

during the 2008 powwow. Also, in both July 2008 and February 2009, I relied on my cousin, and respected community Elder, Shirley Churchill, who assisted immensely in finding Elders and community members to be interviewed (Gchi-Miigwetch Shirley!).

In terms of the process of interpreting both historical documents and interviews, it was often the case that ideas imparted from community members facilitated contextualizing historical texts, or events. For example, before I interviewed my mother, Mae Adler, for this thesis, I had assumed that she and her siblings were forced to attend residential schools by the same laws that forced other Aboriginal children to attend. Despite that my grandmother had intentionally placed her children in residential school due to domestic issues, poverty, and a lack of a family support, it seemed an unusual occurrence to me. It was only after interviewing other Lac des Mille Lacs First Nation community members that I noticed a trend, that the lack of a community centrally located on the reserve weakened social networks, leaving people more vulnerable to become institutionalized. Another example of how information from interviews has contextualized historical events is related to the lack of historical documentation pertaining to the Shebandowan Adhesion, through which Lac des Mille Lacs First Nation entered Treaty 3. From comments made by Elder Shirley Churchill about our communities historical kinship ties with Sturgeon Lake, Seine River, and Lac La Croix First Nation's, I realized that light could be shed on the way Lac des Mille Lacs First Nation adhered to treaty by determining how these communities, some of which also signed the Shebandowan adhesion, perceived and understood the treaty. Additionally, the process of determining the reliability of information gleaned from

both interviews and historical texts was generally accomplished by comparing and contrasting specific pieces of information against other sources that addressed the same topic, as well as taking into account the context of the subject under consideration.

The interview process has allowed for community participation, and for the voices and perspectives of Elders and community members to contribute to the content of this thesis, and to inform its analyses and conclusions. For example, based on the interviews, it is evident that the construction of dams and the flooding of reserve lands, resources, and traditional territory, is known anecdotally amongst band members as the main reason why their families left the reserve. However, a general knowledge does not necessarily translate into an in depth or comprehensive understanding of how or why this history came about, and this has guided and framed the way this thesis has been written. Moreover, perspectives from community members such as this, have to a great extent influenced the way this research has been shared with the community. One reason why I chose to research the history of damming and flooding of Lac des Mille Lacs First Nation reserves and traditional lands, was from a desire to know exactly what happened, when, how, why, and who to hold responsible. Indeed, during the early stages of this research, after speaking with community members, I learned that I was not alone in being unaware of many of the details of our own community's history. For example, when I asked Mary Ellen Kuurila, who has a general knowledge of damming and flooding of reserve lands, whether she knew the specific circumstances in which flooding occurred, she replied:

“No, I don’t, but I’d like to know, and I think we have a right to know... we have a right to know even why our ancestors were displaced, and who’s going to answer for that, my mother, like from being moved off the land... I’d like to know why, we have zero knowledge of that, I think a lot of us don’t know, I mean all our family doesn’t know why we were displaced”.⁵⁹

To add to Wilson’s understanding that when doing research with Indigenous peoples, the researcher should be accountable to relationships, Battiste also suggests that this research should “seek as a final outcome the empowerment of these communities through their own knowledge”.⁶⁰ *The Handbook of Critical and Indigenous Methodologies* states that Indigenous people must “benefit from any research that is done on, for, or with them”.⁶¹ Smith writes that research should reach “the people who have helped make it”, and that an Indigenous methodology requires results of a study to be “disseminated back to the people in culturally appropriate ways and in a language that can be understood”.⁶² With this in mind – and when considering the various ways Lac des Mille Lacs First Nations people have been divided from their land, each other, and even from knowledge of their own history – some of the research data and results of this thesis were included in a documentary video, and distributed back to the community. This video is titled *Niizatikoong: Return to our Lands*, and was produced in collaboration with my twin brother Nathan Adler, a former integrated media student at the Ontario College of Art and Design. This video chronicles members of my immediate family, including myself, on our trip to Lac des Mille Lacs First Nations First Annual Traditional Powwow in 2008, which

⁵⁹Mary Ellen Kuurila, Interview by Author, Audio Recorded, Murillo, Ontario, July 26, 2008.

⁶⁰Battiste, 44.

⁶¹Denzin, and Lincoln, 10.

⁶²Smith, 15.

was our community's first Powwow in over fifty years.⁶³ It also includes footage from audio and video recorded interviews conducted for this thesis, archival photographic materials collected during the research process, as well as ideas and arguments developed in connection with this thesis. Probably one of the most useful aspects of this video, is that it tells some of the history of damming, flooding and dispersal, which helps teach our community its own history, but it also features many Elders and community members, and in a sense builds relationships by re-introducing community members to each other. In these ways, the *Niizaatikoong* video may have helped to "improve the current conditions" of Lac des Mille Lacs First Nation, and some of the results of this research have been disseminated back to my community in a culturally appropriate way, and in a medium that is readily accessible and easy to understand. Another method of 'giving back' to the community is in the form of this thesis, and the historical research that I have conducted and written about in the chapters, which follow. In particular, one of the goals of this work is to fill the gaps in band members' knowledge, and to assist community members to understand the nature and context of the dammings, floodings, and displacement of Lac des Mille Lacs First Nation.

⁶³ Apparently Chief Tom Peters held a powwow in the 1990's, and there have certainly been community gatherings over the years, yet it is my understanding that the 2008 powwow was the first community wide powwow that invited band members from across the country.

CHAPTER 2

“[O]ur lands will be over run and ourselves murdered”: The Shebandowan Adhesion and the Political Context of the Dawson Dam

The purpose of this chapter is to illustrate the political context of damming and flooding on Lac des Mille Lacs Ojibwa lands. Apart from the presence of the fur trade industries of the Hudson Bay Company and the Northwest Company, Euro-Canadian intrusions on the boundary waters Ojibwa territory began in 1857, when Simon James Dawson was employed by the colonial government as a Civil Engineer tasked with finding a practicable route of navigation between Lake Superior and the Red River Settlement.⁶⁴ It was not until changes in the political climate that the necessity of an ‘All Canadian Route’ to ‘the West’ became more apparent for Canada. In 1871, British Columbia agreed to join Confederation on the condition that a railroad would be built to the West within ten years. Further impetus for a Route to the West came two years later in 1869 with the emergence of a Métis ‘rebellion’ at the Red River Settlement. There were also ‘Fenian Raids’ by Irish Americans demonstrating trans-Atlantic resistance against the British occupation of Ireland by attacking British-Canadian territory. These skirmishes encouraged fears of American expansion into what was considered to be Canadian territory. It was this need for a Route to the West that also led the Dominion of Canada to consider a Treaty with the boundary waters Ojibwa as a priority.

⁶⁴ S.J. Dawson, *Report on the Exploration of the Country Between Lake Superior and the Red River Settlement*, (Toronto: John Lovell Printer, Corner of Young and Melinda Streets, 1859).

Political unity among the Shebandowan Ojibwa

Chief Blackstone was a prominent leader of the boundary waters Ojibwa. There is a comparatively large amount of documentation concerning Chief Blackstone's actions and words before, during, and after the Treaty negotiations. Since it will be argued here that Chief Blackstone's actions and words can be generally interpreted as representing the interests and viewpoints of the Shebandowan Ojibwa who adhered to Treaty 3, he indirectly becomes a window into their understandings and concerns of the Treaty, and ultimately, provides a point of reference from which to critically analyze the standard explanations for their absence from the central Treaty negotiations as described in the material which documents those proceedings.

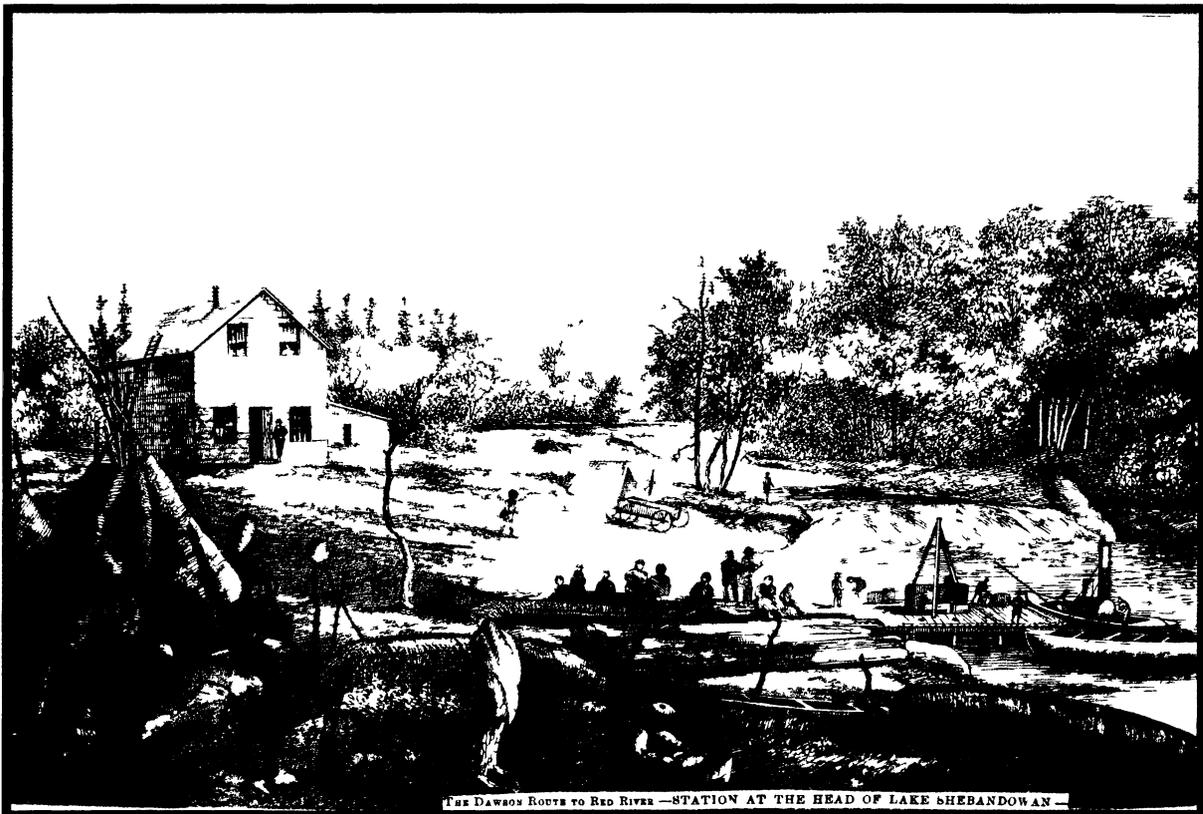


Figure 4 "Station at the Head of Lake Shebandowan", December 7, 1872⁶⁵

⁶⁵ LAC C-058907, Photo Credit William Armstrong.

It is therefore particularly important to stress the point that prior to the signing of Treaty 3, Blackstone would not have been solely associated with one small area, such as Lac Le Croix, which later became his reserve, and that he did, in fact, have strong ties to the Shebandowan area.⁶⁶ For example, William Armstrong's illustration dated December 7, 1872, entitled *Station at the Head of Lake Shebandowan*, depicts "a party of *Blackstone* Indians camped on the high ground opposite the station" (Emphasis added)⁶⁷. Blackstone's connection to the Shebandowan area is apparent in many other instances. For example, as early as Colonel Wolsley's 1870 trek across the North-west, Commissioner Dawson interacted with him as a Chief who represented the Shebandowan Ojibwa. Dawson had held "a sort of council with a young Indian named 'Blackstone' (not a leading man)' at Thunder Bay" who he gave far more generous gifts than Commissioner Simpson was offering to secure a right of way through Shebandowan.⁶⁸ Furthermore, in a letter dated June 5, 1872, from Dawson to the Department of Public Works, he states that the bands from the "Shebandowan land... are the most troublesome of the whole tribe and have a very factious and restless leader in their Chief Roche Noir".⁶⁹ Likewise, in an October 31, 1872 letter, F. Burton Marshall, who was present during the Treaty negotiations at Prince Arthur's Landing in mid-October 1872, wrote that "Blackstone only lives a few miles from Shebandowan (Height of the land)"⁷⁰; And a

⁶⁶ Note that the Shebandowan area refers to the area in the vicinity of Lake Shebandowan, which is located South and East of Lac des Mille Lacs. In the 1870's it would have been two portages between these lakes via Lake Kashabowie.

⁶⁷ Armstrong's illustration was published in a newspaper. The description quoted is from newspaper text on the back of a clipping of the illustration.

⁶⁸ Quoted in Joan Holmes & Associates Inc., *Treaty Research Report – Treaty 3 (1873)*, (for Claims and Historical Research Centre Indian and Northern Affairs Canada, August 2007), 6.

⁶⁹ LAC, RG 10, Volume 3576, File 366. S.J. Dawson, Toronto, to H. L. Langevin, Minister of Public Works, Ottawa. June 5, 1872. Note that Chief Blackstone was also known in Ojibwa as Mukadaywasin and in French as Roche Noir; all three names literally signify Black, as in colour, and stone, the object. Spelling of his name has also appeared as Maintarassim.

newspaper article describing these same Treaty negotiations refers to “Chief Mukadaossin (Blackstone) of Lac des Mille Lacs”.⁷¹ Prior to Treaty 3, Blackstone was clearly associated with the Shebandowan and Lac des Mille Lacs area.

Conversely, Blackstone was not the only Chief that had a physical connection to more than one territory, or a social and political connection to more than one group of Ojibwa. The Ojibwa whose reserve became set aside at Sturgeon Lake, and who had entered into Treaty through the Shebandowan Adhesion represented by Chief Kebaguin, also had strong ties to other neighbouring Ojibwa. For example, McNab noted that “In the 1880’s, the Indian Agent reported that some members [of Sturgeon Lake band] apparently moved to Savanne... and to Lac des Mille Lacs Indian reserve 22A1... others were reported to be at Lac La Croix [the reserve set aside for Chief Blackstone’s band]. But this was not unusual. *There were strong traditional social and political ties between their families. There still are strong ties*” (Emphasis added).⁷² Likewise, Chief Metasoqueshawk whose reserve was set aside at Lac des Mille Lacs would also have had “strong ties” with the neighbouring Ojibwa whose reserves when set aside were located further to the West, at Lac la Croix, Seine River (Sturgeon Falls), and Sturgeon Lake (Kawiagamot River). For instance, Shirley Chapman a much respected Elder and member of Lac des Mille Lacs First Nation, when asked about the connection between the Lac des Mille Lacs and Lac La Croix Ojibwa, stated that:

⁷⁰ LAC, RG 10, Volume 1869, File 582, Item 3. F. Burton Marshall, Toronto, to the Superintendent General of Indian Affairs, October 31, 1872.

⁷¹ LAC, RG 10, Volume 1869, File 582, Item 5. (Newspaper Clipping) From a Correspondent, Prince Arthurs Landing, October 22, 1872.

⁷² David T. McNab, “Wilderness and Extinction: The Lac la Croix and Sturgeon Lake First Nations”, in *Circle of Time: Aboriginal land Rights and Resistance in Ontario* (Wilfred Laurier University Press, 1989), 93, & 94.

*Those are the same group of people, if you interview someone from Seine River and Lac La Croix, they'll tell you that! They're relatives, they're relatives, and they feel connected to us. What they said to me, people from Lac La Croix and Seine River, they said 'You come from us', is what they said. They would have come from there, and then they would move back there, as the seasons went, because there was always movement... people liked to go to their own hunting areas, because you can't all be trapping in the same area. (Emphasis added)*⁷³

Evidence that supports Chief Blackstone was indeed associated with the Shebandowan Ojibwa, and further, that his actions and words can be generally interpreted as representing their interests and viewpoints, can be gleaned from his political career, and solidarity with the Chiefs that ended up signing the Adhesion. In conjunction with these Chiefs, Blackstone sent in letters concerning various issues to Government Officials. For example, one letter sent from Fort Francis on May 18, 1871, was written on behalf of Chief Blackstone, as well as Chief Kebikewan who later signed the Shebandowan Adhesion, and concerned the “opening [of] the Route to Fort Gary” in which they stated that a “promise was made to us by the Officer Commanding the Troops last summer that we should receive presents and provisions to satisfy our people for assisting the Expedition”.⁷⁴ Over a month later another letter was sent from Thunder Bay on June 29, 1871, signed by Chief Blackstone, and two Chiefs who signed the Shebandowan Adhesion, Kebeguin and Rat McKay (Paybamachas). In this letter they identify that they “feel grievances” and write:

We the Indian Chiefs on this side of Fort Francis, we who on the part of the Indians have to look after their interests in the matter of your road now making through our country. When we met your commissioners this Spring we expected they would come authorized to pay us what we had claimed for the right of passage through our country last Summer, and for the damage done to our hunting

⁷³ Shirley Chapman (Maiden name Churchill), interview by author, audio recorded, Thunder Bay, Ontario, July 21, 2008.

⁷⁴ LAC, Former Archival Reference No. RG6-C-1, Volume 328, File 774. Blackstone, and Kebikewan, Ojibwa Chiefs, Fort Francis, to the Secretary of State for Canada, May 18, 1871.

and fishing that ensues from your road and its traffic. Our resolution or openness with respect to future treaties with the Government is not yet formed.⁷⁵

Doubtless these Chiefs had an awareness of the government's strong desire to conclude a Treaty with them, apparent in their fairly polite threat that "their openness with respect to future treaties... is not yet formed"; and a threat perhaps deliberately reinforced by the note beneath their signatures – "Three Chiefs from the Country between Mille Lacs and Fort Francis" – which conveniently highlights the extensive territory under their jurisdiction. Another letter from these same three Chiefs dated October 3, 1872, also states that "Our Land extends from Fort Francis this way to the Height of Land".⁷⁶ The content of their letters are significant on many levels, yet what is relevant for the current issue under consideration is the clear perception of political unity being expressed by these Chiefs "on this side of Fort Francis".

Although the version of the Treaty 3 negotiations at the Northwest Angle, as recorded in the newspaper the *Manitoban*, identified that "The Fort Francis Chief [Mawedopenais] acted as spokesman assisted by another Chief, Powhassan"⁷⁷, this number of spokesman differs from lead Commissioner Alexander Morris's official report, in which "They [the Ojibwa] had selected *three* spokesmen"(Emphasis added).⁷⁸ Despite this discrepancy, according to prominent Treaty 3 scholars Holzkamm and Waisberg:

⁷⁵ LAC, Former Archival Reference No. RG6-C-1, Volume, 328, File 774. Blackstone, Kebeguina, and Rat McKay, Ojibwa Chiefs, Thunder Bay, to Joseph Howe, Secretary of State for Canada, June 29, 1871.

⁷⁶ LAC, RG 10, Volume 1872, File 747, Item 17, Reel C-11105. Blackstone, Head Chief, Ba Pa Ma Jos, Chief of Rainy Lake, Ka Ba Qua, Ojibwa Chief, Prince Arthurs Landing, Thunder Bay, to the Governor General, Ottawa, October 3, 1872.

⁷⁷ Morris, *Treaties of Canada*, 59.

⁷⁸ *Ibid.*, 48.

These spokesmen were the three prominent regional Chiefs in 1873: Blackstone from Lac la Croix east of Rainy Lake, Mawintopinesse from Long Sault on Rainy River, and Powawassin from Northwest Angle on Lake of the Woods. These three men were the primary negotiators for the Anishinaabe, the voices of the Grand Council. Each was the most prominent Chief of a geographic area...⁷⁹

It is clear then, that the third spokesman for the Ojibwa was in fact Chief Blackstone, and that his regional political representation was certainly for the Shebandowan Ojibwa, made apparent by his statement on the third day of Treaty negotiations, that “the people at the Height of the Land where the waters came down from Shebandowan to Fort Francis, are those who have appointed me”.⁸⁰ The evidence considered here has suggested Blackstone’s political and social affiliation with the Shebandowan Ojibwa, made relatively conclusive by his specific claim that he represented them.

Chief Blackstone – “the most troublesome of the whole tribe”

There is a comparatively large amount of documentation concerning Chief Blackstone’s actions and words before, during, and after, the Treaty 3 negotiations. Since it has been demonstrated earlier that the Shebandowan Chiefs displayed political unity, and that Chief Blackstone was the prominent regional Chief of the Shebandowan area, it is argued here that his actions and words can be generally interpreted as representing the interests and viewpoints of the Shebandowan Ojibwa who adhered to Treaty 3. As a result, Blackstone indirectly becomes a point of reference from which to critically analyze the standard explanations for their absence from the central Treaty negotiations, as described in the material that documented those proceedings.

⁷⁹ Tim Holzkamm, and Leo Waisberg, *We have One Mind and One Mouth it is the Decision of all of us: Traditional Anishinaabe Governance of Treaty #3* (Prepared for Grand Council Treaty #3, October, 2001), 9.

⁸⁰ Morris, 64.



Figure 5 "The Great Blackstone (Ojibway Indian) laying down the Law at the Landing", 1881⁸¹

⁸¹LAC, C-038227. Note that "the Landing" refers to Prince Arthurs Lands (Thunder Bay).

Chief Blackstone, known in Ojibwa as Mukadaywasin and in French as Roche Noir, was an indomitable leader of the Ojibwa on the Eastern portion of the Dawson Route. He was said to have ‘dyed his hands’ at the Minnesota Massacre⁸² in the United States, and was allegedly named after a famous English legal analyst because of his “cogent powers of rhetoric and logic”.⁸³ Emblematic of his personality, in 1877 he was said to have “given the Anglican Bishop a piece of his mind... on the subject of paganism versus Christianity”, and illustrative of his stature as a Chief, he apparently obtained a sample of gold from a “Lost Gold Vein” in his traditional territory, brought it on a trip to England in 1910, and presented it to King Edward II.⁸⁴ In a demonstration of resolve and strength of character, after the Treaty negotiations in July of 1872, unsatisfied with the Treaty Commissioners, Blackstone sought to organize a delegation of Chiefs to travel to Ottawa to meet directly with the Superintendent General of Indian Affairs. Although Commissioner Pither “interfered by telling the other chiefs such a meeting was impossible”, Blackstone continued on to Thunder Bay intending to board a steamer across Lake Superior, and was only unable to proceed because “Governor Simpson told all the captains of all the steamers to refuse him passage”.⁸⁵

⁸² For example, See: Allan A. Viita *Quetico – Atikokan ‘The Country Beyond’* (Atikokan, Ontario, 75th Anniversary Edition, 1974), 12; And, W.S. Piper, *The Eagle of Thunder Cape* (New York: The Knickerbocker Press, 1924), 29. Note that this event occurred in 1862 and involved the violent resistance of Dakota and Santee Sioux warriors as a result of late annuity payments, late food distribution, and corrupt practices of white traders. In the aftermath, over six-hundred white people were killed, and two-thousand Dakota and Sioux surrendered, of which over three-hundred were sentenced to death for war crimes; U.S. president Lincoln investigated the trials, and the causes of the uprising, and death sentences were carried out for only thirty-eight of the convicted, the largest execution in U.S. History. “Minnesota Massacre of 1862” [Video], *You Tube*, http://www.youtube.com/watch?v=b0s_Oh7EpzY.

⁸³ David T. McNab, “Wilderness and Extinction”, 92.

⁸⁴ Viita, *Quetico—Atikokan*, 12.

⁸⁵ Carol Hodgson, *Stealing in by the Window: Ojibway-Government Relations in the Quetico* (Carleton University, Ottawa, Ontario, August 7, 2003), 25.

Chief Blackstone was intimately involved in the Treaty 3 negotiations and often viewed and portrayed by government officials as a disreputable and troublesome Chief. In July of 1871, four Chiefs, including Blackstone, as well as Shebandowan Adhesion Chiefs Kebeguin and Rat McKay, met in Fort Francis with Commissioner's Dawson, Simpson, and Pither. At this meeting the Chiefs' "first concern was compensation for the use of the right-of-way through their territory" and it was "probable that talks broke down".⁸⁶ The next year in 1872, after the first gold "discovery" west of the Height of Land⁸⁷, the first mining began with approximately 100 tons of ore being taken out of the Jackfish or Huronian mine.⁸⁸ Understandably, because no Treaty had yet been signed, Blackstone, along with his band of Ojibwas confronted the proprietor Peter McKellar and his party, forcing them to stop operations.⁸⁹ A few weeks after this act of self determination and territorial control, in a letter dated June 5, 1872, Dawson specifically recommends that the "considerable band in waiting at Shebandowan" not be "summoned" to the Treaty negotiation to be held at Fort Francis in the following month as "they are the most troublesome of the whole tribe and have a very factious and restless leader in their Chief Roche Noir, the same who drove the miners from the gold fields west of the Height of the Land".⁹⁰ This proposed intentional exclusion of Blackstone, a prominent regional Chief of the Anishinaabe Grand Council, would also by extension,

⁸⁶ Joan Holmes Associates Inc., *Treaty Research Report*, 11.

⁸⁷ The "Height of the Land" is the high land between the Hudson Bay and St. Lawrence watersheds, and runs between Lac des Mille Lacs and Lake Kashabowie. It refers to the division of watersheds, North to the Arctic, North-east into the Albany and James Bay, East to the Gulf of St. Lawrence and the Atlantic, and South into the Mississippi which eventually empties into the Gulf of Mexico.

⁸⁸ William McInnes, *Report on the Geology of the Area Covered by the Seine River and Lake Shebandowan Map Sheets Comprising Portions of Rainy River and Thunder Bay Districts, Ontario* (Ottawa: Printed by S.E. Dawson, Printer to the Queen's most Excellent Majesty, 1899) 58.

⁸⁹ Viita, 12.

⁹⁰ LAC, RG 10, Volume 3576, File 366. S.J. Dawson, Toronto, to H. L. Langevin, Minister of Public Works, Ottawa. June 5, 1872.

essentially exclude the socially and politically, unified Shebandowan area Chiefs, Kebaguin and Rat McKay, whom Dawson had met with the previous year when “talks broke down”, as well as Chief Metasoqueneshauk. Evident in this letter is a clear intention on the part of Commissioner Dawson to invite Chiefs “to come from Lac Seul and other distant places”, and not to invite Chiefs from the “Shebandowan land”.⁹¹

The success of this plan to exclude Blackstone and the Shebandowan Chiefs from the July 1872 Treaty negotiations at Fort Francis is questionable, as there is evidence to suggest that one or more of the Shebandowan area Chiefs were in attendance. For instance, in a letter from all three Commissioners, Simpson, Dawson, and Pither, dated July 17, 1872, they describe their recent 16 days of negotiations. They note that the Ojibwa “are well informed as to the discovery of gold and silver to the west” and that the “Chief of the section where the discoveries have taken place was emphatic in expressing his determination to keep miners from his country until he had been paid for his land”.⁹² This is most likely a reference to Chief Blackstone, or possibly another Shebandowan area Chief, such as to Chief Kebaguin, whom Dawson later reported “gold bearing country” to be “in this Chief’s district”⁹³. The Commissioners also mention that the Ojibwa made “extravagant demands” for “roads made on their lands and wood taken for steamers and buildings” and that “At a recent council feeling ran so high between the

⁹¹ Ibid.

⁹² LAC, RG 10, Volume 1868, File 577. Wemyss M. Simpson, S.J. Dawson, Robert Pither, Indian Commissioners, Fort Francis, Rainy River, to Joseph Howe, Secretary of State for the Provinces, Ottawa, July 17, 1872.

⁹³ Morris, 328.

band favouring the idea of a treaty, and those *opposing* it”(Emphasis added).⁹⁴ Although concern about the right-of way through their territory had been repeatedly expressed by the Shebandowan Chiefs, Ojibwa from Rainy Lake and Lake of the Woods were also known to share this concern. Nevertheless, this letter indicates that certain bands were opposed to the terms of the Treaty, and the Ojibwa from the East likely had greater cause for such opposition. For example, it was Dawson’s intention to make navigation continuous along the Red River Route, and in 1868, he noted that at Lake of the Woods and Rainy River “the navigation is unimpeded and but little work required”.⁹⁵ Significantly, with the exception of locks under construction at Fort Francis⁹⁶, the construction of dams were almost entirely confined to the Eastern section of the Route and caused flooding of Ojibwa lands on Lac des Mille Lacs, Kashabowie, Kaogassik, Shebandowan, Wiindegostegon, and Sturgeon Lakes.⁹⁷

It seems that Dawson was not the only government official to view Chief Blackstone as “troublesome” and to advise his exclusion from Treaty negotiations. F. Burton Marshall, a government storekeeper at Fort Francis, after the mid-October 1872 Treaty negotiations in Prince Author’s Landing, considered Blackstone to be “detrimental to the speedy arrangement of a Treaty”.⁹⁸ Marshall also expressed an aversion to “Mukadaoosin (Blackstone) who is bad enough to do any crime” and preference for the

⁹⁴ LAC, RG 10, Volume 1868, File 577. Wemyss M. Simpson, S.J. Dawson, Robert Pither, Indian Commissioners, Fort Francis, Rainy River, to Joseph Howe, Secretary of State for the Provinces, Ottawa, July 17, 1872.

⁹⁵ Simon James Dawson, “Report on the line of Route between Lake Superior and the Red River District”, *Canada Sessional Papers*, (A. 1869, #42), 27.

⁹⁶ “General Report of the Minister of Public Works, For the Fiscal Year Ending 30th June, 1872”, *Canada Sessional Papers*, (Ottawa: Printed by I.E. Taylor, A. 1873, #6) 137.

⁹⁷ Joan A. Lovisek, Leo G. Waisberg, and Tim E. Holzkamm, “‘Deprived of Part of Their Living’: Colonialism and Nineteenth-Century Flooding of Ojibwa Lands”, in *Papers of the Twenty-Sixth Algonquian Conference* (Edited by David H. Pentland, University of Manitoba, 1995) 229.

⁹⁸ LAC, RG 10, Volume 1869, File 582, Item 2, Reel C-11104. F. Burton Marshall, April 19, 1872.

more Westerly Chiefs Keechekoka (Rainy Lake) and Manatonenis (Rainy River) who were his “friends”.⁹⁹ One of Marshall’s recommendations is particularly significant as it may indicate a general consensus amongst Government officials, or at least discussion between Dawson and Marshall, that measures should be taken to exclude Chief Blackstone from Treaty negotiations. For instance, referring to the Chiefs that he identified as his “friends”, Marshall states that, “these principal Indians can set all the tribes to agree for making the necessary Treaty and thus leave out Blackstone who can be made only a secondary person”.¹⁰⁰ This theory of an agenda to exclude Blackstone, and by association the other Shebandowan Chiefs, is given further credence by (and gives credence to) Blackstone’s accusations a month later in a letter dated August 30, 1872, in which he asserts that “M. Dawson has been trying to get the Head Chief Blackstone put lowest on the list of Chiefs”.¹⁰¹

“[I]t is not possible for us to treat with Mr. Dawson”

An examination of Blackstone’s August 30, 1872 letter, the authenticity of which was subsequently the subject of much scrutiny by Commissioner Dawson, as well as the slew of correspondence that followed, reveals a history of animosity between Blackstone and Dawson, and makes evident Dawson’s ‘sharp dealings’, and that at times he did not act in good faith in his capacity as an Indian Commissioner. In this letter, Blackstone states:

⁹⁹ LAC, RG 10, Volume 1869, File 582, Item 3, Reel C-11104. F. Burton Marshall, Toronto, to the Secretary of State for the Provinces, October 31, 1872.

¹⁰⁰ Ibid.

¹⁰¹ LAC, RG 10, Volume 1872, File 747, Reel C-11105, Blackstone, Head Chief, Prince Arthurs Landing, to Governor General in Council, August 30, 1872.

... it is not possible for us to treat with Mr. Dawson...all they seem desirous of doing is to make a large amount out of mineral locations which they have been having surveyed. With the government we are willing to treat upon reasonable and fair terms but as for Mr. Dawson and with him we cannot make a treaty as he is only acting for his personal interest. Mr. Dawson has been trying to get the Head Chief Blackstone put lowest on the list of chiefs... He also says that there is no government or authority below to make a treaty but that he is the government himself... Mr. Dawson says that if we do not take the three (\$3) per head which he has offered to pay, that our lands will be over run and ourselves murdered... unless we accepted his offer our country would be over run and that we would get nothing, that the white people would take possession... As for myself, head Chief I can make my oath and swear that all that has been above written and stated is absolutely true and correct... the government must pay no attention to any statements or representations made out side of this letter. We think that Mr. Dawson may make some representations to accord with his own interest but we say pay no regard to them because the aboves our true [sic]. (Emphasis Added)¹⁰²

Although Dawson responded to this letter by declaring it a forgery, this is unlikely as the concern expressed about surveying of mineral locations is consistent with Blackstone's actions halting mining operations on his territory in the spring of 1872, and perhaps more compellingly, because it would require more letters – written by Blackstone and other chiefs – to also be forgeries. For instance, in a letter dated August 31, 1872, Blackstone states “I couldn't get the picture taken I promised to send you but shall send it when I return to this place”¹⁰³, which is clearly a reference to his promise in the August 30 letter that “We will send the likeness of the person that we appoint to attend to our business”.¹⁰⁴ Similar to Blackstone's accusation in the August 30 letter that “Mr. Dawson may make some representations to accord with his own interest”, his August 31 letter also claims that “Dawson has made or pretended to have made some arrangements with some one who pretended to be chief to send his own interests, but the person... is no chief and... has

¹⁰² LAC, RG 10, Volume 1872, File 747, Item 28 & 29, Reel C-11105. Blackstone, Head Chief, Prince Arthurs Landing, to Governor General in Council, August 30, 1872.

¹⁰³ LAC, RG 10, Volume 1872, File 747, Item 27, Reel C-11105. Blackstone, Ojibwa Chief, Prince Arthurs Landing, to Governor General in Council, August 31, 1872

¹⁰⁴ LAC, RG 10, Volume 1872, File 747, Item 29, Reel C-11105. Blackstone, Head Chief, Prince Arthurs Landing, to Governor General in Council August 30, 1872.

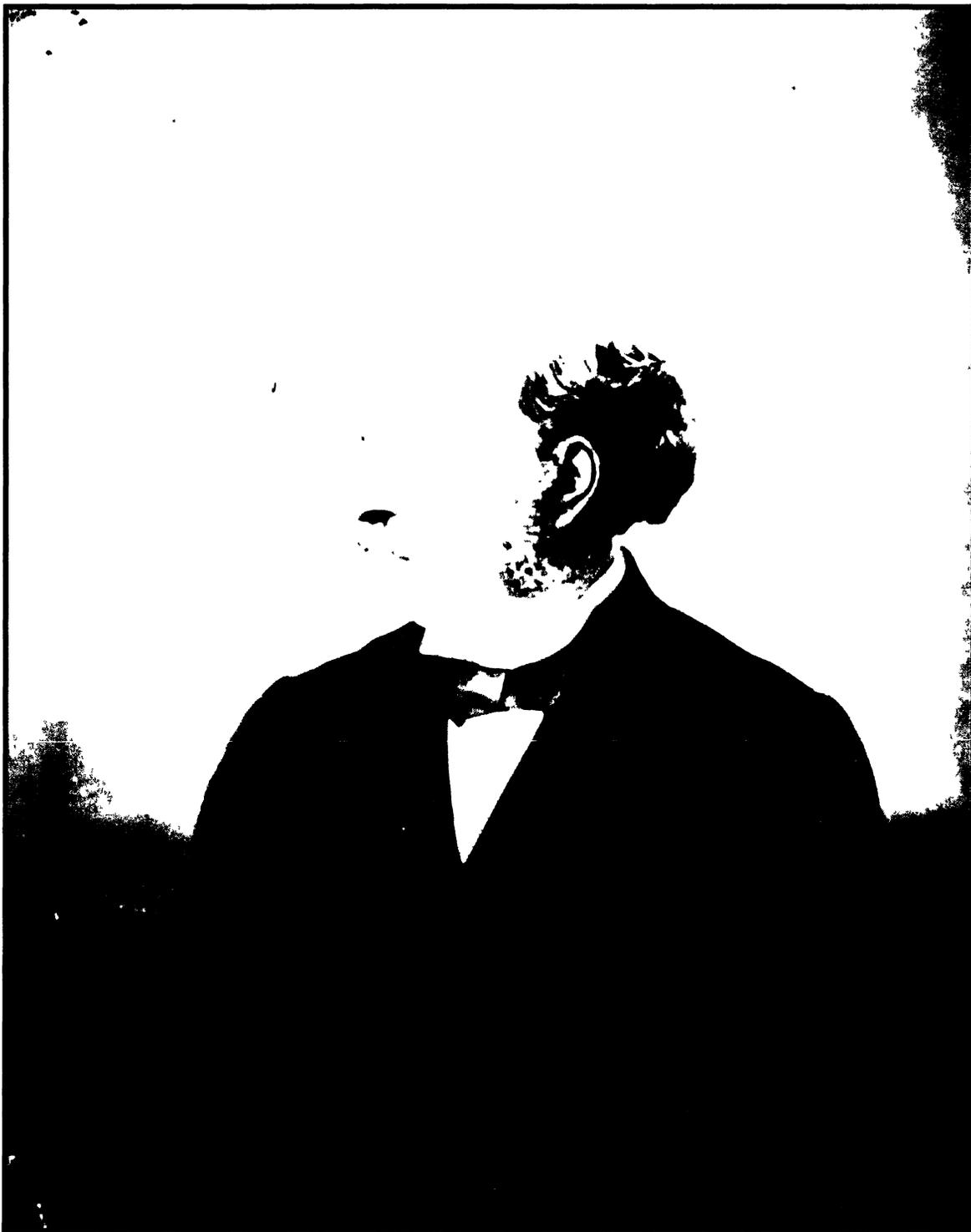


Figure 6 Simon James Dawson, April 1879¹⁰⁵

¹⁰⁵ LAC, PA-033901.

no authority whatsoever”¹⁰⁶ Additionally, in an October 3, 1872 letter, signed by Blackstone as well as “Chief Ba Pa Ma Jos of Rainy Lake” and “Chief Ka Ba Qua of [illegible, looks like Lac la Croix]”, they express candid opposition to Dawson, concern over mining activities, and even refer to their “property” being taken by “force”, sentiments very similar to the August 30 letter, yet again indicating its authenticity. They state that “persons are constantly upon the territory exploring and surveying our lands as well as mining... We cannot treat with Mr. Dawson in this affair or with Mr. McIntyre. We shall not give up our property and let it be taken from us by force [illegible]... [we are] willing to make a treaty upon fair terms. Our Land extends from Fort Francis this way to the Height of Land”.¹⁰⁷ It is unlikely that Blackstone’s August 30 letter was a forgery as this would necessitate other letters to also be forgeries, including one signed by three Shebandowan Chiefs, Blackstone, Paybamachas, and Kabaquin.

Although an analysis of the slew of correspondence generated by Blackstone’s August 30 letter reveals the presence of animosity between Blackstone and Dawson, it is curious that some authors, who have given attention to their relationship, suggest *friendship* rather than animosity between them! Author Elizabeth Arthur seems to assume that Dawson and Blackstone had “friendly relations”, based on letters written by the American manager of the Jackfish Mine, W.B. Frue, in which he accuses Dawson of “coaching” Blackstone about legal rights prior to his actions in 1872 forcing this mine to

¹⁰⁶ LAC, RG 10, Volume 1872, File 747, Item 26, Reel C-11105. Blackstone, Ojibwa Chief, Prince Arthurs Landing, to Governor General in Council August 31, 1872.

¹⁰⁷ LAC, RG 10, Volume 1872, File 747, Item 17, Reel C-11105. Blackstone, Head Chief, Ba Pa Ma Jos, Chief of Rainy Lake, Ka Ba Qua, Ojibwa Chief, Prince Arthurs Landing, Thunder Bay, to the Governor General, Ottawa, October 3, 1872.

shut down.¹⁰⁸ Authors Chute and Knight, seem to borrow and reiterate the idea of a “close relationship” between Dawson and Blackstone, from Arthur, whom they cite, yet they ironically opine that Frue’s “allegations” were “unfounded”¹⁰⁹. They also refer to a series of articles from the *Toronto Globe* by F. Burton Marshall, in which Marshall “castigates Dawson for befriending... Blackstone”, yet they point out that Marshall “hoped to be rewarded for his revelations by being made a special agent at Shebandowan”.¹¹⁰ Indeed, Marshall was persistently vying for the position of Indian Commissioner, and several times made reports on relations with the Ojibwa that intermittently criticized various officials, such as Commissioner Pither, and Mr. Brunelle of the Public Works department in Fort Francis, in what seems an attempt to convince Indian Affairs that they should hire a reputable employee such as himself.¹¹¹ The evidence to support a close relationship between Dawson and Blackstone is tenuous at best, especially given that this requires overlooking the import of Blackstone’s accusatory August 30, 1872 letter, as well the subsequent correspondence from Dawson that indicates a rivalry.

Returning to the content of the August 30 letter, “Head Chief” Blackstone clearly refuses to treat with Commissioner Dawson, and makes very detailed references to threats from him, and refers to Dawson’s interest in surveying activities for the purposes of mining. These accusations may have merit. For example, in 1867, Simon Dawson,

¹⁰⁸ Elizabeth Arthur, *Simon J. Dawson, C.E.* (Thunder Bay Historical Museum Society, 1987), 18

¹⁰⁹ Janet E. Chute and Alan Knight, “Taking up the Torch: Simon J. Dawson and the Upper Great Lakes’ Native Resource Campaign of the 1860’s and 1870’s” in *With Good Intentions: Euro-Canadian and Aboriginal Relations in Colonial Canada* (Toronto: UBC Press, 2006), Ch. 5, 111, 112.

¹¹⁰ *Ibid.*, 113.

¹¹¹ LAC, RG 10, Volume 1869, File 582, Reel C-11104. “Fort Frances - Treaty No. 3 - F. Burton Marshall Relating the Status of Treaty Negotiations with the Indians at Fort Frances (Newspaper Clippings)”, 1872.

along with his brother William Dawson, had invested hundreds of dollars in mineral lands, and Simon Dawson was employed as an agent by a Montreal Businessmen eager to attain property North of Neebing.¹¹² Similarly, W.B. Frue's April 4, 1872 letter, infers that Dawson had spent "a considerable amount of the Public Funds", intended for the development of the Red River Route, "for the survey and explorations of lands for private interests".¹¹³ Furthermore, Dawson was not the first Indian Commissioner to use threats in order to coerce Aboriginal peoples into agreeing to the terms of a Treaty. Wemyss Simpson served as an Indian Commissioner for Treaty 1, signed on August 3, 1871, and, in the process "threatened the Natives with being swamped by settlers without any compensation if they did not agree to the governments offer".¹¹⁴ Simpson also served as a Commissioner for Treaty 3 negotiations during 1871 and 1872, and according to Dawson, "Mr. Simpson and I always acted in perfect harmony"¹¹⁵; it seems that Dawson borrowed a bargaining method from his fellow Commissioner Simpson, with his threat that Blackstone described: "if we do not take the three (\$3) per head which he has offered to pay, that our lands will be over run and ourselves murdered... unless we accepted his offer our country would be over run and that we would get nothing, that the white people would take possession".¹¹⁶ Dawson's behaviour described in this letter would not have been out of place from other officials employed during Treaty 3 negotiations. For example, J.A.N. Provencher who was appointed as an Indian Commissioner for the 1873

¹¹² Arthur, Elizabeth. *Simon J. Dawson*, 13.

¹¹³ Quoted in Janet E. Chute and Alan Knight, "Taking up the Torch", 112.

¹¹⁴ Olive P. Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: McClelland & Stewart Inc., 1992), 278.

¹¹⁵ LAC, RG 10, Volume 3576, File 366. S.J. Dawson, Indian Commissioner, Toronto, to H.L. Langevin, Minister of Public Works, Ottawa, June 5, 1872.

¹¹⁶ LAC, RG 10, Volume 1872, File 747, Item 28 & 29, Reel C-11105. Blackstone, Head Chief, Prince Arthurs Landing, to Governor General in Council, August 30, 1872.

negotiations, acted as an Indian Commissioner later in his career in Manitoba, and was fired for corruption. Under his supervision only a limited amount of government distributed livestock and agricultural aids reached the intended reserves, items that did were inferior in quality, and an 1877 inquiry determined that this was due to the corruption of Provencher and his officials.¹¹⁷ Moreover, regarding Dawson's scruples, actions such as those described in the August 30 letter may not be out of character. For example, after George Gladman, H.Y. Hind, and S.J. Dawson's 1857 survey operations between Lake Superior and the Red River settlement, there was much dispute amongst them on which course was the most appropriate navigable Route. While Gladman and Hind preferred the Boundary Water Route, also known as the Grand Portage or Pigeon River route, Dawson preferred the Old Canoe Route, or what became known as the Red River Route, via Lac des Mille Lacs to Rainy Lake. In the political backdrop, Simon Dawson's politically connected brother William Dawson had "saved the expedition once when it was under attack", and through a "close association of political and business interests... expected to profit from the road to the west, and see to it that his brother profited also".¹¹⁸ Further, William Dawson served on a committee of the legislature responsible for printing reports in which he was "well placed to get advance knowledge of precisely what Hind recommended... [a] memorandum in the Dawson papers is almost certainly William's work" and in support of his brother he made public condemnations of

¹¹⁷ Sarah Carter, "St. Peter's and the Interpretation of the Agriculture of Manitoba's Aboriginal People", in *Manitoba History* (No. 18, Autumn 1989), http://www.mhs.mb.ca/docs/mb_history/18/manitobaaboriginalagriculture.shtml; Carol Hodgson, *Stealing in by the Window: Ojibway-Government Relations in the Quetico* (Carleton University, Ottawa, Ontario, August 7, 2003), 26.

¹¹⁸ Elizabeth Arthur, *Simon J. Dawson*, 9.

Hinds report in order to “suppress” it.¹¹⁹ Nepotism, although apparently not an uncommon occurrence in politics during this time-period, is evident between Simon Dawson and his politically connected brother.¹²⁰

In response to Blackstone’s accusatory August 30, 1872 letter, Dawson sent a series of letters to the Department attempting to deny, disprove, and otherwise de-legitimize the accusations made against him. In a letter dated December 12, 1872, Dawson goes to great lengths in order to prove that the incriminating letter was “the production not of Blackstone” and that “could he in his sober senses, hear the letter to which his mark is affixed... he would at once repudiate it”.¹²¹ Dawson goes on to argue:

... [the letter] conveys none of the sentiment of the Indians...the fact is that Blackstone and some other Indians who visit Thunder Bay are led into grogeries, which with the influence of miners, have unfortunately become too numerous at that place... Blackstone is only a sort of quasi chief and that, too of a band not numbering over eighty souls... since the first attempt was made at opening the country the utmost harmony has prevailed between the Indians and the people on the public works...¹²²

Dawson was well versed in political intrigue. When he “[a]nticipated opposition to his proposals from the Dominion Government, Dawson raised the spectre of hostile Indians blocking the Red River route, threatening immigrant women and children, but in other

¹¹⁹ Ibid., 10.

¹²⁰ It is not intended to vilify or unduly portray S.J. Dawson; instead a more complex understanding of his character is being sought. For example, authors such as Chute and Knight have strived to label all of Dawson’s actions as having “good intentions”, highlighting aspects of his later political career such as his arguments for the Aboriginal vote, or his support for Aboriginal fishing rights. Yet they excuse racist remarks in his writing as “Victorian prejudices” or as “occasional slighting remarks on Ojibwa culture”, and they presume him to have a “close relationship” with the Shebandowan Ojibwa while overlooking the import of Blackstone’s accusatory August 30, 1872 letter, as well the following correspondence from Dawson, that indicates a rivalry. Ultimately, a one-dimensional portrayal of Dawson simply won’t do. Janet E. Chute and Alan Knight, “Taking up the Torch”, 106-131.

¹²¹ LAC, RG 10, Volume 1872, File 747, Item 8-14, Reel C-11105. S.J. Dawson, Indian Commissioner, Ottawa, to the Secretary of State for the Provinces, Dec 12, 1872

¹²² Ibid.

correspondence he emphasized repeatedly the amicability of Ojibwa leaders”.¹²³ In Dawson’s letter it seems that he again relies on a similar tactic. He portrays Blackstone as being simply a drunk prone to “groggeries”, and he downplays Blackstone’s authority by saying that he is only a “quasi chief... of a band not numbering eighty souls”. This is almost certainly an attempt to delegitimize Blackstone’s allegations, given that when descriptions of Treaty 3 reserves were recorded two years later in 1874, the recorded population for Blackstone’s band was 93, and also taking into account that the highest number of members for a particular band was only 144, thus “eighty souls” for a band would have been about average.¹²⁴ Furthermore, Dawson’s claim that the “utmost *harmony* has prevailed between the Indians and the Public works” (emphasis added), distinctly contrasts with the paranoia evident in his June 5, 1872 letter, a sparse four months previous, which referred to matters “bearing on the public works in progress”, and to a “factious and restless leader [named Blackstone]” who “drove the miners from the gold fields west of the Height of Land, a few weeks ago”.¹²⁵ Clearly *disharmony* was present.

To Blackstone’s accusation that “all they want is to make a large amount of mineral locations”, Dawson replied “the Indian territories are not as yet organised and no one at present can acquire mineral or other lands therein”, an argument that Dawson would have known was not entirely accurate. For example, in a letter dated September 12, 1871, Dawson himself enthusiastically reports the discovery of gold and silver “three miles beyond the western extremity of Shebandowan Lake” and that parties “are at the

¹²³ Joan Holmes Associates Inc., *Treaty Research Report*, 9.

¹²⁴ *Ibid.*, Appendix 2.

¹²⁵ LAC, RG 10, Volume 3576, File 366. S.J. Dawson, Indian Commissioner, Toronto, to H.L. Langevin, Minister of Public Works, Ottawa, June 5, 1872.

present moment laying off the ground” and “three Provincial Land surveyors are at work”.¹²⁶ Although three months later a December 28, 1871 provincial Order-in-Council officially delayed mining and logging interests in the Shebandowan and Lake Head area until a Treaty could be made, it was not actively enforced.¹²⁷ Indeed, this discovery of gold led to the development of the Jackfish or Huronian mine site, from which Chief Blackstone had to force the miners from in 1872, as this was in his territory and a Treaty had not yet been signed. Furthermore, this discovery of gold “started the tide of mineral exploration which continued through the 1870’s”; at Kawiagamot River (Sturgeon Lake) in the 1870’s, the location at which Adhesion Chief Kebaguin chose as his reserve, “A rich deposit of copper was found on the east side of Round Lake (original name Kawaweagamakok...)”; and in part of the Seine River drainage basin that outflows from Lac des mille Lacs, “large blocks of hematite were found around the shores of Steep Rock Lake” in 1869.¹²⁸ On September 9, 1872, John Clark “of the City of Hamilton in the County of Wentworth”, based upon Dominion Land Surveyor C.C. Forneri’s field notes and plans of mining locations, submitted an application for patents to over 187 acres of mining locations on the North shore Lac des Mille Lacs, as well as several islands.¹²⁹ According to a July, 1872, description of Port Arthurs Landing, “The chief business is silver mining, and prospecting for silver, copper, galena, and other valuable

¹²⁶ AO, Reel MS10275, S.J. Dawson, Indian Commissioner, to J.C. Aiken’s, the Secretary of State for the Provinces, September 12, 1871.

¹²⁷ AO RG3, “Staying issues of Patents and Mining Licences in the Neighbourhood of Lake Shebandowan and Head of Lake Superior” (Executive Council Office, Ontario, Department of the Prime Minister), Order-in-Council, December 28, 1871.

¹²⁸ Viita, 15, 17, 18.

¹²⁹ LAC, RG 10, Volume 1872, File 726 ½, Reel C-11105. MacKenzie, Delamere and Brook, Solicitors for John Clark, Toronto, to the Secretary of State for the Provinces, Ottawa, September 9, 1872.

minerals known to exist in the neighbourhood”.¹³⁰ In this context, Blackstone’s claim that “all they seem desirous of doing is to make a large amount out of mineral locations which they have been having surveyed” is given credibility, and Dawson’s claim that Blackstone’s letter “conveys none of the sentiments of the Indians”, seems quite erroneous.

In response to Blackstone’s letter Dawson tried to deny, disprove, and delegitimize the accusations made, and in what appears an attempt to remain employed as an Indian Commissioner¹³¹, went to great lengths to prove that Blackstone was not its true author. For instance, in a letter dated April 4, 1873, Dawson reiterates his claim that Blackstone was not the author of the letter and that the letter was a “forgery” perpetrated by people “from an Indian settlement at a place called Saginaw in the United States”. Dawson explains that two months previously in February 1873, he had “the officer in charge of Public Works at Thunder Bay, Mr. J.A.P. Towers... read [the letter] over to Blackstone in his own language”, that “Blackstone did not know its contents”, and that “enclosed is a certificate from Blackstone made before judge Van Norman, Stipendiary Magistrate of the Thunder Bay District, denying that he had authorized any person to write such a document to the government for him”.¹³² According to Towers, Blackstone “only wanted them to state [in the letter] that... when the government came to make a treaty they would all come down in a friendly manner and arrange it. He was sorry such

¹³⁰ George M. Grant, *Ocean to Ocean Sanford Fleming’s Expedition through Canada in 1872*, (Toronto: James Campbell & Son), Chapter III.

¹³¹ In the summer of 1873, Dawson was not re-appointed as an Indian Commissioner. Instead, Alexander Morris, J.A.N. Provencher, and Lindsay Russell were appointed as Indian Commissioners. It is possible that Blackstone’s letters of complaint were directly related to Dawson not being reinstated as an Indian Commissioner.

¹³² LAC, RG 10, Volume 1872, File 747, Item 4-7, Reel C-11105. S.J. Dawson, Indian Commissioner, Ottawa, to Joseph Howe, Secretary of State for the Provinces, Ottawa, April 4, 1873.

sentences had been put in a letter”.¹³³ This does not sound like the sentiments of the “factious and restless leader... who drove the miners from the gold fields west of the Height of Land”.¹³⁴ In fact, it seems the complete opposite of Blackstone’s actions and behaviour. Moreover, it is doubtful that Blackstone would have gone to the difficulty of finding a literate person to put in writing his views, only to make such unnecessary sentiments. It is likely that Dawson, perhaps through intimidation, convinced Blackstone to formally refute the authenticity of the letter, which, nonetheless, does not refute the evidence that suggests its authenticity. Indeed, Blackstone’s August 30 letter specifically states that “it is not possible for us to treat with Mr. Dawson”, an assertion reiterated in Blackstone’s October 3 letter, also signed by Shebandowan Chiefs Paybamacas and Kabaqua, which states “we cannot Treat or have any thing to do with Mr. Dawson in this affair”.¹³⁵ Surely the accuracy of the claims made against Dawson in the August 30 letter would explain the enmity the letter contains against him, as well as the enmity against him in other correspondence.

Standard Explanations for the Absence of the Shebandowan Chiefs

According to the historical material that documents the final Treaty 3 negotiations at the Northwest Angle of the Lake of the Woods in 1873, there are two standard explanations for the absence of the Shebandowan Adhesion Chiefs. For example, according to lead Commissioner Alexander Morris’s official report of October 14, 1873,

¹³³ Ibid.

¹³⁴ LAC, RG 10, Volume 3576, File 366. S.J. Dawson, Indian Commissioner, Toronto, to H.L. Langevin, Minister of Public Works, Ottawa, June 5, 1872.

¹³⁵ LAC, RG 10, Volume 1872, File 747, Item 17, Reel C-11105. Blackstone, Head Chief, Ba Pa Ma Jos, Chief of Rainy Lake, Ka Ba Qua, Ojibwa Chief, Prince Arthurs Landing, Thunder Bay, to the Governor General, Ottawa, October 3, 1872.

there were “two bands in the Shebandowan District, whose *Adhesion was secured in advance*, and the signatures of whose Chiefs Mr. Dawson left to secure” (Emphasis added).¹³⁶ Likewise, an anonymous account, by a person Morris described as a “short-hand reporter”¹³⁷, published in the newspaper the *Manitoban* on October 18, 1873, gives a slightly different explanation: “In the Neighbourhood of Lac des Mille Lacs and Shebandowan are several bands who have sent word that they *cannot come as far as this point, but will accept the terms made at this treaty* and ratify it with any one Commissioner who will go there to meet them” (Emphasis added).¹³⁸ Interestingly, McNab has hypothesized that “Since this account [in the *Manitoban*] and the Morris Report of October 14, 1873, contain similar information sometimes in similar wording, both documents may have been conceived or written by Morris or by someone associated with him”.¹³⁹ The pertinent questions thus become: what point in time did the Shebandowan Ojibwa send word that they could not travel “as far as this point”? When, and with whom, had they negotiated and consented to the terms of the Treaty “in advance”? Lastly, is there any evidence to corroborate this beyond these brief statements that were likely both “written by Morris or someone associated with him”?

As a sign of Dawson’s esteem, the final Treaty 3 negotiations at the Northwest Angle began with the Ojibwa spokesman not willing to consider the Treaty without first addressing that “Mr. Dawson had made promises that had not been kept, and that they had not been paid for the wood used in building the steamers, nor for the use of the [Red

¹³⁶ Morris, 51.

¹³⁷ *Ibid.*, 52.

¹³⁸ *Ibid.*, 54.

¹³⁹ McNab, “Hearty Co-operation and Efficient Aid”, 134.

River] Route itself”.¹⁴⁰ Throughout the negotiations, the Grand Council of the Ojibwa’s had strove to present a united front, and the three Ojibwa spokesmen Mawintopinesse, Powawassin, and Blackstone, had repeatedly referred to having “one mind” on all the matters under discussion. At a crucial point in the negotiations, Chief Sakatcheway of Lac Seul had spoken in favour of the Treaty, revealing a crack in their united front; and it was likely not a coincidence that Chief Sakatcheway had privately spoken to Morris near the beginning of the negotiations.¹⁴¹ It was after this break in unity that Chief Blackstone asserted that the “people at the Height of land, where the waters came down from Shebandowan to Fort Francis, are those who have appointed me to lay before you our decision. We are going back to hold a council”¹⁴², and as a counter-measure and in a display of his continued opposition to the terms of the Treaty, he “urged the other Chiefs to return to the council” to consider Commissioner Morris’s proposals, “stating that he was ready to Treat, though he did not agree to... [Morris’s] proposals, nor to those made to [Morris]”.¹⁴³ After Blackstone’s words, Dawson questioned his authority and demanded:

...the Chief who has just spoken, did the band at Shebandowan-did Rat McKay, authorize him to speak for them? Ke-ha-ke-ge-nen is Blackstone’s own Chief; and I am perfectly willing to think that he authorized him. What I have to say is that the Indians may not be deceived by representations made to them, and that *the*

¹⁴⁰ Morris, 48. The accuracy of Dawson’s promises cited by the Ojibwa can be construed from his own observations in an 1869 report, that when at an Ojibwa Grand Council “it is necessary to observe extreme caution in what is said... there are those present who are charged to keep every word in mind... on one occasion... [a] Chief of the tribe commenced an oration by repeating, almost verbatim, what I had said to him two years previously”. Simon James Dawson, “Report on the line of Route between Lake Superior and the Red River District”, *Canada Sessional Papers*, (A. 1869, #42), 28.

¹⁴¹ Tim Holzkamm and Leo Waisberg, *We have One Mind and One Mouth it is the Decision of all of us: Traditional Anishinaabe Governance of Treaty #3*(Prepared for Grand Council Treaty #3, October, 2001), 9.

¹⁴² Morris, 64.

¹⁴³ *Ibid.*, 49.

*two bands met me at Shebandowan said they were perfectly willing to enter into treaty” (Emphasis added).*¹⁴⁴

This interaction between Dawson and Blackstone can be interpreted with greater understanding by considering their previous conflict with each other. Despite the fact that Dawson had interacted with Blackstone as a Chief who represented the Shebandowan Ojibwa on several earlier instances, and despite his own correspondence in which he specifically referred to Blackstone as a “leader” of the “Shebandowan Land”¹⁴⁵, he nonetheless questions “did the band at Shebandowan-did Rat McKay, authorize him to speak for them?”, and he even claims that “Ka-ha-ke-ge-nen is Blackstone’s own Chief”. Essentially, Dawson is asking if the other Chiefs from the Shebandowan area had given Blackstone authority to speak for them, and also implying that he was only a secondary Chief to “Ka-ha-ke-ge-nen”. Kahekegenen is likely a reference to Chief Kebaguin, who on at least five separate occasions had acted in concert with Blackstone as a Chief of equal standing, as illustrated by their letters of complaint to the Government, on May 18, 1871, June 13, 1871, June 29, 1871, July 13, 1871, and October 3, 1872.¹⁴⁶ Dawson’s challenge to Blackstone is reminiscent of his earlier response to Blackstone’s August 30, 1872 accusatory letter, that is, he attacked his credibility as a Chief in order to delegitimize the content of his words. Dawson’s motivation for challenging Blackstone’s

¹⁴⁴ *Ibid.*, 64.

¹⁴⁵ LAC, RG 10, Volume 3576, File 366. S.J. Dawson, Toronto, to H. L. Langevin, Minister of Public Works, Ottawa. June 5, 1872.

¹⁴⁶ LAC, Former Archival Reference No. RG6-C-1, Volume 328, File 774. Blackstone, and Kebikewan, Ojibwa Chiefs, Fort Francis, to the Secretary of State for Canada, May 18, 1871; LAC, Former Archival Reference No. RG6-C-1, Volume 328, File 774. Blackstone & Kabekwan, Indian Chiefs, Lac La Croix, Fort Francis, to J.H. (Joseph Howe?), June 13, 1871; LAC, Former Archival Reference No. RG6-C-1, Volume 328, File 774. Blackstone, Kebeguine, and Rat McKay, Ojibwa Chiefs, Thunder Bay, to Joseph Howe, Secretary of State for Canada, June 29, 1871; LAC, Former Archival Reference No. RG6-C-1, Volume 328, File 774. Blackstone, Rat McKay, Kebeguine, Ojibwa Chiefs, Thunder Bay, Lake Superior, to J.H. (Joseph Howe?), July 13, 1871; LAC, RG 10, Volume 1872, File 747, Item 17, Reel C-11105. Blackstone, Head Chief, Ba Pa Ma Jos, Chief of Rainy Lake, Ka Ba Qua, Ojibwa Chief, Prince Arthurs Landing, Thunder Bay, to the Governor General, Ottawa, October 3, 1872.

authority during the negotiations was almost certainly motivated by previous animosity between them, and by a desire to limit any dissent against the Treaty.

That Dawson mentions *two* Shebandowan area Chiefs, Rat McKay, and Kahakegenen, as well as his statement that “the *two bands* met me at Shebandowan said they were perfectly willing to enter into a Treaty” is particularly important. It should be noted that Morris’s report also referred to “*two bands* in the Shebandowan District, whose adhesion was secured in *advance*, and the signatures of whose Chiefs Mr. Dawson left to secure”. Likewise, in a telegram dated October 10, 1873, Morris also reported that “two Shebandowan Chiefs not present, but Dawson had their promised Adhesion”.¹⁴⁷ The obvious disparity is that when the Shebandowan Adhesion was signed, there were *three* bands represented by Metasoqueneshauk, Paybamachas, and Kebaguin. It was not until after the Shebandowan Adhesion, and in Dawson’s official report, that he noted “at Shebandowan... the whole of the bands east of the narrows of Rainy Lake, are under *three* principal Chiefs” (Emphasis added).¹⁴⁸ Perhaps, this frequent reference made to there only being two bands at Shebandowan prior to the adhesion, is an indication that Dawson did not in fact meet with them as he claimed, because then he would have been well aware that there were *three* bands at Shebandowan, and not two.

Moreover, after an examination of the correspondence leading up to the October 1873 Treaty negotiations it is unclear when exactly the Shebandowan Ojibwa were supposed to have given their assurance “in advance” that they would agree to the terms of

¹⁴⁷ AO, Irving Papers 75/16. “Record of Proceedings, Prepared for Supreme Court of Canada in the Treaty 3 Annuities case” (Doc.134), Lieutenant-Governor Alexander Morris, to Alexander Campbell, Minister of the Interior, October 10, 1873.

¹⁴⁸ Morris, 328.

Treaty 3. For instance, in July of 1873, Dawson traveled to Fort Gary and encountered Ojibwa at various points who asked to have “timely notice of the precise date and time [for the negotiations]... in order that those living at a distance, as many of them do, may be enabled to attend”.¹⁴⁹ Clearly, the Ojibwa he met in July planned on attending the negotiations. According to a letter dated August 26, 1873, Dawson had received a telegram from F. Braun of the Department of Public Works requesting his presence at the Northwest Angle Treaty negotiations scheduled on September 11, and asking that he notify the Ojibwa on the Eastern portion of the Dawson Route. Dawson replied that “Immediately on this dispatch coming to hand I sent *messengers*¹⁵⁰ to convey the required notice to the Indians in the Eastern Sections” (Emphasis added).¹⁵¹ Clearly Dawson sent messengers, and it was not at this point in time when Dawson met with the “two bands” at Shebandowan as he claimed. At the end of this August 26 letter, Dawson made it clear that he was about to leave for Fort Gary, and asked that further dispatches be sent to him at that place.¹⁵² Importantly, the original 1873 Treaty commission did not include Dawson, and it was not until a telegraph sent to him at Fort Gary and dated September 3, through which the Minister of the Interior officially informed him that he was appointed as a Commissioner in place of Lindsay Russell.¹⁵³ Ultimately, Dawson

¹⁴⁹LAC, RG 10, Volume 1904, File 2235, Item 112. S.J. Dawson, to James Cox Aikens, Secretary of State, July 19, 1873.

¹⁵⁰In a September 14, 1873 letter, Robert Pither also stated that he would “send Runners to those East of Rainy Lake”. This may indicate that none of the Commissioners or government officials intended to meet with the Shebandowan Ojibwa in person or prior to Treaty negotiations at the Northwest Angle. Provincial Archives of Manitoba, MG 12, B1, LG, #480, Robert Pither, Indian Agent (Fort Francis), to Alexander Morris, September 14, 1873.

¹⁵¹LAC, RG 10, Volume 1904, File 2235, Item 47. S.J. Dawson, Thunder Bay, to Alexander Campbell, Minister of the Interior, Ottawa, August 26, 1873.

¹⁵²LAC, RG 10, Volume 1904, File 2235, Item 49. S.J. Dawson, Thunder Bay, to Alexander Campbell, Minister of the Interior, Ottawa, August 26, 1873.

¹⁵³LAC, RG 10, Volume 1904, File 2235, Item 45. Alexander Campbell, Minister of the Interior, to S.J. Dawson, Fort Garry, September 3, 1873.

could not have met with the Shebandowan Ojibwa Chiefs while acting with the authority of an Indian Commissioner, since he was not officially appointed until after he had already departed west to Fort Gary, in anticipation of the Treaty negotiations at which his presence was requested. Moreover, prior to Dawson's belated appointment as a Commissioner, unless he was specifically requested to, it is unlikely that he would have carried out any actions that would have been the obligation of a Commissioner, such as meeting in person with the Shebandowan Ojibwa Chiefs in order to secure their Adhesion to the proposed Treaty. It seems that the most recent meeting that Dawson had specifically with Chiefs of the Shebandowan area prior to the Adhesion, was in July 1871, and significantly, other than Blackstone and an unfamiliar Chief named Kwitikezig, the *two* Shebandowan Chiefs present at this meeting were Rat Mckay and Kebaguin, the very same two Chiefs that Dawson referred to at the Northwest Angle negotiations.

The evidence examined here suggests that Commissioner Dawson did not meet with the Shebandowan Ojibwa in advance to secure their Adhesion. Regarding the explanation in the Manitoban, that the Shebandowan Ojibwa "sent word that they cannot come as far as this point", this could also be interpreted as conflicting with the idea that their Adhesion was secured in advance.¹⁵⁴ For example, it would seem odd that they would send such a message if they had already met with Commissioner Dawson and confirmed their Adhesion in advance. Moreover, this account differs in that their absence was said to be due to their inability to "come as far as this point", that is, to travel the long distance from the Shebandowan area to the Lake of the Woods. Perhaps, their

¹⁵⁴ Morris, 54.

inability to travel this distance was a result of limited notice, rather than a lack of willingness to attend as a result of already having met with Commissioner Dawson and confirmed their adhesion. Considering the history of conflict and animosity between Shebandowan regional Chief Blackstone and Commissioner Dawson; that Dawson was aware of Blackstone's opposition to the previous terms of the Treaty; that he had suggested the exclusion of Blackstone from previous negotiations; that Blackstone's letters of complaint against Dawson likely had a great deal to do with him not being reappointed as an Indian Commissioner; that the responsibility to invite the Blackstone affiliated Ojibwa on the Eastern portion of the Red River Route was delegated to Dawson; and that the Ojibwa on the Eastern portion of the Route were absent from the Northwest Angle Treaty negotiations; it is certainly possible that Dawson simply did not invite the Shebandowan Ojibwa, or that he simply did not send messengers to them in a timely manner as he claimed, in an attempt to exclude Chief Blackstone.

“[P]erfectly willing to enter into treaty”?

It is questionable whether the bands at Shebandowan were “perfectly willing to enter into treaty”.¹⁵⁵ At the exact same time as colonial officials were attempting to negotiate a Treaty with them, as well as other boundary waters Ojibwa First Nations, they were also labouring to build the Dawson Route through their territory.¹⁵⁶ The Route consisted of a series of connecting lakes and Rivers from Lake Shebandowan to Lake of the Woods, with steamers and ‘tugs’ placed on most of the larger lakes, eleven portages, corduroyed roads, and accommodation along the way. It also included a wagon road

¹⁵⁵Morris, 64.

¹⁵⁶The Route was also known as the ‘All Canadian Route’, the ‘Red River Route’, and the ‘Old Canoe Route’.

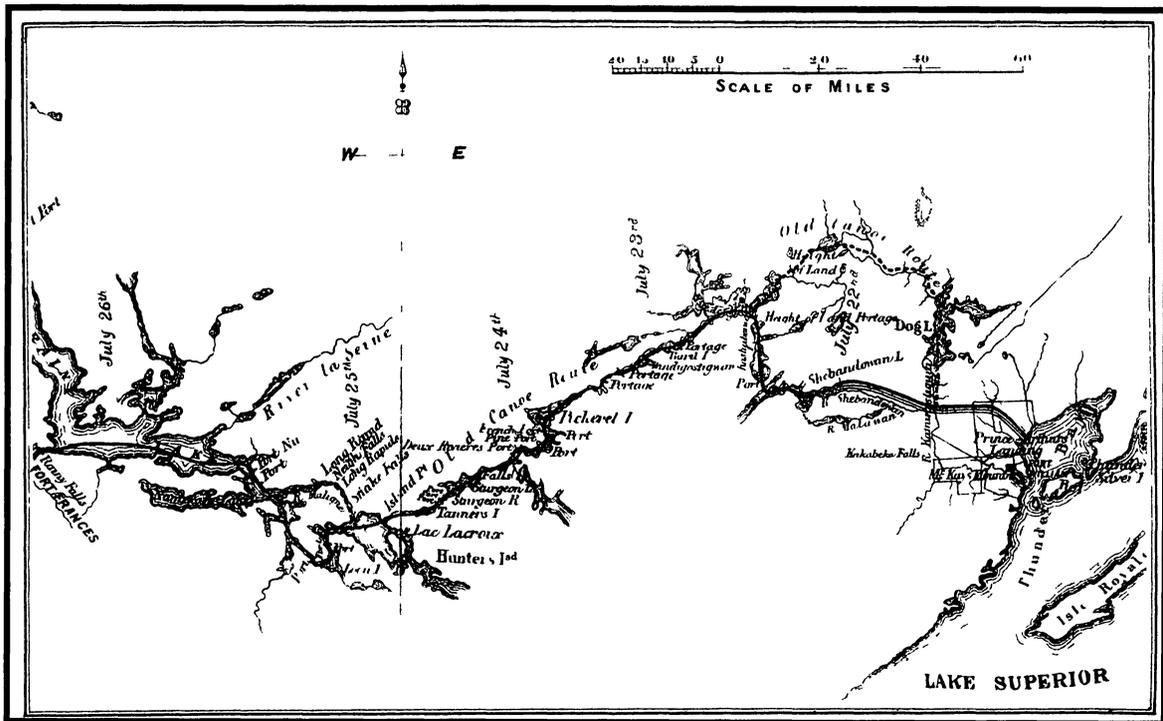


Figure 7 “Thunder Bay to Fort Francis”, the Eastern Portion of the Dawson Route, 1872¹⁵⁷

from Prince Arthur’s Landing to the foot of Lake Shebandowan, and a road from Lake of the Woods to the Red River Settlement. The viability of the Route required the cutting of timber for the building and operation of steamers, as well as the construction of dams along its Eastern portion causing flooding of the Shebandowan Ojibwa lands on Lac des Mille Lacs, Kashabowie, Kaogassik, Shebandowan, Wiindegostegon, and Sturgeon Lakes.¹⁵⁸ Dams were also built on the Maligne River which raised the water levels around the falls and the rapids as high as twelve feet.¹⁵⁹ It was Dawson’s intention to make navigation continuous along the Route, and in 1868 he noted that at Lake of the

¹⁵⁷From: George M. Grant, “Ocean to Ocean Sanford Fleming’s Expedition through Canada in 1872” (Toronto: James Campbell & Son), Chapter III.

¹⁵⁸Joan A. Lovisek, Leo G. Waisberg, and Tim E. Holzkamm, “‘Deprived of Part of Their Living’: Colonialism and Nineteenth-Century Flooding of Ojibwa Lands”, in *Papers of the Twenty-Sixth Algonquian Conference* (Edited by David H. Pentland, University of Manitoba, 1995), 229.

¹⁵⁹Grace Lee Nute. “On the Dawson Road”, in *The Beaver*, (Winter, 1954), 17.

Woods and Rainy River “the navigation is unimpeded and but little work required”.¹⁶⁰ Significantly, with the exception of locks under construction at Fort Francis¹⁶¹, this damming and flooding was almost entirely confined to the Eastern section of the Dawson Route, in the territory of the Chiefs who signed the Shebandowan Adhesion. Furthermore, the Route allowed for transporting immigrants and military troops in larger numbers than ever before through boundary waters Ojibwa territory. Reportedly, between 1871 and October 1873, the Dawson Route carried 2,739 people, 805 of whom were settlers, the rest likely government officials, and military troops.¹⁶² For example, in 1870, Colonel Wolseley and his troops used the Route, or perhaps more accurately built a great extent of it, during their trek to the Red River Settlement in order to suppress the first Métis “Rebellion”, or more accurately the first Métis resistance, against the acquisition of the Northwest by the Dominion of Canada. It was used again by the ‘Manitoba Expedition’ in 1871, which consisted of military troops sent west in response to a ‘Fenian Raid’ into British-Canadian territory by Irish-Americans and Métis from Pembina, a settlement south of Manitoba and across the tenuous international Border.¹⁶³ Embarking on their first expedition, the N.W.M.P. also travelled the Route in October 1873, on their way to the Stone Fort in Manitoba. Since the Route facilitated easier access into Ojibwa territory it led to the growth of extensive mining industries. In an October 3, 1872 letter, Shebandowan Chiefs Blackstone, Paybamachas (Rat McKay) and

¹⁶⁰ Simon James Dawson, “Report on the Line of Route between Lake Superior and the Red River District”, *Canada Sessional Papers* (1869, #42), 27.

¹⁶¹ H.L Langevin, “General Report of the Minister of Public Works, For the Fiscal Year Ending 30th June, 1872”, *Canada Sessional Papers* (Ottawa: Printed by I.E. Taylor, 1873, #6), 137.

¹⁶² Jack Manore, “Mr. Dawson’s Road”, in *The Beaver* (February/March 1991, Vol. 71, No.1), 8.

¹⁶³ Ruth Swan and Edward A. Jerome, “‘Unequal Justice’: The Métis in O’Donoghue’s Raid of 1871”, in *Manitoba History* (No. 39, Spring/summer 2000), http://www.mhs.mb.ca/docs/mb_history/39/unequaljustice.shtml.

Kabeguin clearly express dismay that “persons are constantly upon the territory exploring and surveying our lands as well as mining”.¹⁶⁴ In a letter dated June 29, 1871, these same Chiefs make specific reference to “the matter of your road now making through our country”, and to “the damage done to our hunting and fishing that ensues from your road and its traffic”.¹⁶⁵ Prior to their Adhesion to Treaty the Shebandowan Chiefs had clearly expressed concern about the harmful effects of the Route on their lands and its impacts on their subsistence methods. Similar to the Northwest Angle negotiations, at which the Ojibwa’s first concern was to address the issue of compensation for the Route, the Shebandowan Chiefs most likely wanted, and perhaps with greater cause due to the damming and mining in their territory, to address the outstanding issue of the Route and to be adequately compensated. Nevertheless, knowing that the majority of the Ojibwa had already accepted the terms of the Treaty without compensation for the Route, the Shebandowan Chiefs would not have had any political leverage from which to argue for such compensation. Indeed, the fundamental nature of a subsequent adhesion is that the adhering party agrees to pre-determined terms, conditions and boundaries. Dickason made an observation regarding Treaty 1 that is apt for a comparison to this situation; essentially “they were at a serious disadvantage vis-à-vis the government, which could, and [likely] did, impose a ‘take-it-or-leave-it’ approach that meant in the final analysis the Indians had little choice”.¹⁶⁶

¹⁶⁴ LAC, RG 10, Volume 1872, File 747, Item 17, Reel C-11105. Blackstone, Head Chief, Ba Pa Ma Jos, Chief of Rainy Lake, Ka Ba Qua, Ojibwa Chief, Prince Arthurs Landing, Thunder Bay, to the Governor General, Ottawa, October 3, 1872.

¹⁶⁵ LAC, Former Archival Reference No. RG6-C-1, Volume, 328, File 774. Blackstone, Kebeguin, and Rat McKay, Ojibwa Chiefs, Thunder Bay, to Joseph Howe, Secretary of State for Canada, June 29, 1871.

¹⁶⁶ Olive P. Dickason, *Canada’s First Nations: A History of Founding Peoples from Earliest Times* (McClelland and Stewart Inc., 1992), 277.

Additionally, it is doubtful that the Lac des Mille Lacs Ojibwa were “perfectly willing to enter into Treaty”. It is important to point out that to a certain extent the locations of reserve lands were *chosen* by the Ojibwa bands themselves, and that the lands chosen were extremely important for Ojibwa subsistence methods. For example, when Commissioners Dawson and Pither met with Ojibwa bands at Lake of the Woods in the summer of 1874, in order to have reserves selected, it was agreed upon that farm reserves would be laid out to include gardens that the Ojibwa already had under cultivation.¹⁶⁷ This practice of the Ojibwa having some control in determining the location of their reserves is also consistent with the manner in which the Lac des Mille Lacs reserve was chosen. For example, according to Dominion Lands Surveyor R.I. Ross, he began surveying the Lac des Mille Lacs reserve at its Northeast corner specifically because it was the place pointed out by Chief Metasoqueneshawk as his starting point.¹⁶⁸ According to Lovisek, Holzkamm, and Waisberg, “the Ojibwa controlled key economic locations in the region, such as fishing stations, rice fields, garden islands, and maple groves... Reserves were selected to include established production areas, mineral or timber lands, and hay meadows critical to farming”¹⁶⁹. Likewise, McNab noted that “in the treaty 3 area... lands selected by the Indian bands were in close proximity to their hunting, fishing, and wild rice harvesting areas”.¹⁷⁰ That the reserve lands chosen by the Lac des Mille Lacs Ojibwa were important for

¹⁶⁷ LAC, RG 10, Volume 1918, File 2790D, S.J. Dawson, to E.A. Meredith, Deputy Minister of the Interior, January 28, 1874 (incorrectly dated).

¹⁶⁸ R.I. Ross, *Diary of Survey of the Indian Reserves in the North West Territory, in the year 1875*, Dominion Lands Surveyor (*Canada Lands Survey Records*, Field Book 47 Ontario, Microbook 3042, 1875), 1-6.

¹⁶⁹ Joan A. Lovisek, Leo Waisberg, and Tim E. Holzkamm, “Deprived of Part of Their Living”, 228.

¹⁷⁰ David T. McNab, “The Administration of Treaty 3: The Location of the Boundaries of Treaty 3 Indian Reserves in Ontario, 1873-1915”, in *As Long as the Sun Shines and the Water Flows: A Reader in Canadian*



Figure 8 “Camp on Lac des Mille Lacs with Chief Peter [Metsaoqueneshawk]” 1892¹⁷¹

subsistence purposes can be construed from observations made by Commissioner Dawson. For example, on several occasions he noted the use of farming by the Lac des Mille Lacs Ojibwa. In his official report on the Shebandowan Adhesion he praised Chief Metasoqueneshawk as a “very intelligent man” who had “already begun, to make his people clear land and grow crops”.¹⁷² And, in a letter dated March 2, 1874, Dawson also included the Seine River and Lac des Mille Lacs Ojibwa in his list of “Indians who at

Native Studies (Edited by Ian A.L. Getty and Antoine S. Lussier, University of British Columbia, Vancouver, 1983), 147.

¹⁷¹Chief Peter was described in 1895: “with the looks and air of a patriarch. He has a long white beard and moustaches and shaven cheeks... his figure is slightly bent... Peter told us he is a hundred years old”. Archibald Blue, “Tour of Inspection Northwestern Ontario”, in *Report of the Bureau of Mines*, (Ontario Bureau of Mines, 1895 Report, Published 1896, Toronto: The Bureau, 1892-1906), 115.

¹⁷² Morris, 328.

present cultivate land to any extent”, and he recommended that measures should be taken to supply them, “a few families”, with seeds and implements.¹⁷³ In addition, the Lac des Mille Lacs Ojibwa would have greatly relied upon the harvesting of wild rice as well as trapping of fur bearing animals. Archaeologist K.A.C. Dawson noted the presence of “ricing pits” on Sand Point, clearly suggesting the pursuit of wild rice harvesting on Lac des Mille Lacs.¹⁷⁴ Audrey DeRoy, a band member of Lac des Mille Lacs First Nation, explained how the First Nation “came from different clan systems, [they] came there [Lac des Mille Lacs] to harvest wild rice... the wild rice was a huge resource that we were harvesting for preservation”.¹⁷⁵ The late Phillip Sawdo, in his book *The Trapper*, recalled seasonal trapping with his parents during 1925: “from fall to close to Christmas are generally spent in one place... a line of traps would be set out... on the home lake, after freeze up, maybe a rabbit snare line, to keep the family in fresh meat... [in] March, preparations would be started for the spring beaver and muskrat season... spring would be spent trapping the river while... [his father would hunt] deep in the interior”.¹⁷⁶ Freda Chapman and her family lived on the Lac des Mille Lacs reserve until approximately 1928, and described how they “used to eat the wild rice and the birds that would land in the water to eat the wild rice”, and that her “family used to trap and sell the furs” as a source of income.¹⁷⁷ Clearly, the Lac des Mille Lacs reserve was specifically chosen by the Ojibwa themselves because it was an important location for subsistence methods. It

¹⁷³ LAC, RG 10, Volume 1922, File 2970, S.J. Dawson, to David Laird, Minister of Interior, March 2, 1874.

¹⁷⁴ K.A.C. Dawson “Lac des Mille Lacs Archaeological Reconnaissance”, in *Manitoba Archaeological Quarterly* (Volume 7, No.2 & 3, April – July 1983), 59.

¹⁷⁵ Audrey DeRoy, Interview by author, audio recorded, Thunder Bay, Ontario, July 25, 2008.

¹⁷⁶ Phillip T. Sawdo, *The Trapper*, (Trafford Publishing, 2004), 12-15.

¹⁷⁷ Quoted in Andersen & Associates, *Final Report Lac des Mille Lacs First Nations and Ontario Hydro Joint Problem Solving Team* (Winnipeg, Manitoba, April 1994), 5-9.

was also their traditional territory where they had exercised their hunting and harvesting rights since time immemorial.



Figure 9 “Indian Grave, Shebandowan Lake”, 1891¹⁷⁸

It is also important to acknowledge the cultural significance of the sacred lands which the Lac des Mille Lacs Ojibwa chose for their reserve. Archaeologist K.A.C. Dawson pointed out the ceremonial importance of sites on Lac des Mille Lacs. On what became reserve lands at Poplar Point, he describes a mound formation 47 feet across, seasonally rebuilt, that resembles a ghost lodge with an entrance facing southwest in a line with Coffin Island.¹⁷⁹ The islands on Lac des Mille Lacs, such as Coffin Island, were known to have been used by the Ojibwa as burial grounds. According to DeRoy, when

¹⁷⁸ LAC, PA-038134, Photographer: William MacInnis.

¹⁷⁹ K.A.C. Dawson, “Archaeological Reconnaissance”, 65, 68.

asked about important places on Lac des Mille Lacs, she stated, “there’s sacred places like where we buried our people on little islands... Skeleton Island... my uncles told me that they always put our people out to the little islands around Lac des Mille Lacs”.¹⁸⁰ Indeed, in the mid 1950’s, it was reported that burial relics estimated to be a hundred years old had been stolen from Coffin Island, and that there were over two hundred coffins on this island.¹⁸¹ Apparently Skeleton Island is the oldest burial place “known to inhabitants of the area” with the remains of an “ancient skeleton... well over 100 years old” that had been buried wrapped in a birch bark shroud and suspended from a tree in a method known as a “suspension burial”. Similarly, the coffins on Coffin Island were placed on specially constructed platforms, a practice that allegedly developed in the late 1800’s.¹⁸² Ultimately, not only did the Lac des Mille Lacs Ojibwa choose reserve lands that they actively used for purposes of subsistence, they also chose a location with sites of ceremonial and cultural significance.

Certainly then, the aptly named ‘Dawson Dam’, built for the ‘Dawson Route’ in 1872 at the Seine River outlet on Lac des Mille Lacs, would not have been looked upon favourably by the Lac des Mille Lacs Ojibwa.¹⁸³ Additionally, there were other

¹⁸⁰ Audrey DeRoy, interview by author, audio recorded, Thunder Bay, Ontario, July 25, 2008.

¹⁸¹ “Indian Relics Stolen from Burial Ground” in *Thunder Bay Times Journal*, July 13, 1955, 1. Note: There has been some disagreement on the exact number of coffins, and on what items were stolen from this site. For example, Jeffries suggests there were only two coffins on this island, and only one item taken. See N. Jeffries, “Awesome, Inspiring Lac des Mille Lacs Abounds with Fish”, in *Thunder Bay Times Journal* [Thunder Bay Brodie Resource Library: LF NWO Upsala], 1958.

¹⁸² William McKeown (Conservation Officer), *A History of Lac des Mille Lacs Area*, from Bob Thompson, Ministry of Natural Resources, Fish and Wildlife [Thunder Bay Brodie Resource Library: #12 History-Thunder Bay & District], 1962.

¹⁸³ S.J. Dawson, *Report on the Line of Route between Lake Superior and the Red River Settlement* (Canada Sessional Papers, #42, May 1, 1869) 12-13; S.J Dawson, *Report on the Line of Route between Lake Superior and the Red River Settlement* (Canada Sessional Papers, #12, 1870) 44. See also: Joan Lovisek, “Lac des Mille Lacs ‘Dammed and Diverted’: An Ethnohistorical Study”, in *Actes Du Vingt-Cinquieme Congres Des Algonquinistes* (Carleton University, Ottawa, 1994), 297.

industries that also occupied the sacred lands of the Lac des Mille Lacs Ojibwa. In the early 1870's, there were timber operations underway with several steamboats operating on Lac des Mille Lacs. These steamers were used for transporting booms of logs to saw-mills at Savanne, such as one owned by G.A. McLaurin, a fur trader and timber baron, who had headquarters on the Savanne River. The pre-Treaty time period when some of these timber operations were in progress, can be construed from the anecdote that McLaurin's steamboat was commandeered to help move Wolseley's military troops during the summer of 1870.¹⁸⁴

Based on the intrusions of the Lac des Mille Lacs Ojibwa's traditional lands, it is doubtful they were "perfectly willing to enter into Treaty". Particularly, since reports state that the Dawson Dam raised Lac des Mille Lacs *nine feet*¹⁸⁵. Flooding was so extensive that it has been hypothesized by Fisheries Biologist P.A. Ryan, that certain bays such as Maze Bay on the North-eastern part of the lake and other bays downstream of Honkinnen Narrows, were formerly separate lakes.¹⁸⁶ What other effects would this drastically increased water level have? What would have happened to the land mass of the islands on Lac des Mille Lacs? Damage to burial grounds and sites of cultural significance can only be speculated. Surely the flooding of islands throughout the lake would have left graves under water, and the raising of water levels to nine feet higher than customary would have had a disastrous effect upon wild rice on Lac des Mille Lacs. As indicted earlier, wild rice was an extremely important resource and a staple food for

¹⁸⁴ N. Jeffries, "Awesome, Inspiring Lac des Mille Lacs Abounds with Fish".

¹⁸⁵ Joan Lovisek, "Anatomy of a Century of Flooding", 130. See also Andersen & Associates, *Final Report Lac des Mille Lacs First Nations and Ontario Hydro Joint Problem Solving Team* (Winnipeg, Manitoba, April 1994), 13.

¹⁸⁶ Andersen & Associates, *Ontario Hydro Joint Problem Solving Team*, 12.

the Ojibwa; once processed it could be kept for years.¹⁸⁷ According to author Thomas Vennum Jr., “government and industry control of water has in nearly every instance proven disastrous to wild rice crops. All changes in the customary water climate of rice stands affect the plant”.¹⁸⁸ Other nineteenth century flooding of Ojibwa lands on Lake of the Woods caused destruction to homes, farms, wild rice fields, and fur bearing habitats—the same would undoubtedly have occurred on Lac des Mille Lacs.¹⁸⁹ Lovisek has articulated Dominion Lands Surveyor Robert Ross’s 1874 description of flooding on Lac des Mille Lacs:

...the water level has risen and flooded the shore of the future reserve in several locations. So extensive was the flooding that Ross was prevented from surveying several parts of the reserve despite his reportedly valiant attempt at felling trees from his canoe. Even portions of the northern rectilinear boundary of the reserve, which were not bounded by Lac des Mille Lacs or any other water source were flooded. Amidst this sea, Ross identified a small garden patch of potatoes – a reminder of the Lac des Mille Lacs Ojibwa presence.¹⁹⁰

Lovisek, Holzkamm, and Waisberg have explained the nature of the Boundary Waters Ojibwa economy with the concept of “resource switching”. Essentially, between various resources such as maple groves, fishing stations, berry patches, garden sites, and wild rice beds, the Ojibwa employed a resource use strategy that changed by the season, and year, and that adapted to environmental changes.¹⁹¹ In Dawson’s official report on the Shebandowan Adhesion he states that “Metas-so-que-nes-hauk, Chief of Lac des

¹⁸⁷ Kinew, “Manito Gitigaan”, 187.

¹⁸⁸ Thomas Jr. Vennum, “Wild Rice and the Ojibway People” (Minnesota Historical Society Press, St. Paul, 1988), 290.

¹⁸⁹ Leo Waisberg, and Tim Holzkamm, “From Ojibway Homeland to Reservoir: Flooding of the Lake of the Woods Anishinaabeg”, in *Sacred Lands: Aboriginal World Views, Claims, and Conflicts* (Publication No.43, Canadian Circumpolar Institute, 1998), 117.

¹⁹⁰ Joan Lovisek, “Dammed and Diverted”, 296.

¹⁹¹ Joan Lovisek, Tim Holzkamm, and Leo Waisberg, “Rainy River: Heartland of the Grand Council Ojibway”, in *Sacred Lands: Aboriginal World Views, Claims, and Conflicts* (Publication No.43, Canadian Circumpolar Institute, 1998), 108. See also, Lovisek, “Dammed and Diverted”, 288-294.

Mille Lacs... is a very intelligent man, and has already begun, to make his people clear land and grow crops”.¹⁹² This concept of “resource switching” may provide insight into Dawson’s observations. Given the very recent context of flooding resulting from the construction of the Dawson Dam in 1872, it seems likely that the Lacs des Mille Lacs Ojibwa responded to their flooded lands by switching to farming to compensate for their devastated resources. Despite Commissioner Dawson’s Adhesion report that the Shebandowan Ojibwa were “most friendly in their bearing”¹⁹³, taking into account the context of damming, flooding, mining, cutting of timber, the destruction of resources and culturally significant lands, and the trespass of military troops and settlers—all in the absence of a Treaty and without consent by the Lac des Mille Lacs Ojibwa—it is unlikely that they were “perfectly willing” to enter into a Treaty that made no consideration for compensating these past infringements.

The evidence examined here has suggested that the Lac des Mille Lacs Ojibwa had a measure of control in deciding the locations for their reserves. As such one must question why they would choose reserve land that they surely knew to be flooded? According to an 1895 report, Chief Peter (Metasoqueneshauk) claimed to be a hundred years old, and although he didn’t know when his people came to live at Poplar Point on Lac des Mille Lacs, he explained that “his father, had been born there, and his grandfather; his people had always been there”.¹⁹⁴ It has been noted that Chief Peter’s Grandfather being born at Poplar point would put the Lac des Mille Lac Ojibwa’s

¹⁹² Morris, 328.

¹⁹³ Morris, 327.

¹⁹⁴ Archibald Blue, “Tour of Inspection Northwestern Ontario”, in *Report of the Bureau of Mines* (Ontario Bureau of Mines, 1895 Report, Published 1896, Toronto: The Bureau, 1892-1906), 115.

occupation of the region as far back as the 1600's.¹⁹⁵ Furthermore, archaeologist K.A.C. Dawson has noted that “the primary residents were Northern Ojibwa... The Cressman site [at Sand point on the reserve] appears to have been an extensive *home base camp occupied continuously* from ca. AD 1000 to historic times with other small seasonal camps located around the lake”(emphasis added).¹⁹⁶ In addition to the importance of Lac des Mille Lacs for resources, subsistence, and its many sites of cultural value, the Lac des Mille Lacs Ojibwa also had strong ties to this area dating back beyond living memory; undoubtedly, they chose their reserve despite flooding simply because it was their home.

Shebandowan Adhesion

The text of the Shebandowan Adhesion essentially states that the Shebandowan Chiefs, not having been present to sign the Treaty made at the Northwest Angle , now agree to all the terms, provisions, payments, and reserves, set out in that agreement.¹⁹⁷ In Dawson’s official report on the Shebandowan Adhesion, he asserted that “before signing it they comprehended perfectly the nature of the obligations into which they are about to enter”.¹⁹⁸ However, there is evidence to suggest that the Shebandowan Chiefs did not understand precisely what they were agreeing to, and there is also evidence to suggest that some terms and promises agreed to during the Adhesion process were different from the terms of the Northwest Angle Treaty. For instance, when Dominion Lands Surveyor R.I. Ross was plotting out the Lac des Mille Lacs reserve, he noted that there was “a misunderstanding between the Commissioners and the Indians” regarding the amount of

¹⁹⁵ Andersen & Associates, *Ontario Hydro Joint Problem Solving Team*, 4.

¹⁹⁶ K.A.C. Dawson “Archaeological Reconnaissance”, 72.

¹⁹⁷ Morris, 326.

¹⁹⁸ Morris, 327.

land that was to be reserved for them.¹⁹⁹ Likewise, in a letter dated January 6, 1882, Indian Agent John McIntyre reported, on a “Council with Chiefs at Savanne”, during which Adhesion Chief Rat McKay (Paybamachas) listed specific items that were promised in the Treaty. For instance, McIntyre reported that “Chief Rat McKay River La Seine band says when signing the Treaty [he] was promised four barrels of flour each year one chest of tea, half a large bar of tobacco and five pieces of [illegible] for each Chief... he also says that they were promised a dress for Chiefs wives [at] the same time they received their clothes”.²⁰⁰ Significantly, Dawson was the only Commissioner who was present during the Adhesion process, and he signed on behalf of his fellow Commissioners Morris and Provencher.²⁰¹ Perhaps Dawson made additional promises to the Shebandowan Ojibwa beyond those made at the Northwest Angle negotiations in order to convince them to adhere to Treaty? The council with Chiefs at Savanne described in McIntyre’s letter may also be indicative of a lack of understanding of the Treaty on the part of the Shebandowan Chiefs (or more accurately not having the same understanding of the Treaty as the Commissioners and the colonial government). For instance, McIntyre noted that all of the chiefs, Kegabuin, Rat McKay, Blackstone, and Metasoquenshauk, asked for supplies that were not stipulated in the Treaty, and that he had to explain to them what they were entitled to under the Treaty.²⁰² Perhaps what can be construed from this council is that the Shebandowan Ojibwa’s understandings of their

¹⁹⁹ R.I. Ross, *Diary of Survey of the Indian Reserves in the North West Territory, in the year 1875*, Dominion Lands Surveyor (*Canada Lands Survey Records*, Field Book 47 Ontario, Microbook 3042, 1875), 1-6.

²⁰⁰ LAC, RG 10, Volume 3645, File 7935, Reel C-10113, John McIntyre, Indian Agent, to John A. McDonald, Superintendent General of Indian Affairs, January 6, 1882.

²⁰¹ Morris, 327.

²⁰² LAC, RG 10, Volume 3645, File 7935, Reel C-10113, John McIntyre, Indian Agent, to John A. McDonald, Superintendent General of Indian Affairs, January 6, 1882.

rights under the Treaty were not limited only to the specific provisions that were asked for at the time of the Adhesion, but instead that provisions and items provided could vary each year depending upon their changing needs.

Synopsis

The purpose for this chapter has been to demonstrate the political context in which damming and flooding on Lac des Mille Lacs Ojibwa lands occurred. It assessed the lack of scholarly discussion upon the Shebandowan Ojibwa's Adhesion to Treaty 3; Chief Blackstone's political/social affiliation with, and leadership role for, the Shebandowan Ojibwa, his acrimonious relationship with Commissioner Dawson, and the likelihood that this unfriendly relationship resulted in the Shebandowan Ojibwa's intentional exclusion from the Northwest Angle Treaty negotiations; that the Shebandowan Chiefs articulated concern for the harmful effects of the Dawson Route on their ability to hunt and fish, as well as concern for mining activities and timber operations on their territory; that evidence does not support the standard explanation that the Shebandowan Ojibwa's Adhesion to Treaty had been secured in advance by Commissioner Dawson, and contrary to his report on the Adhesion, it is unlikely that the Shebandowan and Lac des Mille Lacs Ojibwa were perfectly willing to enter into a Treaty that made no consideration for the harmful effects of the Dawson Route which disproportionately effected them in comparison to the Ojibwa on the western portion of the Route. Arguably one of the most important aspects of the Treaty 3 agreement, and indeed what allowed the Treaty to be made in the first place, was the promise that the Ojibwa could continue their traditional forms of subsistence, yet the official text of the

Treaty reads as if the Government of Canada could supersede those rights at any time, and for any reason: “the said Indians shall have the right to pursue their avocations of hunting and fishing throughout the tract surrendered... subject to such regulations as may from time to time be made... and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes”.²⁰³ The text of the written version of the Treaty agreement clearly gives the perspective of the Crown, and not that of the Ojibwa. Especially considering that none of the extant accounts documenting the Northwest Angle Treaty negotiations contain this public works expropriation clause. Although a Treaty is supposed to be a “meeting of the minds” (the necessary requirement for the formation of a contract), the presence and the enforcement of this clause that sanctions government regulatory control over Ojibwa hunting and fishing, and that confers the right to use any tract of land for any activity regardless of its effects upon the Ojibwa, represents a serious breach of this tenet. In addition to the likelihood the Shebandowan Ojibwa were intentionally excluded from the Northwest Angle Treaty negotiations, when they did adhere to Treaty, it would not have been much of a negotiation as technically they only had the right to agree to the terms that had already been determined, a position that would have been un-favourable for addressing issues of pre-Treaty damming and flooding that largely occurred along the Eastern portion of the Red River Route, and a position un-favourable for arriving at the basic Treaty tenet of a “meeting of the minds”. In the next chapters it will be demonstrated that this unbalanced relationship continued when additional damming and flooding of Lac des Mille Lacs Ojibwa lands occurred.

²⁰³ Morris, 323.

CHAPTER 3

“Lac des Mille Lacs Indians, live exclusively by hunting and trapping”: Damning, Flooding, and the Role of Government

The crude Dawson Dam, built of stone at the outlet of Lac des Mille Lacs in 1872, was replaced by a rock-filled timber dam in 1923 by the Backus-Brooks Construction Company. This dam was built to utilize the lake as a reservoir, and to regulate the water levels further downstream in order to produce and supply electrical power for an industrialist named Edward Wellington Backus²⁰⁴, for his various projects, and for the town of Fort Francis.

This chapter will illustrate the political context in which damming and flooding occurred on Lac des Mille Lacs Ojibwa reserve lands and traditional territory as a result of the Backus dam. It will consider the racist underpinnings of the St. Catherine’s Milling Case, and the consequences of its legal decisions, which delegated the authority to control crown lands to the provinces. It will examine the ways in which these new provincial powers circumvented the nation-to-nation relationship that had been established between the Ojibwa and the federal government through Treaty 3. Specifically, it will discuss how after this litigation, the location and extent of reserves within Ontario that had been previously set aside under Treaty 3, became subject to the whims of the province. That is, in order to

²⁰⁴ Backus was an American who owned and operated various industrial companies in the Minnesota-Ontario Boundary area prior to the Great depression. He will be discussed in further detail later in this chapter.

induce Ontario to confirm the reserves as they had been surveyed, the federal government acquiesced to provincial demands that certain reserves be cancelled, and initiated what can be thought of as an unofficial policy to unilaterally cancel and remove Ojibwa from those reserves. This discussion of the federal-provincial division of powers, and of the federal governments apparent willingness to unceremoniously cancel reserves, provides context for the role of both levels of government in the building of dams in Treaty 3 area in the first half of the twentieth century. Indeed, it was the province's Ministry of Lands and Forests that had the authority to issue water power leases and licenses of occupation, permitting private company's to build dams and control water levels, which essentially excluded both the Ojibwa and the federal government from the decision process. This chapter will examine one case study, in which a company owned by E.W. Backus was permitted to build a dam near the town of Fort Francis, and the culpability of the federal government which knew prior to the construction of the dam that flooding of Ojibwa reserve lands and resources would occur. It is useful to understand how each level of government dealt with the flooding of Ojibwa reserve lands in this case, as it illustrates a trend of provincial apathy for Ojibwa reserve lands, and federal negligence to manage reserve lands and assets for the benefit of the Ojibwa. This trend persisted before, during, and after the building of the Backus dam on the outlet of Lac des Mille Lacs, and it is argued here that both levels of government were complicit in the damages that resulted to the Lac des Mille Lacs First Nations reserve, resources, and sacred lands.

The story of the Backus dam reaches back far into Canada's colonial history. In 1670 the British Crown unilaterally granted a Charter to the Hudson's Bay Company (HBC) conferring "sole trade and commerce" and "in law to have, purchase, receive, posses, enjoy and retain lands, rents, privileges, liberties, jurisdictions, franchises and hereditaments" for all territory drained by the rivers flowing into Hudson's Straits – also known as Rupert's Land – "which are not now actually possessed by any of our subjects, or by the subjects of any other Christian Prince or State".²⁰⁵ Couched in sentiments of religious superiority and the widespread perception that "Amerindians had neither faith, nor king, nor law"²⁰⁶, the British Crown considered it to be their prerogative to grant the HBC a monopoly on trade as well as *possession* of a vast territory totalling 7.7 million square acres of land²⁰⁷. Two centuries later, with Confederation in 1867, seeking westward expansion and title to the land, the newborn country set a higher priority on obtaining the HBC's Charter over making Treaties with Aboriginal Peoples, the latter a process Canada appears to have viewed as a mere formality.²⁰⁸ Shortly afterword, the Rupert's Land Act of 1868 authorized the British Crown to take over the HBC's lands, along with the Northwest Territories (Lands draining into the Arctic and Pacific Oceans). These

²⁰⁵ "The Royal Charter Incorporating the Hudson's Bay Company, 1670", in E.H. Oliver, *The Canadian North-west: It's Early Development and Legislative Records*, Vol. 1, (Ottawa: Government Printing Bureau, 1914), 136, 137.

²⁰⁶ Dickason, 83.

²⁰⁷ Manitoba: Life and Times, "Birth of Manitoba", <http://manitoba.ca/cocoon/launch/en/themes/bom>.

²⁰⁸ For example, historian Frank Tough argues that the HBC's claim to Rupert's Land was given preference over Aboriginal claims to title, pointing out that the HBC obtained better compensation for its territorial claims than Aboriginal peoples received through the numbered Treaties, and that purchase of the HBC's Charter was sought first. Indeed, the negotiations for Treaties 1 and 2 in what became Manitoba, as well as Treaty 3 in what is now North-western Ontario, did not begin until 1870, whereas negotiations for the acquisition of the HBC's territory began as early as December 1867. Frank Tough, "Buying out The Bay: Aboriginal Rights and the Economic Policies of the Department of Indian Affairs after 1870", in *The First Ones: Readings in Indian/Native Studies*, ed. David R. Miller et al., (Saskatchewan Indian Federated College Press, Paipot Reserve #75, 1992) 399.

lands were subsequently transferred to the Dominion of Canada in 1869.²⁰⁹ Essentially, through a ‘Euro-colonial sleight of hand’ Canada was able to confer upon itself ownership of an enormous portion of North America without dealing with the rights of its Indigenous occupants.

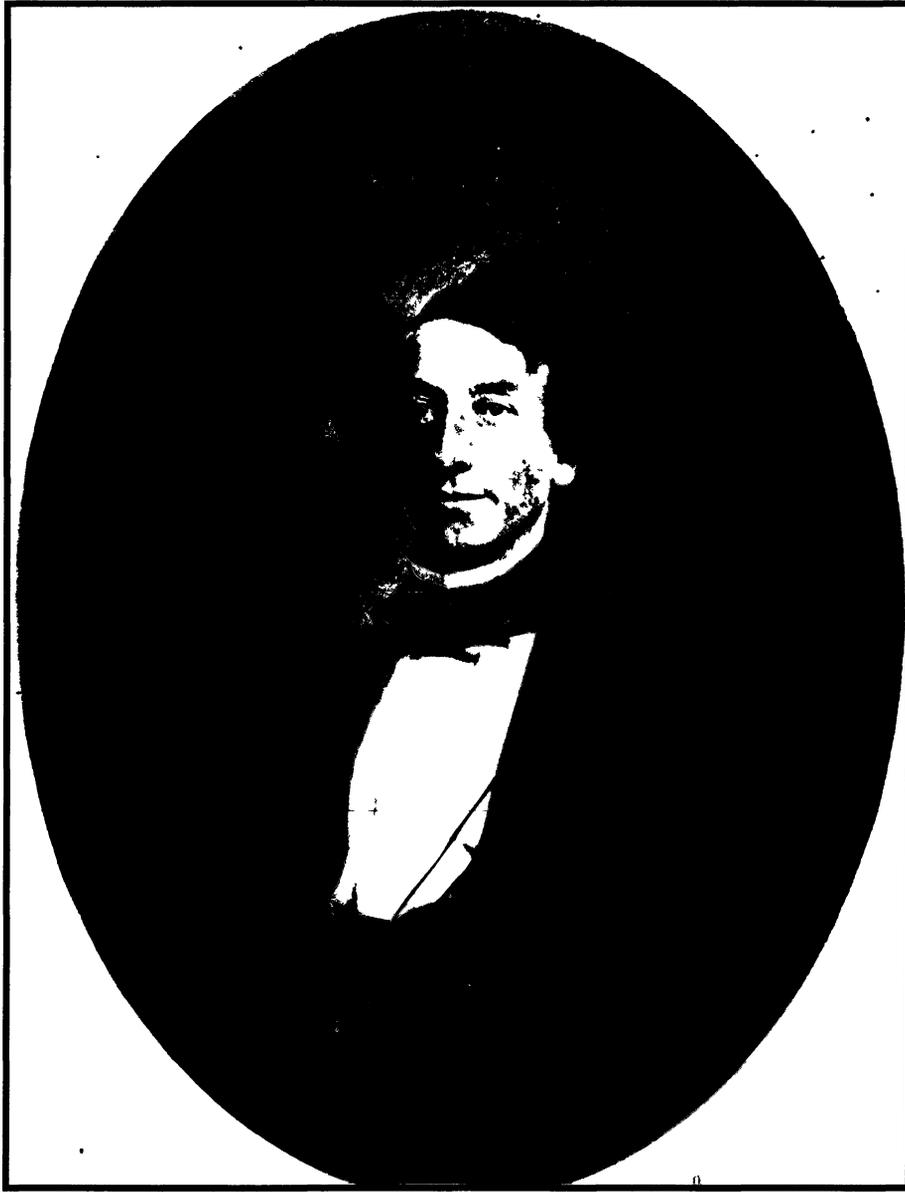


Figure 10 Sir John A. McDonald, June 1, 1858, Quebec²¹⁰

²⁰⁹*Ruperts Land Act, 1868,*

http://www.efc.ca/pages/law/cons/Constitutions/Canada/English/rpl_1868.html

²¹⁰ LAC, C-005331-v6.

St. Catherine's Milling case

These lands were purchased... by the Dominion...By seven Treaties... and every acre belongs now to the people of Canada, and not to the people of Ontario... there is not one stick of timber, one acre of land, or one lump of lead, iron, or gold that does not belong to the Dominion...²¹¹

-Prime Minister, Sir John A. McDonald-

The litigation involving the *St. Catherine's Milling and Lumber Company vs. The Queen*, privileged doctrines of discovery, settlement, conquest, and the HBC's charter, as the source of Canada's title to the land, and not Treaties. Soon after Canada's acquisition of Rupert's Land through purchase of the HBC's charter, a relatively small area around the Red River Settlement was set as the boundary for Manitoba in the spring of 1870. The federal government and Ontario were left to dispute the location of Ontario's boundaries. At the heart of the dispute was whether the provincial or federal government owned the rights to the valuable resources northwest of Lake Superior. This dispute was resolved by the St. Catherine's Milling decision, which entailed discussion and interpretation of a multitude of laws, including the *Royal Proclamation of 1763*, *The British North America Act*, the *Indian Act*, as well as the nature of Aboriginal title. The case was sparked on May 1, 1883, when the Federal government issued a timber licence near Wabigoon Lake – In the Treaty Three area, east of Lake of the Woods, and south of present day Dryden, Ontario – to the St. Catherine's Milling and Lumber Company. In 1884, Ontario brought a legal suit against the company to the Chancery Division of the High Court of Ontario, claiming the company had no right to operate in the area, and requested

²¹¹*Toronto Mail*, June 1, 1882, cited in Anthony J. Hall, "The St. Catherine's Milling and Lumber Company versus the Queen: Indian Land Rights as a Factor in Federal-Provincial Relations in Nineteenth-Century Canada", in *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, ed. Kerry Abel and Jean Friesen (University of Manitoba Press, 1991) 271, 272.

an injunction against further cutting of timber, and the removal of timber already cut.²¹² Although technically the case was between the St. Catherine's Milling Company and Ontario, federal government lawyers candidly assisted the company in its defence. The court proceedings became the arena through which the federal government attempted to assert control over resources in the territory. In 1885, before John Alexander Boyd the Chancellor of Ontario, D'Alton McCarthy, a trained lawyer appointed Minister of Justice in 1884, represented the company and thus the federal governments interests. Oliver Mowat, Liberal premier of Ontario, represented the province. Essentially, the federal government argued that it was entitled to the land through Treaty 3, and the *Constitution Act, 1867* which allotted control over "Indians and Lands reserved for the Indians"²¹³, while the provincial government argued that Indians had no concept of property recognizable in law, and that the crown owned the land by means of discovery, conquest, and settlement.²¹⁴ In making his decision in favour of Ontario, Chancellor Boyd – who according to historian Donald B. Smith "did not have a great knowledge of Indian Matters before the Indian Titles case began"²¹⁵, and who, according to legal historian Kent McNeil "the influence of social Darwinian thought on his judgment is obvious"²¹⁶ – he stated that:

Indian peoples were found scattered wide-cast over the continent, having as a characteristic, no fixed abodes, but moving as the exigencies of living

²¹²Peter Kulchyski, "St. Catherine's Milling", in *Unjust Relations: Aboriginal Rights in Canadian Courts*, (Toronto, Oxford University Press, 1994) 25.

²¹³*Constitution Act, 1867*, 30 & 31 Victoria, c. 3., "An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith", 29th March, 1867.

²¹⁴Barry S. Cottam, "Indian Title as a 'celestial Institution': David Mills and the St. Catherine's Milling Case" in *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, (Winnipeg, University of Manitoba Press, 1991) 248.

²¹⁵Donald B. Smith, "Aboriginal Rights a Century Ago", in *The Beaver*, (February/March 1987, Volume.67:1,) 8.

²¹⁶Kent McNeil, "Social Darwinism and Judicial Conceptions of Indian Title in Canada in the 1880's", in *JOW*, (January 1999, Vol. 38, NO.1) 73.

demanded. As heathens and barbarians it was not thought that they had any proprietary title to the soil, nor any such claim... no ownership of the land was ever attributed to them.²¹⁷

Following this logic, the Ojibwa, not having title to the land, could not have transferred it through Treaty Three, and thus the federal government had no right to issue timber permits to the St. Catherine's Milling and Lumber Company, whereas the provinces had been given control of crown land by the terms of the British North America Act.²¹⁸



Figure 11 John Alexander Boyd²¹⁹

Chancellor Boyd's decision was appealed to the Ontario Court of Appeal, then to the Supreme Court of Canada, and finally to the British Judicial Committee of the Privy Council in London. At each level the case was decided in Ontario's favour. Historian Peter Kulchyski, has noted the lack of Ojibwa participation in this

²¹⁷Quoted in Smith, 12.

²¹⁸Section 109 states that "all lands, mines, minerals, and royalties, belong to the several provinces of Canada... in which the same are situate or arise". The *British North America Act, 1867*, s. 109., http://www.solon.org/Constitutions/Canada/English/ca_1867.htm.

²¹⁹Wikipedia, "John Alexander Boyd", http://en.wikipedia.org/wiki/John_Alexander_Boyd

process at any level, and that they were likely unaware that the case was even underway.²²⁰ Smith has criticized the appeal to the Supreme Court proceedings, pointing out that McCarthy, assisted by lawyer A.R. Creelman, could have made better arguments to weaken their opponent's position. Smith also noted Boyd's portrayal of the Ojibwa as a nomadic people with no ownership of the land, as well as similar sentiments that Indians had no government and were not capable of owning land, by lawyers for the province, David Mills and Walter Cassels, could have been easily disputed.²²¹

At the final level of appeal, Lord Watson issued the judgment of the Judicial Committee of the Privy Council. According to Watson, "the tenure of the Indians was a personal and usufructuary right, dependant on the good will of the

²²⁰Kulchyski, 22.

²²¹Smith, 14. Indeed, it would not have been difficult to find examples of Ojibwa governance, and of their own understanding of their rights to land. There are excellent examples in Simon Dawson's and Henry Youle Hind's accounts of their expeditions into Ojibwa territory in the 1850's. Dawson reported that "When the Red River Expedition first came into contact with them [the Ojibwa], they manifested displeasure, and were not slow to express it, at parties being sent through their country, to explore and examine it, without their consent being first asked and obtained". Similarly, Hind reported an unnamed Indian Chief as saying "The reason why we stop you is because we think you do not tell us why you want to go that way... Do they want to see the Indians land? Remember, if the white man comes to the Indian's house he must walk through the door, and not steal in by the window". According to an 1859 letter from Chief Wasaquokihegan or Wabenogijick of the River La Seine area, he stated that "This country you see here – these rivers, the Riv La Seine and its tributaries belong to us, our fathers and grandfathers owned it and they gave it to us". In addition, statements made by the Ojibwa during the negotiation of Treaty Three could have been easily cited. Chief Mawadopenais was recorded as stating "All this is our property where you have come... That is what we think, that the Great Spirit has planted us on this ground where we are, as you were where you came from. We think where we are is our property", and that "It is the Great Spirit who gave us this; where we stand upon is the Indians property, and belongs to them". Evidently the Ojibwa understanding of their rights to land were the cultural equivalent to European notions of ownership and property. *Canada Sessional Papers*, A.1869, #42, pp.27, Simon James Dawson, Report on the Line of Route between Lake Superior and the Red River District, April 20, 1868; Henry Youle Hind, *Narrative of the Red River Exploring Expedition of 1857 and of the Assiniboine and Saskatchewan Exploring Expedition of 1858*, (2 Vols. London: Longman, Green, Longman and Roberts, 1860; reprint New York: Greenwood Press, 1969); Archives of Ontario, Dawson Family Papers, MU 831, "From Wasaquokihegan or Wabenogijick and the Indians of the River La seine to Mr. Dawson the great chief from the Canadian government", July 27, 1859; Morris 59, 62.

Sovereign”²²² that originated from the Royal Proclamation of 1763. This contrasts greatly with Ojibwa perspectives, where the source of their rights to land certainly do not flow from any European legislation or court decision; instead they maintain these are inherent rights based upon a history of self-governance, and of a relationship with the land since time immemorial. From an Ojibwa perspective, European or Canadian legislation, as well as Treaties, are not the sources of rights per se, since for the most part they only had the power to reaffirm rights that had already existed. Watson concluded that, “[h]ad its Indian inhabitants been the owners in fee simple of the territory which they surrendered by the Treaty of 1873... the Province of Ontario could not derive benefit from the cession... But that was not the character of the Indian interest. The Crown has all along had a present proprietary estate in the land, upon which the Indian title was a mere burden”.²²³ It appears that the Privy Councils decision was swayed by the arguments of Mowat and Edward Blake (Mowat’s predecessor as liberal Premier of Ontario), who pointed out that “the crown made grants of land in every part of North America both before and after the proclamation of 1763 without any previous extinguishment of the Indian claim”.²²⁴ Basically, former unilateral decisions where the crown had granted land in the Americas without consent from Aboriginal peoples, such as the charter granted to the HBC in 1670, were cited as evidence that the crown possessed underlying title. In retrospect, many legal historians’ argue that the foundations upon which the St. Catherine’s Milling case rulings were based are inherently flawed. For example, John Borrows, an Ojibwa Professor of law, has articulated that:

²²²Excerpts from Lord Watson’s judgement are printed in Kulchyski, 27.

²²³ibid, 29.

²²⁴ibid, 24.

Canada's assumption of underlying title and sovereignty throughout its claimed territory... violates both fundamental principles of the rule of law. The crown's claims are arbitrary, in that Canada substantially invalidated Aboriginal people's territorial rights without informed consent, or persuasive legal explanation. Doctrines of discovery, *terra nullius*, conquest, and adverse possession have all been discredited in the common law and international legal systems as a legitimate basis to dispossess Aboriginal peoples of their land.²²⁵

Ultimately, the St. Catherine's Milling case decision – heavily influenced by ethnocentrism, based upon unilateral legislation, and illegitimate doctrines of discovery and conquest – circumscribed the nation to nation Treaty order relationship in Canada, including the relationship between the boundary waters Ojibwa and the federal government. Treaty Three, instead of a nation to nation agreement, or from the perspective of the Ojibwa as a *sacred* agreement meant to last “as long as the sun goes round and the water flows”²²⁶, became, according to provincial Lawyer David Mill's “a mere purchase of the good will of the Indians as a matter of public policy”, and in the words of provincial lawyer Mowat, “a mere matter of courtesy or grace, not of legal necessity nor right”.²²⁷ Yet as Borrows illustrates, the only legitimate source from which Canada can claim ownership of the land is through Treaties, therefore Treaties should take precedence over other legislation. This is not what has occurred with the St. Catherine's Milling case, or with other laws and legislations pertaining to Aboriginal peoples that were soon to follow.

²²⁵John Borrows, “Questioning Canada's Title to Land: The Rule of Law, Aboriginal Peoples and Colonialism”, in *Recovering Canada: The Resurgence of Indigenous Law*, (University of Toronto Press, 2002) 2.

²²⁶Morris, 75.

²²⁷Cited in Cottam, 254, 255.

The 'Indian removal' policy

Although treaties technically still remained valid, the ability of the federal government to enforce them was greatly inhibited by the powers allotted to provincial governments to control crown lands. As a result of the St. Catherine's Milling case rulings, reserves previously chosen by the Ojibwa and plotted out by Dominion Lands Surveyors in accordance with the terms of Treaty 3 now required confirmation from the province of Ontario.²²⁸ For example, according to a May 27, 1890 Memorandum, from Edgar Dewdney, the Superintendent General of Indian Affairs, to the Privy Council of Canada, the federal government "cannot legally exercise control over any of the Reserves without an arrangement having been come to in respect thereof between the Dom. & Prov'l Govt [sic] and the Government of Ontario".²²⁹ To resolve issues related to the status of reserve lands, in 1891 the Federal Government passed *An Act for the settlement of certain questions between the Governments of Canada and Ontario respecting Indian Lands*, and in 1894 Canada and Ontario entered into an *Agreement between the Dominion and Ontario as to the lands within Treaty No. 3*. The general idea of both Act and Agreement was that since Treaty 3 reserves were plotted out prior to the "true boundaries" of Ontario, and due to the fact Ontario did not participate in the selection process, its "concurrence" was now required, and if Ontario was dissatisfied with any of the reserves already selected, joint commissions would be appointed by Canada and

²²⁸The exception being several Treaty Three reserves located within, or partially within, the province of Manitoba, such as reserves belonging to Buffalo Point, and Shoal lake First Nations.

²²⁹LAC, RG 10, Volume 2313, File 62509-2, Edgar Dewdney, Superintendent General of Indian Affairs, to Privy Council of Canada, May 27, 1890.

Ontario to settle all questions related to reserves.²³⁰ One of the most significant features of the Act and the Agreement was the inclusion of a “Headlands to Headlands clause”. This clause states:

That in case of all Indian Reserves... the waters within the lands laid out... including the land covered with water lying between the projecting headlands of any lake or sheets of water, not wholly surrounded by an Indian Reserve or Reserves, shall be deemed to form part of such Reserve including Islands wholly within such headlands, and shall not be subject to the public common right of fishery by others than Indians of the Band to which the reserve belongs.²³¹

Why, one may ask, would federal and provincial governments include a clause, which loosely increases the size of reserve lands to include “projecting headlands”? The explanation appears to be that the federal government was attempting to protect Treaty rights. For example, pointing out that Treaty three guaranteed the continued avocation of fishing, and that all Treaty three reserves were set along lakes and rivers so as to sustain traditional fishing practices, legal historian Richard H. Bartlett suggests that this clause was “focused upon Indian ownership of the waterbed in the context of the maintenance of traditional hunting, trapping, and fishing”.²³² Bartlett also points out that “without water rights the promises made by the crown cannot be fulfilled”.²³³ Indeed, the intention of government was for the Ojibwa to adopt a more sedentary Euro-Canadian way of life on reserves, and treaty promises of continued exercising of traditional resource activities, as well as support of agricultural

²³⁰“An Act for the settlement of certain questions between the governments of Canada and Ontario respecting Indian Lands”, SC [Statutes of Canada], 54-55 Victoria, Chapter 5, July 10, 1891; “Agreement between Dominion and Ontario as to lands within Treaty No. 3”, signed by Thomas Mayne Daly, Superintendent General of Indian Affairs, and John Morison Gibson, Secretary and Registrar of the Province of Ontario, April 16, 1894, in *Canada Indian Treaties and Surrenders*, (Ottawa: Printed by C.H. Parmelee, 1912) 132-134.

²³¹Ibid.

²³²Bartlett, Richard H. “Aboriginal Water Rights in Canada: A study of Aboriginal Title to Water and Indian Water Rights”, (The Canadian Institute of Resources Law, University of Calgary, 1986), 101.

²³³Ibid, 35.

implements, seeds, and farm animals, suggests that water rights were necessary, and thus implied by the Treaty.

Although the 1894 agreement seems to have taken into consideration the purposes for which reserves were created, as well as Treaty Three provisions for continued traditional resource activities, the province soon reneged on the agreement. The question of reserve land in Ontario was discussed at length nearly two decades later when the province had a resurgence of interest on the matter. On December 9, 1913, various provincial and federal government officials met in Ottawa to discuss “outstanding and unsettled Indian Matters between the Dominion and the Province”. According to the “Minutes of the Conference”, Ontario agreed that it would confirm reserves with certain exceptions. Reserve 24C, (also known as the Sturgeon Lake reserve, the reserve that had become Chief Ke-ba-guin’s, one of three Chiefs who signed the Shebandowan Adhesion to Treaty Three) would simply be “cancelled”, and the Dominion Government would “endeavour to obtain a surrender for sale of the Wild Lands reserve²³⁴ and an amalgamation of the Indian bands on the Rainy River with a surrender for sale of their reserves”.²³⁵ According to a “Memo of what was agreed to” at this December 9, 1913 Conference, “the small reserve in Quetico [24C]” would be “done away with”, Rainy River reserves were to be “opened for settlers”, and the province “reserved the right to object to per centage

²³⁴The Wild Lands reserve was held collectively by Six Rainy River First Nations, Little forks No.10, Manitou Rapids No.11, Long Sault No.12, Long Sault No.13, The Bishop No.14, and Paskonkin No.15. See LAC, RG10, Volume 2314, File 62509-5, Part 1, Excerpt from “Schedule of Indian Reserves in the Dominion”, January 1914.

²³⁵LAC, RG10, Volume 2314, File 62509-5, Part 1, “Minutes of The Conference Between The Hon. W.J. Roche, Superintendent General of Indian Affairs, And The Honourable W.T. Heart, Minister Of Lands & Forests, Province of Ontario”, December 9, 1913.

of Reserves taken which may be too large”.²³⁶ Early on in 1914, Duncan Campbell Scott, Deputy Superintendent General of Indian Affairs, sent a letter to J.P. Wright, Indian Agent at Fort Francis, informing him that negotiations with Ontario were in an “advanced position”, and that Ontario would confirm reserves “contingent upon our obtaining a surrender of Wild Lands reserve and the reserves on the river, except Manitou Rapids, and the removal of the Indians to that reserve”.²³⁷ Scott also wrote that “confirmation of all the reserves in Treaty No.3 hinges on this agreement with the Indians... they have no proper title to any of these lands without it, I think it would perhaps be justified in going to parliament for authority to make the re-arrangement if... they would be averse to surrendering”.²³⁸ Clearly, if the Rainy River Ojibwa were unwilling to surrender their reserves, the federal government planned on forcing them off against their wishes. Doubtless surrendering valuable reserves in the ‘fertile belt’ along the Rainy River, and an area steeped in history and culture as a traditional gathering place, would have been looked upon unfavourably by the Ojibwa. When reserves were being surveyed, the Rainy River Ojibwa had been upset over the limited amount of reserve land they were able to gain in this area. In his January 1875 report on the selection of reserves, S.J. Dawson described:

...the Bands of Rainy River had formed a deep laid scheme of bringing their brethren from the Lake of the Wood to join with them in occupying the fertile belt which extends along the banks of that river from Fort Francis to Hungry Hall... they were so persistent in their object that they for some time refused to accept their annual payments, unless their demands were acceded to and seemed

²³⁶Aubrey White, “Memo of what was agreed to at Conference by Minister of Lands, Forests and Mines and Myself with Minister of Interior and Mr. Scott”, Ministry of Natural Resources, Indian Land Files 186214, Volume 2, December 9, 1913.

²³⁷LAC, RG 10, Volume 2314, File 62509-5, Part 1, Duncan Campbell Scott, Deputy Superintendent General of Indian Affairs, to J.P. Wright, Indian Agent at Fort Francis, February 17, 1914.

²³⁸ibid.

prepared to go so far as to repudiate the Treaty of the former year. The Commissioners, however... brought them to see that their views were untenable and they finally consented... to accept the areas marked out for them and relinquish their intention of bringing Bands from the Lake of the Woods.²³⁹

It was likely lands such as the fertile belt along the Rainy River that the Ojibwa spokesman had in mind during the final treaty negotiations, when they stressed that the Ojibwa had already selected areas that they wanted for reserves, and did not want government to select them on their behalf.²⁴⁰ The treaty commissioner replied that reserves would be selected at another time, but assured that the Ojibwa would “have enough of the good farming land”.²⁴¹ It was also determined at treaty that lands already under cultivation would be respected.²⁴² Despite legally binding treaty promises, Indian Affairs staff resorted to using “threats of removal without payment” to force the Ojibwa to abandon their homes and to relocate to Manitou Rapids.²⁴³ The Long Sault band, for example, later complained to Government that Wright, Indian Agent at Fort Francis, had promised money for a school house, houses, livestock, and eighty acres per family on the Manitou rapids reserve, which “they now believed... were all lies”.²⁴⁴ According to ethno-historians Waisberg, Lovisek, and Kolzkamm, “[o]ver 43,000 acres of Reserve Lands, the most arable in the region, were taken. The seven Rainy River bands lost 89% of their land... Ontario thus

²³⁹ LAC, RG10, Volume 1918, File 2790D, S.J. Dawson, to E.A. Meredith, Deputy Minister of the Interior, January 28, 1875 (incorrectly dated January 28, 1874).

²⁴⁰ Morris, 71.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Leo G. Waisberg, Joan A. Lovisek, and Tim E. Holzmann, “Ojibwa Reservations as ‘An Incubus upon the Territory’: The Indian Removal Policy of Ontario, 1874-1982”, in *Papers of the Twenty-Seventh Algonquian Conference*, Ed. David H. Pentland (University of Manitoba, Winnipeg, 1996), 345.

²⁴⁴ Lise C. Hansen, “Research Report: The Rainy River Indian Band Land Claim to the Land Identified as Long Sault Indian Reserve #12 and #13, Little Forks Indian Reserve #10, The Bishop Indian Reserve #14, Paskonkin Indian Reserve #15 and Wild Lands Indian Reserve #15M”, Ministry of Natural Resources Report, December 3, 1986, 28.

accomplished a nearly complete removal of Indian reserves from the best farming land in the region”.²⁴⁵ Similar to the elimination of Rainy River reserves, the province also wanted the cancellation of the Sturgeon Lake reserve due to its location within the boundaries of the Quetico Forest and Game Reserve, created in 1909 and later revamped as Quetico Provincial Park²⁴⁶ in 1913.²⁴⁷ Leading up to the official cancellation of this reserve, there were no discussions regarding the treaty rights of the Sturgeon Lake Ojibwa, nor of any consultation beforehand, despite the fact that Treaty 3 specified that reserves could not be “sold, leased, or otherwise disposed” without “consent of the Indians entitled”.²⁴⁸ Later in the 1930’s provincial game wardens would drive them from their reserve and traditional lands at gunpoint.²⁴⁹ It seems the federal government was willing to go to great lengths in order to placate the demands of the provincial government, and that provincial interests were put before Ojibwa peoples, as well as their Treaty Rights.

The subjects of cancelling reserves, and reserves being “too large”, were further discussed in a series of correspondences between Aubrey White, Deputy Minister of Lands, Forests and Mines, and Duncan Campbell Scott, Deputy Superintendent General of Indian Affairs. In a December 20, 1913 letter, White indicated that Ontario’s agreement to confirm reserves was contingent upon the surrender of reserves along Rainy River, and that without this surrender the

²⁴⁵ Ibid.

²⁴⁶ Note that Game Reserves are set aside for the purpose of hunting, whereas hunting is not permitted in Provincial parks.

²⁴⁷ McNab, David T. “Wilderness and ‘Extinction’: The Lac la Croix and Sturgeon Lake First Nations”, in *Circles of Time: Aboriginal Land Rights in and Resistance in Ontario* (Wilfred Laurier University Press, 1999), 90.

²⁴⁸ “The Northwest Angle Treaty, Number Three”, in *The Treaties of Canada with the Indians*, Alexander Morris (Belfords, Clark & Co. of Toronto, 1880), 323.

²⁴⁹ Ibid, 90. According to Elder Gene Sawdo, people from Lac des Mille Lacs were also driven out at gun point from Quetico park.

agreement would be “null and void”.²⁵⁰ In Scott’s response in a January 27, 1914 letter, he assured White that the surrender of reserves along Rainy River would be obtained, and noted that “we are well aware of the importance which Ontario attaches to this action”.²⁵¹ With the interests of the province in mind, in his December 15, 1914 letter, White criticized the Headlands to Headlands clause of the 1894 Agreement, saying that it “left the door open for all kinds of disputes and misunderstandings” and pointing out that:

The provision is very far reaching and might seriously cripple our action with respect to the application of Winnipeg for leave to take its water supply from Shoal Lake, and I think you will agree with me that there is much room otherwise for future trouble under that clause as it reads, because in some of the reserves I find there are rivers of considerable size running through them and it surely never was intended that lands under a river should belong to the Indians... I also find that some reserves... border on the lake in such a way that, under the language with respect to headlands, a large number of islands would become the property of the Indians, the possession of which islands would give them large additional areas beyond that surveyed...²⁵²

In Scott’s December 30, 1914 letter of reply to White, he concurred that the “points you have raised are important, and the difficulties you anticipate must be removed”, which meant that it was “advisable to confirm the reserves as surveyed”, and to “repeal the statute of 1894”.²⁵³ As a result of their discussions, Ontario passed an Act in 1915 that confirmed federal title to most reserve lands, and, repealed the 'headlands to headlands' clause from the previous 1891 Act and 1894 Agreement,

²⁵⁰LAC, RG 10, Volume 2314, File 62509-5, Part 1, Aubrey White, Deputy Minister of Lands, Forests and Mines, to Duncan C. Scott, Deputy Superintendent General of Indian Affairs, December 20, 1913.

²⁵¹LAC, RG 10, Volume 2314, File 62509-5, Part 1, Duncan C. Scott, Deputy Superintendent General of Indian Affairs, to Aubrey White, Deputy Minister of Lands, Forests and Mines, January 27, 1914.

²⁵²Aubrey White, Deputy Minister of Lands, Forests and Mines, to Duncan C. Scott, Deputy Superintendent General of Indian Affairs, December 15, 1914. Quoted in Emerson A., “Research Report on Policy of the Government of Ontario re Headland to Headland Question, Treaty No.3, (1873-1978)”, Ontario Ministry of Natural Resources, 1978.

²⁵³LAC, RG 10, Volume 2314, File 62509-5, Part 1, Duncan C. Scott, Deputy Superintendent General of Indian Affairs, to Aubrey White, Deputy Minister of Lands, Forests and Mines, December 30, 1914.

that had sought to protect Treaty rights.²⁵⁴ According to Bartlett, the federal government did not pass parallel legislation, and had not been consulted about it. He concluded that the “1915 Act is a clear violation of the terms of the 1894 Agreement... but also a violation of Treaty #3”.²⁵⁵

From an examination of the federal-provincial negotiations to confirm Treaty 3 reserves, an unofficial “Indian Removal Policy” is apparent. Ojibwa reserves were simply cancelled, and treaty rights ignored and considered expendable in the face of provincial interests, and federal desires to expediently resolve the issue of unconfirmed reserve lands. This trend of cancelling reserve lands is apparent in many other instances. For example, in 1919 the town of Kenora easily achieved the surrender of the Rat Portage Indian Reserve #38B for the development of recreational facilities and cottages on Lake of the Woods. One historian has observed: “it is incredible that a request for Indian land surrender by a town made on May 19, 1919 involving more than five thousand acres of lake front property was achieved by June 2, 1919, less than one month later”.²⁵⁶ Consequently, when trying to understand the context in which damming and flooding of Lac des Mille Lacs First Nation reserve lands occurred, it is important to recognize the existence of an unofficial policy to cancel reserves and remove Ojibwa from their lands whenever it suited government interests. Federal responsibility to protect reserves was often at odds with other interests, especially when reserves were considered impediments to

²⁵⁴ “An Act to confirm the title of the Government of Canada to certain Lands and Indian Lands”, *Statutes of Ontario*, George V, c.12, April 8, 1915. Interestingly, this Act also stipulated that water power would continue to be the property of the province, and that the province would pay to Indian Affairs “for the benefit of the Indians”, ten percent of revenue generated from water power.

²⁵⁵ Bartlett, 107.

²⁵⁶ Alison F. Dacey, “Treaty 3: the failure of the Canadian Government to Protect Native Treaty Rights 1905-20”, MA Thesis, Lakehead University, 1993, 20.

economic pursuits such as industry and resource exploitation. Reserves had also come to be thought of by government as a temporary situation, based on the premise that, as Aboriginal peoples adopted Euro-Canadian ways of life, they would become enfranchised, and take with them their individual allotments of reserve land, which would become private property, and the reserve system would eventually be done away with.²⁵⁷

“A nefarious character”

Edward Wellington Backus was a wealthy American industrialist who operated predominantly in the Minnesota-Ontario boundary region. He was a timber baron, dam builder, mill owner, railroad entrepreneur, banker, and senator in the U.S. representing the district of Minneapolis. Furthermore, he was affiliated with a multitude of companies, including the following: the Lee and Backus Co.; E.W. Backus & Co.; Backus-Brooks Company; Minnesota and International Railway; Northern Pacific Railway; Minnesota, Dakota & Western Railway; N.W. National Bank; the International Lumber Co.; Keewatin Lumber Co.; Great Lakes Power Co.; Minnesota and Ontario Paper Co.; and the Ontario & Minnesota Power Co., to name but a few.²⁵⁸ In an April 15, 1913 article from the *Fort Francis Times*, Backus was referred to as “the modern Napoleon of Finance, diplomacy, and astuteness” and as “the kind of men Fort Frances needs and when we get him we should assist him as

²⁵⁷ John, L. Tobias, “Protection, Civilization, Assimilation: An Outline History of Canada’s Indian Policy”, in *As Long as the Sun Shines and the Waters Flow* (Vancouver: UBC Press, 1983), 132-133.

²⁵⁸ See Koochiching County Minnesota, “The History of Koochiching County: The Era of E.W. Backus”, 1983, <http://www.co.koochiching.mn.us/history/Hist02.htm>.



Figure 12 Edward Wellington Backus²⁵⁹

far as possible to build up our town”.²⁶⁰ In many descriptions and local histories in which Backus is featured, he is often portrayed as a hard working capitalist responsible for industrial development, the progenitor of towns, creator of employment, and the harbinger of electricity, whose career was sadly brought to ruin during the Great Depression.²⁶¹ There is more to Backus’s life than this typical historical narrative of pioneer ingenuity and manifest destiny. In a biographical sketch by editor Larry Rossman of Grand Rapids Minnesota, who apparently knew Backus well, he wrote that "Ed Backus' personality... could be brutal, remorseless,

²⁵⁹"The Era of E.W. Backus", Koochiching County History, <http://www.co.koochiching.mn.us/history/Hist02.htm>

²⁶⁰Fort Francis Times, April 15, 1913, <http://www.fftimes.com/100-years-100-stories/backusbio.html>

²⁶¹ See for example Op Cit.; And Carol Russel, "In Our Own Backyard", North Central Minnesota Historical Centre, 1979, <http://www.lakesnwoods.com/Backus.htm>.

ruthless, and not always (to say the least) ethical".²⁶² Often not discussed were companies owned by Backus that built dams responsible for flooding traditional Ojibwa lands, as well as their reserve lands. For example, one historian depicted Backus as "a rather nefarious character who had a finger in most dams which flooded Treaty 3 lands. Many of the TARR²⁶³ reports held in Kenora describe the history of flooding and the role of Backus (and his various companies) [which] is well documented with historical evidence".²⁶⁴

One prominent example of Backus's role in flooding Treaty three reserves, occurred between 1905 and 1910, when the "Ontario and Minnesota Power Company" built a power dam on Rainy Lake, at the Chaudiere or International Falls, that resulted in the flooding of the Pithers Point or Agency Indian reserve #1.²⁶⁵ This dam was situated on the Ontario-Minnesota border near the town of Fort Francis on the Canadian side, and the town of International Falls on the American side. According to details from a September 19, 1905 report, the province of Ontario stood to benefit greatly from the dam; an agreement was made between Backus and the province, granting him land to build a dam for the operation of mills and other manufacturing, with certain conditions, such as the raising and maintaining of water levels on Rainy lake, and the delivery of power to the town of Fort Francis by

²⁶² Quoted in "The History of Koochiching County".

²⁶³ 'Treaty and Aboriginal Rights Research' [TARR] is an organization controlled by the Ojibwa Grand Council of Treaty #3, among other things, it does research for specific claims on behalf of First Nations.

²⁶⁴ Joan A. Lovisek, Personal Communication, January 13, 2010.

²⁶⁵ Note that this reserve was set aside for general use of all Treaty three Ojibwa, yet the closer Rainy River bands of Couchiching, Stanjikoming, Nicickousemenecaning, and Naicathcewenin, were the ones pressured into surrendering it by Indian Agent J.P. Wright in 1908. Tim Holzkamm and Leo Waisberg, "Agency Indian Reserve 1, Selection, Use and Administration: A Confidential Draft Report Prepared for Grand Council Treaty #3", Tim Holzkamm Consulting, Seven Oaks Consulting Inc., September 19, 2000.

January 1, 1907.²⁶⁶ This 1905 report also details how Backus's application on behalf of the Ontario and Minnesota Power Company was referred to the Chief Engineer of the Department of Public works, who reported that the dam would not interfere with navigation. The report also indicates that the Department of Justice, communicated it needed time to consider how the dam would affect fishing and an unfinished canal and lock near the dam site, and the Department of Marine and Fisheries, sent a plan for a fishway for the company to erect. Given that Backus's application had passed through all these departments, the Minister of Public Works had recommended that it be approved.²⁶⁷ According to an October 20, 1905 letter from the Assistant Indian Commissioner, Fort Francis, he wrote that if the dam were to raise the water to the proposed level of 497, it could make the Indian Agent J.P. Wright's house on Pither's Point "uninhabitable".²⁶⁸ A map was also submitted by the Backus company showing the eighteen acres on Pithers Point that would be flooded if the lake was raised to the 500 benchmark level.²⁶⁹ A substantial amount of correspondences followed between Backus, his legal representatives, Indian Agents, and senior Indian Affairs officials, discuss the extent of flooding damage that would occur to land, roads, and property, with a focus on how much compensation the company would owe the government. For example, in Wright's April 28, 1906 letter to J.D. Mclean, the Secretary of the Department of Indian Affairs, he wrote that the "portion that it is proposed to flood is

²⁶⁶LAC, RG10, Volume 4021, Part 1, File 282759, Item 4, Reel C-10203, "Certified Copy of a Report of the Committee of the Privy Council Approved by the Deputy of his Excellency the Governor General on the 19 September 1905".

²⁶⁷LAC, RG10, Volume 4021, Part 1, File 282759, Item 4, 5, & 6, Reel C-10203.

²⁶⁸ *Ibid*, Item 10.

²⁶⁹ *Ibid*, Item 18.

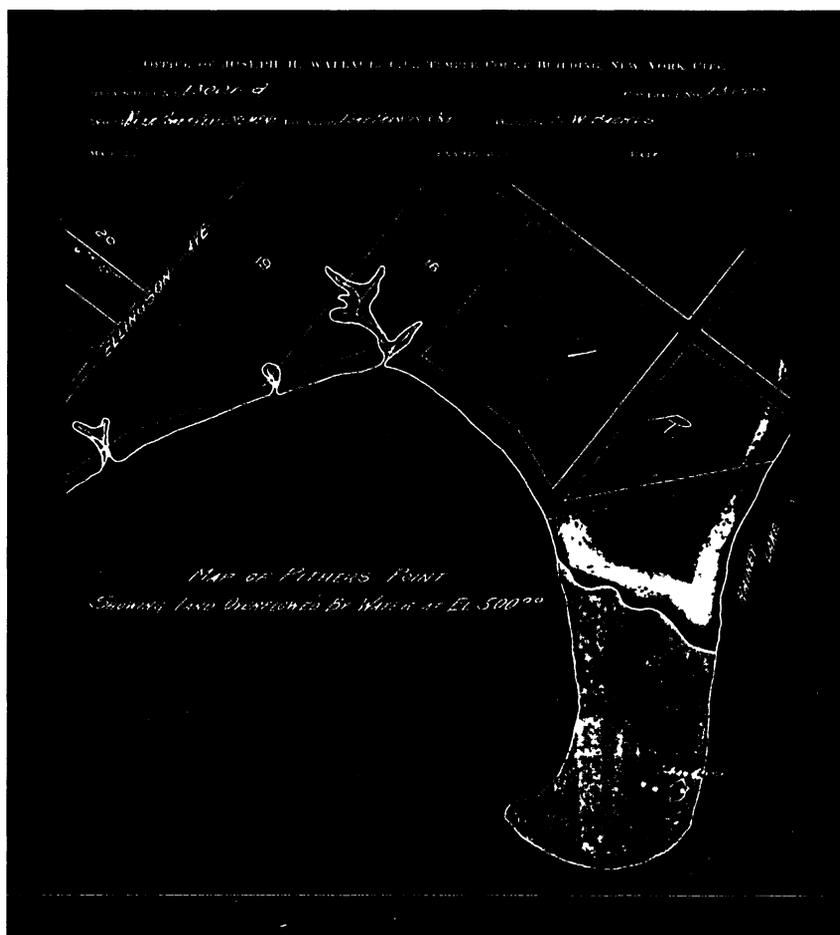


Figure 13 "Map of Pithers Point showing land overflowed by water at El. 500"²⁷⁰

the most valuable...I would advise the Department to demand \$1000.00 per acre as compensation for the land, flooded, and \$300.00 for the buildings, and \$150.00 for the garden, the latter I think should be paid to me for the raspberry, gooseberry, and current bushes, rhubarb, lawn etc, which I have planted at considerable cost and labor".²⁷¹ Clearly, Agent Wright was more concerned with possible damage to departmental property, yet with Backus's application to construct a dam passing through multiple Government Departments, and with the protracted discussion

²⁷⁰ LAC, Microfiche NMC12494, Box 2000002135, Item no. 653, [Agency Reserve no. 1] 1906.

²⁷¹ LAC, RG10, Volume 4021, Part 1, File282759, Item 29, Reel C-10203.

surrounding the flooding of eighteen acres on Pither's Point, the absence of any commentary about how flooding would effect the Rainy River Ojibwa is surprising. Historian Alison F. Dacey, has commented it was “strange that the government was only concerned with the dollar value of potential resort land, while being indifferent to the possible repercussions of the flooding on Native people because the departments mandate was clearly not to act as a realtor, but to protect Aboriginal peoples interests”.²⁷² Indeed, after complaints from Backus over Wright's “extravagant”²⁷³ appraisal, Surveyor S. Bray was brought in to act as a neutral judge and to determine the value of the land. He reported that flooding damage could be “very great” as the land was flat and large tracts of land could become swamp, that the stability of the industrial school building could be threatened, and that tracts of land within the limits of the reserve would be submerged.²⁷⁴ Despite Bray's bleak report that reserve property and traditional territory would be damaged, the Indian Department was willing to grant the company the right to flood the land for a sum of money to cover the retail value of the eighteen acres in danger of being flooded; yet no concern was expressed as to how the Ojibwa would be affected.

Ultimately the Fort Francis dam resulted in extensive flooding of the Pither's Point reserve, as well as flooding on the banks of the Koochiching Indian Reserve 16A and Rainy Lake Reserve 18B²⁷⁵. When the six burial mounds at Pither's Point dating back from between 800 to 1700 A.D.²⁷⁶ were in danger of being flooded, the

²⁷² Dacey, 45.

²⁷³ Op. Cit., Item 36.

²⁷⁴ Ibid, Item 45.

²⁷⁵ Ibid, Item 58; “Ontario and Minnesota Power Company v. The King” (October 23, 1924), [1925] 2 D.L.R. 37 (also reported: (1920), [1925] A.C. 196), <http://library2.usask.ca/native/cnlc/vol04/400.html>.

²⁷⁶ Tim Holzkamm, and Leo Waisberg, “Agency Indian Reserve 1, Selection, Use and Administration”, 18.

company proposed the removal of the bodies instead of spending money to protect the banks of the lake.²⁷⁷ On December 23, 1909, Wright reported that although damage to the shoreline was occurring from the high water level, the company had not yet raised it to the 497 elevation that it had proposed.²⁷⁸ By 1913, it was reported that approximately a mile of shoreline up to fifty-four feet inland was effected; soil was eroded, bridges and five houses needed to be moved, the boarding school was damaged, and Ojibwa hay grounds were flooded, forcing them to purchase their hay.²⁷⁹ Later, in 1916 when the water levels were raised to an elevation of 500.88 (or to 7.98 feet above the natural height) Ojibwa crops and property were damaged and/or destroyed, land was eroded, and a number of trees were killed.²⁸⁰ Throughout this situation, the federal government fell short of its treaty fiduciary duty by failing to protect the Rainy River Ojibwa reserve lands from flooding damage. Instead of taking direct action to stop damage from occurring and seeking redress from the company, the government, futilely, tried to “urge the company to protect these reserves”²⁸¹, and in response, the company “ignored, denied, promised and executed partial and unsatisfactory repairs”.²⁸² Eventually, in the 1920's, the government took Backus's company to court for damages to reserves lands. However, since much of the damages were within a two-chain (132 feet) road allowance along the shoreline,

²⁷⁷ Dacey, 49.

²⁷⁸ LAC, RG10, Volume 4021, Part 1, File 282759, Item 62, Reel C-10203.

²⁷⁹ LAC, RG10, Volume 4021, Part 1, File 282759, Item 154, Reel C-10203, John Simmons, Inspector of Indian Agencies, “Report of Inspection of Koochiching Indian Reserve”, May 19, 1913.

²⁸⁰ Tim Holzkamm, and Leo Waisberg, “Agency Indian Reserve 1, Selection, Use and Administration”, 42; “Ontario and Minnesota Power Company v. The King” (October 23, 1924), [1925] 2 D.L.R. 37 (also reported: (1920), [1925] A.C. 196), <http://library2.usask.ca/native/cnlc/vol04/400.html>.

²⁸¹ LAC, RG10, Volume 4021, Part 1, File 282759, Item 63, Reel C-10203.

²⁸² Dacey, 46.

which the court ruled not to form part of the reserve, the case was “not resolved” and “left to lie in indecision”²⁸³.

“[I]f their means of livelihood is taken away... I do not know what they will do for a living”

Recognition of an 'Indian removal policy' in the first half of the twentieth century, and examination of the Backus led company's damming and flooding of Rainy Lake reserves, and the government response, provides context and insight to better understand the damming and flooding that later occurred on the Lac des Mille Lacs First Nation reserve lands. Certainly both the provinces Ministry of Lands and Forests, and in particular the federal Department of Indian Affairs, would have been well aware of Backus's various companies and their history of causing damage to reserve lands, when on June, 6, 1921, he applied for a license to store water, overflow lands, and build various dams along the Seine River.²⁸⁴ Indeed, at the exact same time as Backus was requesting to build these dams along the Seine River, including one at the outlet of Lac des Mille Lacs, his company, the Ontario and Minnesota Power Company, was in court defending itself against the federal government for having caused damage to reserves on Rainy Lake. In his application for licenses to build dams along the Seine River, Backus explained that they were necessary for the expansion of his Mill at Fort Francis, that they would benefit the town of Fort Francis and the province, and that the Fort Francis Council and Board

²⁸³Dacey, 65, 67.

²⁸⁴ Archives of Ontario (AO), RG75, Orders in Council, Beniah Bowman, Minister of Lands and Forests, to the Lieutenant Governor in Council, September 28, 1922. Note that the source of the Seine River flows from the Northwest corner of Lac des Mille Lacs.

of Trade were “unanimous” in their support of the project.²⁸⁵ Although the locations Backus originally proposed to build dams included Sturgeon Falls, Calm Lake, Steep Rock Lake, and Partridge Lake, a November 22, 1922 Order in Council authorizing him to proceed to obtain these licenses was later amended to allow licenses for two more dams at Lac des Mille Lacs and Crooked Pine Lake.²⁸⁶ Specifically, this amended request also sought permission to “proceed at once with the Lac des Mille Lacs development”.²⁸⁷ Chief Engineer L.V. Rorke's December 27, 1922 memo regarding Backus's application highlighted the fact that only preliminary plans for three of the six proposed dams had been submitted, and that the plans “[did] not show sufficient data”. On this basis Rorke concluded that he was “not prepared to recommend approval of the works”.²⁸⁸ There were also formal protests against a lease to the Seine River being granted to “the Backus interests” by the City of Port Arthur's Chamber of Commerce, as well as various mining interests.²⁸⁹ Regarding the dam on Lac des Mille Lacs, nearby companies were concerned about the raising of the water levels, including the Nyando Pulp and Paper Corporation that owned

²⁸⁵ Archives of Ontario (AO), RG75, Orders in Council, Beniah Bowman, Minister of Lands and Forests, to the Lieutenant Governor in Council, September 28, 1922.

²⁸⁶ See: AO, RG75, Orders in Council 124/162, “Fort Francis Pulp and Paper Company authorized to store water in Seine River Valley”, November 2, 1922; AO, RG75, Orders in Council 125/274, Beniah Bowman, Minister of Lands and Forests, to Lieutenant Governor in Council, December 38, 1922; AO, *ibid.*, Orders in Council 121/162, December 29, 1922. Note that the name on the application was changed from the Fort Francis Paper Company to Edward Wellington Backus “owing to the financing of this undertaking”.

²⁸⁷ L.V. Rorke, Chief Engineer, Department of Lands and Forests, “Memorandum”, Ministry of Natural Resources, f.16799, December 27 1922.

²⁸⁸ *Ibid.*

²⁸⁹ Archives of Ontario, RG3-06-0-1287, Ferguson Parpers, Box 9, E. Marks, to F.H. Keefer, Parliamentary Undersecretary, Department of Lands, Forests and Mines.

property and a Mill on the lake, as well as the Canadian Pacific Railway, that had tracks to the Northeast.²⁹⁰

Despite criticism of Backus's plans for the Seine River project by the provinces own Chief Engineer, formal protests from an entire City and mining interests, the fact that the federal government was in a legal battle with Backus for his dams that had previously flooded Indian reserves, and that at least two of the six locations along the Seine River watershed where he proposed to build more dams were adjacent to reserves (i.e. Lac des Mille Lacs Reserve 22A1 and Sturgeon Falls Reserve 23B²⁹¹). These factors were apparently not enough of a concern for Ontario's 'Committee of the Executive Council', who on November 22, 1922, approved Backus's application authorizing him to proceed to obtain licenses to build dams on the Seine River. Likewise, the Minister of Lands and Forests for the Province of Ontario, Beniah Bowman, had encouraged the Committee to approve Backus's application.²⁹² Two months later, on January 17, 1923, the province granted one of Backus's subsidiary companies – the Seine River Improvement Company Limited – letters patent to “build dams store water and develop electrical power on the Seine River” and to “transmit industrial power... and carry on the business of lumbering and manufacturing”.²⁹³ On February 5, 1923, Bowman also issued a ‘License of Occupation’, granting Backus “full right and liberty” to

²⁹⁰LAC, RG10, Volume 6612, File 6009-12, Frank Edwards, Storekeeper at Savanne, Ontario, to Frank Edwards, Indian Agent, Kenora, Ontario, April 17, 1923.

²⁹¹Note that Backus proposed the dam at Sturgeon Falls would be located near the eastern boundary of Reserve 23B, and that it would raise the water sixty feet above its natural level. The height at which water would be raised by the proposed dam at the outlet of Lac des Mille Lacs was not specified. L.V. Rorke, Chief Engineer, “Memorandum for the Prime Minister”, Ministry of Natural Resources, f.16799, August 18, 1923.

²⁹²AO, RG75, Order in Council, Beniah Bowman, to Lieutenant Governor in Council, Sept 28, 1922.

²⁹³“Letters Patent incorporating the Seine River Improvement Company Limited”, Archives of Ontario, RG55, I-2-B, Liber #200, January 17, 1923.

construct a dam at the outlet of Lac des Mille Lacs “for the purpose of controlling the flow of the waters from said lake and conserving the waters therein”.²⁹⁴ This license stipulated that the Minister of Lands and Forests could cancel or revoke the license if it appeared to be in the public interest. It further stipulated that: the water level of the lake could not be raised higher than “ordinary high water mark”; the rights of private individuals or companies not be “prejudice[d]”; and that logging and navigation on the lake not be “unduly interfere[d] with”.²⁹⁵ Considering the number of reasons to reject Backus's plans for the Seine River, it seems strange that the province approved them. Nevertheless, in the early twentieth century, given that provinces sustained themselves largely through management of natural resources²⁹⁶, Ontario certainly would have had a vested interest in encouraging industrial development such as that proposed by “the Backus interests”.

The approval of Backus's plans is a tangible example of the effect of the St. Catherine's Milling case, as it demonstrates the way in which the powers allotted to the provincial government to control crown lands interfered with the federal government's ability to protect Ojibwa Treaty rights. For example, Ontario's June 13, 1922 *Rivers and Streams Act*, that outlined the process an applicant must follow for approval to construct dams or other works, set no rules or regulations for projects that might be constructed on, or near, Indian reserve lands. Nor did this Act include a procedure of provincial dialogue with federal departments in such cases.²⁹⁷

²⁹⁴Beniah Bowman, Minister of Lands and Forests, “Licence of Occupation” #1040, Ministry of Natural Resources, f.16799, February 5, 1923.

²⁹⁵Ibid.

²⁹⁶Wikipedia, “Income taxes in Canada”, http://en.wikipedia.org/wiki/Income_taxes_in_Canada.

²⁹⁷Statutes of Ontario, “An Act respecting the Construction of Certain Works on Lakes and Streams in Ontario (The Rivers and Streams Act), June 13, 1922.

Apparently for the province, Indian Treaty rights were not an important consideration. Consequently, when Backus built a dam on the outlet of Lac des Mille Lacs, Indian Affairs was unaware of the project until after Ontario had approved it, when it was in the final stages of construction, and complaints were made by the Ojibwa about possible damages to their reserve lands. For example, on May 1, 1923, A.F. MacKenzie, the Acting Assistant Deputy and Secretary at Indian Affairs, wrote to L.V. Rorke, the province's Director of Surveys, requesting details about the Backus dam as his department was unaware of the dam's purpose, and the height to which the lake would be raised as a result.²⁹⁸ It was not until May 3, 1923, that Indian Affairs was provided with the specific details of the Lac des Mille Lacs dam, when the Ontario Department of Lands and Forests wrote to them to explain the terms of Backus's License of Occupation, with an enclosed blueprint of plans showing the position of the dam.²⁹⁹

Regardless of the lack of provincial consideration, it certainly does not excuse the federal government's failure to protest against, and protect, the Lac des Mille Lacs First Nations reserve lands, as the Indian Department still had ample knowledge, prior to the completion of the dam, that increased water levels could damage lands, property and resources on the lake. Indian Affairs had received complaints from the Lac des Mills Lacs Ojibwa, communicated with non-native residents around the lake, and had correspondences with provincial officials regarding the possible damage from the dam. On April 17, 1923, Frank Edwards, a

²⁹⁸LAC, RG10, Volume 6612, File 6009-12, Mackenzie, to Rorke, May 1, 1923.

²⁹⁹LAC, *Ibid.*, W.C. Cain, Deputy Minister Lands and Forests, to Mackenzie, May 3, 1923.

store owner located in Savanne³⁰⁰, Ontario, sent a letter to the local Indian Agent objecting to the raising of water levels on Lac des Mille Lacs, complaining that “[d]amage that may result from high water will be the flooding of the low-lying areas, [and] destruction of timber... If water is used and level lowered during the winter it will kill out all beaver and muskrats around the lake and up all streams up to the first rapids as these animals will build above fall level”.³⁰¹ Edward's letter also reveals a lack of local information about the dam, as “no one” seemed to know the purpose of the dam. He was clearly apprehensive about possible damage to his property and business, as he explained that he had been in contact with lawyers.³⁰² On April 18, 1923, the local Indian Agent based in Kenora, also named Frank Edwards, reported receiving a letter from the Lac des Mille Lacs Ojibwa who complained that Backus's dam would damage their reserve. He wrote: “I must say the Lac des Mille Lac Indians, live exclusively by hunting and trapping, and if their means of livelihood is taken away from them, I do not know what they will do for a living”.³⁰³ He also suggested “a protest to the proper quarters”, so that if damages did occur to the reserve or to Ojibwa hunting and fishing grounds, they would be in a position to claim damages. In reply, J.L. McLean, Assistant Deputy and Secretary at

³⁰⁰Savanne is located East of Lac des Mille Lacs along the Savanne River, which empties into the lake.

³⁰¹LAC, RG10, Volume 6612, File 6009-12, Frank Edwards, Storekeeper at Savanne, Ontario, to Frank Edwards, Indian Agent, Kenora, Ontario, April 17, 1923.

³⁰²On Edward's behalf, his attorneys wrote a letter of protest to E.C. Drury, the Premier of Ontario; Drury forwarded their letter to W.C. Cain, the Deputy Minister of Lands and Forests; and Cain responded to Edward's attorneys that Backus's license did not permit him to “en-damage private interests”, and that the “licensees state that it is not their intention to flood adjoining lands by reason of this dam but rather to hold the water at or about high water mark in order to have this water for us in the dry season of the year”. AO, RG3, Series 03-040-286, Dowler & Dowler, Barristers, Notaries, Proctors &c., Fort William, Ontario, to E.C. Drury, Premier of Ontario, Toronto, Ontario, April 21, 1923; AO, *Ibid.*, Drury, to Dowler, May 8, 1923; MNR, f.16799, Cain, to Dowler, May 11, 1923.

³⁰³LAC, RG10, Volume 6612, File 6009-12, Frank Edwards, Indian Agent, Kenora, Ontario, to A.F. MacKenzie, Assistant Deputy and Secretary, Department of Indian Affairs, Ottawa, April 18, 1923.

Indian Affairs, reiterated the Department's newly acquired information about the terms of Backus's licence to build the dam, and concluded that:

In view of the conditions under which this license has been granted it does not appear to be necessary that any further action be taken at the present time, but it is expected that you would report immediately as to any damage results to the reserve itself or to the livelihood of the Indians on account of the construction or operation of the said dam, in order that a claim might be advanced against the company.³⁰⁴

Ultimately, the federal government ignored the complaints of the Lac des Mille Lac Ojibwa because the terms of Backus's license stipulated that his company was liable for any damages that might occur to any land. As McLean's letter indicates, the Department's intention was to wait until damages occurred and then seek monetary compensation from the company. No consideration was given as to how the Ojibwa would deal with "their means of livelihood being taken away" while waiting for the government to prod the Backus company into making such compensation. This attitude by the Indian Department is problematic, as it extends their liability for the management of the Lac des Mille Lacs Ojibwa reserve lands and assets, onto third parties, that is, the Backus interests and the provincial government. Technically, this could be considered a breach of the federal governments trusteeship of "reserves for the benefit of the said Indians, to be administered and dealt with for them by...Canada", and of the Ojibwa "right to pursue their avocations of hunting and fishing" as stipulated by Treaty three.³⁰⁵ Indeed, at no point during the Treaty process was it agreed that Ojibwa Treaty Rights were eligible for infringement, so long as the infringing party pay for the damages caused. Similarly, other legislation (although perhaps not as relevant due to being unilaterally imposed upon Aboriginal

³⁰⁴LAC, *Ibid.*, J.L. McLean, Assistant Deputy and Secretary, Indian Affairs, to Edwards, May 9, 1923.

³⁰⁵Morris, 322.

peoples) could also be considered to have been violated by the eschewing of liability for reserve lands and assets onto a third party. Such as, Section 91(24) of the *Constitution Act, 1867*, which allocated to the federal government control over “Indians, and Lands reserved for the Indians”³⁰⁶, as well as Section 19 of the *Indian Act, 1906*, that provided “[a]ll reserves for Indians... held in trust for their benefit, shall be deemed to be reserved and held for the same purposes as they were held heretofore”.³⁰⁷

“[D]eprived of part of their living”

Qualms over flooding damage assuaged by the terms of Backus's license, Indian Affairs made no further protest against the dam at the outlet of Lac des Mille Lacs that was in its final stages of construction during the winter and spring of 1923³⁰⁸, and completed by mid summer.³⁰⁹ Almost immediately after the Backus dam was put into use, and throughout the ensuing years, there were numerous complaints from various parties about the regulation of water levels on the lake; the first complaints were from the Ojibwa. For example, according to Indian Agent Frank Edward's July 11, 1923 letter, he reported that during Treaty payments that summer the Lac des Mille Lacs Ojibwa complained of damage from the dam, and that high and low water would “kill off all the rats and prevent them from making a

³⁰⁶*Constitution Act, 1867*, 30 & 31 Victoria, c. 3., “An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith”, 29th March, 1867.

³⁰⁷*Indian Act*, R. S., c. 43, s. 19., “An Act Respecting Indians”, July 13, 1906,

³⁰⁸To demonstrate the general time period when the dam was built: In a letter dated March 3, 1923, the construction manager of the Backus-Brooks Company engaged in building the Lac des Mille Lacs dam had received objections from a crown timber agent regarding their cutting of timber for the dam. MNR, f.16799, R.W. Montgomery, Construction Department, Backus-Brooks Company, to J.H. Milway, Crown Timber Representative, March 3, 1923.

³⁰⁹Although some sources state that the Backus dam was completed in 1926, the documentary record indicates that the dam was completed by the summer of 1923.

living by trapping”.³¹⁰ Edwards also wrote that nothing could be done “until this had been proved” and asked the Ojibwa to inform him the next time the water was high. Proof of the damaging capabilities of the Backus Dam came to the provincial government a few months later, in October 1923, when Ontario Lands Surveyor D.J. Gillon submitted a report on the Lac des Mille Lacs Dam to the Department of Lands and Forests. Gillon's report included a general plan and description of the dam, as well as his various measurements of water elevation levels.³¹¹ Note that Backus's 1923 License of Occupation allowing him to erect a dam on Lac des Mille Lacs permitted him to “overflow any lands adjoining said lake” as long as it wasn't “beyond what is known as the ordinary high water mark”.³¹² Backus's license was also accompanied by Ontario Lands Surveyor E.H. Low's December 13, 1922 plans, that set the lakes high water mark at 1500.00. Therefore, Backus's license permitted him to raise Lac des Mille Lacs waters to this level. This high water mark was higher than the 1498.92 level that Gillon subsequently set in his report. It is hard to determine the exact reason for this disparity, yet it is suspicious that by 1927, Low was employed as a surveyor for at least two of Backus's companies, the Fort Francis Pulp and Paper Company, and the Seine River Improvement Company.³¹³ Perhaps, a

³¹⁰LAC, RG10, Volume 6612, File 6009-12, Frank Edwards, Indian Agent, Kenora, Ontario, to J.L. McLean, Assistant Deputy and Secretary Indian Affairs, Ottawa, July 11 1923.

³¹¹MNR, f.16799, “Report on Dam at Lac des Mille Lacs”, D.J. Gillon, Ontario Lands Surveyor, Fort Francis, Ontario, to Deputy Ministers Office, Department of Lands and Forests, October 16, 1923.

³¹²Beniah Bowman, Minister of Lands and Forests, “Licence of Occupation” #1040, Ministry of Natural Resources, f.16799, February 5, 1923.

³¹³ For example, in 1927 Low wrote two separate letters to government departments regarding survey operations he was conducting on behalf of these company's. See: MNR, f.16799, E.H. Low, Fort Francis Pulp and Paper Company, to L.V. Rorke, Chief Engineer, Department of Lands and Forests, June 23, 1927; LAC, RG10, Volume 6612, f.6009-12, Low, Engineering Department, Seine River Improvement Company, to Department of Indian affairs, October 8, 1927.

vested interest on Low's part explains why Gillon's examination of the Lac des Mille Lacs water levels resulted in such obvious predictions of flooding damage:

If the dam is filled to its full capacity [1501.12] the boiler room floor at the Nyando Mill will be 1.99 feet under water; the cellar at the Savanne Store will be 3.03 feet under water, while the surrounding land will be at water level; the rails on the C.P.R. Will only be 5.9 feet above water level... If the gates of the dam are all opened the water in Lac des Mille Lacs can be run off until the bottom of the lake in front of the Nyando Mill is completely dry.³¹⁴

Despite Gillon's report clearly describing damages that would occur from high and low water levels, the province made no attempts to impose regulations on water levels, to reduce the ordinary high water mark, nor to protect lands and property on Lac des Mille Lacs. Quite the contrary, the province ignored Gillon's report, as well as a multitude of complaints from area residents and companies. Moreover, Ontario's conduct could be considered negligent and complicit in the subsequent flooding damages. For example, on May 5, 1924, R. Pagensticher, the President of the Central Paper Company visited the Lac des Mille Lacs dam accompanied by Ontario Forest Provisor J.P. Legris, and store owner Frank Edwards.³¹⁵ In a May 16, 1924 letter to a legal representative of the Backus's company, Pagensticher described the dam as being in a state of disrepair, that in a previous letter Backus had denied the dam was in need of repairs, which was a "far sighted alibi preparing for future trouble", and he made a notice of complaint to the company for damages.³¹⁶ Legris's presence during this visit to the dam, suggests that the province was aware of the state of the dam, as well as the Central Paper Company's complaints of damages. Reports indicating an inflated ordinary high water mark that would cause damage,

³¹⁴Op. Cit.

³¹⁵MNR, f.16799, R. Pagensticher, President, Central Paper Company, Fort William, Ontario, to V.A. Sinclair, Solicitor to Backus, Tillsonburg, Ontario, May 16, 1924.

³¹⁶Ibid.

knowing that damage did occur, and that the dam was in need of repairs, were clearly not concerns for the province. Although the province did revoke Backus's water power lease to the Seine river on March 23, 1925, the rationale was that he had not paid the necessary rental fees, or developed and utilized the water power on the Seine River, as required by the dates set out on his lease.³¹⁷ This cancellation was also deemed to revoke Backus's 1923 License of Occupation for the Lac des Mille Lacs dam.³¹⁸ According to a May 3, 1927 Order in Council, Backus's Seine River Improvement Company had re-applied for a water power lease for the Seine River, covering the same water powers in his previous lease; in the new lease the province included provisions to protect municipal, mining and other interests, and the Minister of Lands and Forests recommended that the lease be issued.³¹⁹ On May 4, 1927, the lease to the Seine River Improvement company was issued “for land and land involved with water activity” on Sturgeon lake, Calm lake, and Moose lake.³²⁰ And on the same date, a License of Occupation was issued to the same company to store water on Lac des Mille Lacs to “control an elevation of 6 feet between high and low water and 9 feet between low water and the crest of the dam... [to] increase the power at Moose Lake power development”. Ignoring Gillon's report that set the ordinary high water mark at 1498.92, Backus's new license again relied on Low's plans and permitted a 1500.00 level high water mark, and even allowed the possibility of an “additional raise in the waters to the crest of the dam (1503)”!

³¹⁷AO, RG75, Orders in Council 143/409, March 23, 1925.

³¹⁸MNR, f.16799, License of Occupation No. 1561, May 4 1927.

³¹⁹AO, RG75, Orders in Council, 158/3, May 3, 1927.

³²⁰MNR, f.16799, Water Power Lease #28, May 4, 1927.

For approximately 2 years, between March 23, 1925 and May 4 1927, Backus's licence on Lac des Mille Lacs was cancelled. Regardless of this detail, from all accounts, it appears as though Backus was still using the dam during this period of time, that the department of Lands and Forests was aware of this use, and they did not prevent Backus from regulating the waters on Lac des Mille Lacs. This is problematic, for during this intermediate period there was extensive damage caused from the dam on Lac des Mille Lacs. For example, in a July 21, 1925 letter to the Ontario Minister of Lands and Forests, store owner Frank Edwards complained that the dam had been closed since the latter part of the winter (around when Backus's licence was revoked), and that the “above normal high water level” was causing damage by flooding his cellar.³²¹ Edwards also asked that the province take the matter up with the owner of the dam “[as] the control and operation of this dam is at all times subject to the Minister of Lands and Forests”.³²² W.C. Cain, the Deputy Minister of Lands and Forests, asked Forest Supervisor J.P. Legris to look into the matter³²³, and Legris confirmed that Edwards basement was flooded, reporting that the water on the lake was two feet ten inches higher than the last year, and that the one gate he had left open on the dam the previous fall had been closed by the Backus-Brooks Company.³²⁴ In another July 1925 letter, Indian Agent Frank Edwards wrote to Indian Affairs that he had received a letter from the Chief of Lac

³²¹ MNR, f.16799, Edwards, to Minister of Lands and Forests

³²² Ibid.

³²³ MNR, Ibid., W.C. Cain, Deputy Minister of Lands and Forests, Toronto, Ontario, to J.P. Legris, Forest Supervisor, Port Arthur, Ontario, July 29, 1925.

³²⁴ MNR, Ibid., Legris, to Cain, August 10, 1925.

des Mille Lacs, Joseph Rat (Souzay)³²⁵, in which he protested against the high water level that had flooded the bands hay meadows and prevented them from getting hay for their horses.³²⁶

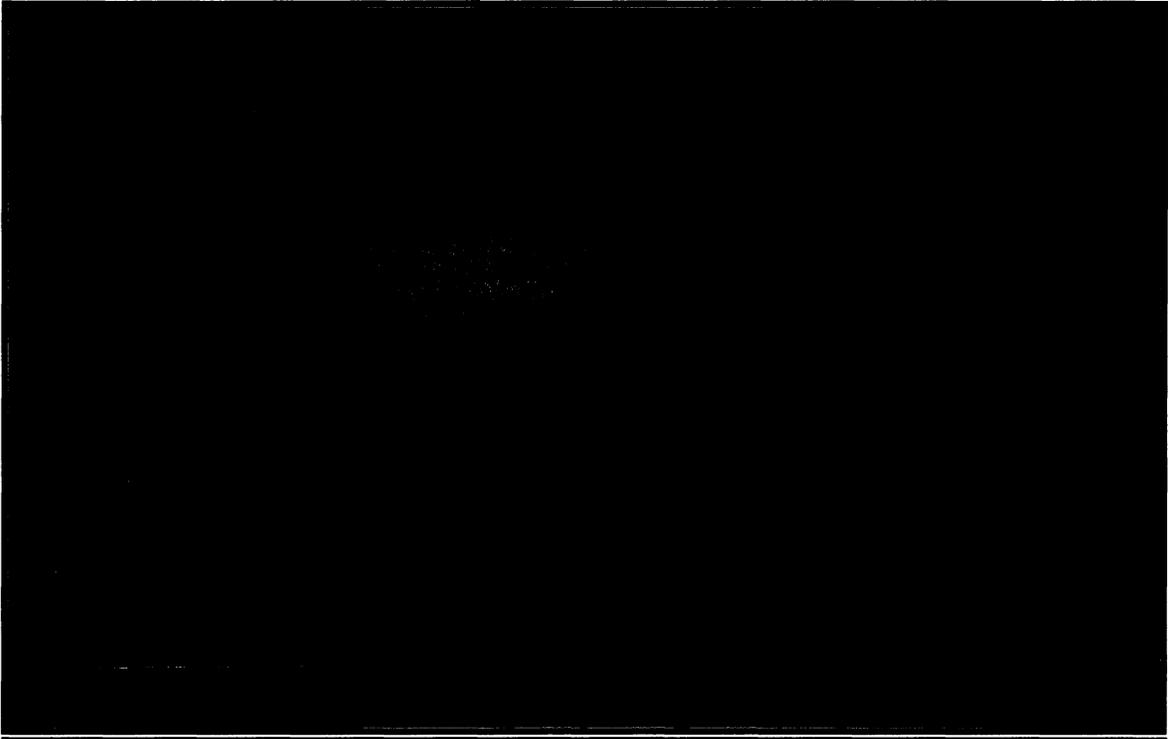


Figure 14 “The last hereditary Chief of Lac Des Mille Lacs First Nation, Souzay Ratt (Grandfather of the Sawdo Family)”³²⁷

Edwards also commented that “there is no question he [Backus] is flooding a lot of territory”.³²⁸ A.F. MacKenzie, Assistant Deputy and Secretary at Indian Affairs, responded that the department needed to know if the company was holding the water above high water mark, and that “[if] the company is not exceeding this level, and

³²⁵ Chief Joseph Rat was also known as Souzaye. He was the last hereditary Chief of Lac des Mille Lacs First Nation prior to the enforcement of the Indian Act band council system. He is the grandfather of the Sawdo Family.

³²⁶ LAC, RG10, Volume 6612, File 6009-12, Frank Edwards, Indian Agent, Kenora, Ontario, to A.F. MacKenzie, Assistant Secretary and Deputy Department of Indian Affairs, July 23, 1925.

³²⁷ “Members of Lac des Mille Lacs First Nations [Facebook group]”, photo courtesy of Kathleen Sawdo, <http://www.facebook.com/group.php?gid=2337374706>

³²⁸ Op Cit.

you [Edwards] consider that maintaining the waters at the ordinary high water mark is causing sufficient damage to justify investigation, the question of making a survey to determine the extent of this damage will require to be considered".³²⁹ MacKenzie also requested that Edwards make a full report on flooding damages. On September 23, 1925, Edwards reported receiving a letter from Chief Souzaye in which he detailed damages from the dam:

... he informs me that they have had a council meeting and say the water of the lake is now higher than normal high water level, and has flooded the hey marshes so that the Indians can not get to them to cut hey for the horses. The wild rice beds are so far under water that they have no crop and are thus deprived of part of their living. They say if the water is kept at the present level it will kill off some of the timber as it is now about the trunks of the trees growing along the shores. The raising and lowering of the water at other than natural times will spoil the beaver and muskrat trapping about the whole lake and rivers running into it for as far up stream as effected by the dam. Water is now above normal spring high level and if allowed to drain off during the Winter, after these animal have built their dwellings to suit condition of water level in the Fall, the entrances to their houses will freeze up and the animals die. They ask me to make this known to the Department to see that their rights are not prejudiced or damage done to them or their lands.³³⁰

Although Edwards had once remarked that the Ojibwa lived entirely by hunting and trapping, in this letter he also diminished the Ojibwa's complaints and opined that they only had two horses, that not much timber would be destroyed, and that "damage would not amount to much except in the case of the fur-bearing animals and possibly wild rice, as there are doubtless other rice beds in the district from which they could gather the rice, *but of course they would not be close to the reserve*"[Emphasis added].³³¹ Edwards ended his letter by suggesting that the Backus company could be approached to compensate the Ojibwa. Even though

³²⁹LAC, *ibid.*, MacKenzie, to Edwards, July 28, 1925.

³³⁰LAC, *ibid.*, Edwards, to MacKenzie, September 23, 1925.

³³¹*ibid.*

Treaty 3 reaffirmed Ojibwa rights to continue their avocations of traditional harvesting activities, a hand written marginal note on this letter indicates that the Indian department considered flooding damage to be a provincial responsibility. The note reads "...even if compensation could be collected from the company it would be a matter for the province as these are resources of the province and not of the Indians as the rice beds and animals are not actually on the reserve".³³² Ultimately the Lac des Mille Lacs Ojibwa's complaints were ignored, and no additional actions were taken by Indian Affairs to determine the extent of damages, or to protect the livelihood of the Ojibwa. In this case, the federal government did not fulfil its Treaty obligations and deflected its responsibilities onto the province, and onto the Backus interests. The raising and lowering of water levels at other than natural times by the Backus dam on Lac des Mille Lacs, and flooding the First Nations reserve lands and traditional territory, impaired their ability to live by hunting, trapping, gardening, raising livestock, and wild rice harvesting, and over the next two decades directly resulted in the abandonment of the Lac des Mille Lacs reserve.

Between March 23, 1925 and May 4 1927, while Backus's lease to the Seine River, and Licence of Occupation on Lac des Mille Lacs, were cancelled, there were also many complaints from business interests along the Seine River and from companies operating on Lac des Mills Lacs. Leading up to Backus's re-acquiring of his water power leases on the Seine River, there was a rise in what can be called an 'anti-Backus' sentiment from other industries and companies, that presumably were aware Backus was re-applying for the same lease. For example, J.E. Marks, a resident of Port Arthur who self-professed to have extensively surveyed the mining

³³²ibid.

and timber resources in the Seine river area, wrote letters of protest to provincial authorities against the “Backus interests”. In his January 22, 1926 letter, he criticized the province for issuing Backus's first lease to the Seine river in spite of protests from the city of Port Arthur and mining interests, and advised that “this development should only be undertaken by the Hydro Electric Commission of Ontario” to prevent the mining and timber interests in the area from passing into the hands of Backus's “monopoly”.³³³ Marks pointed out that Backus's dams would “create very large flooded areas for storage purposes”, and suggested that the amount of power Backus claimed his dams would generate was not accurate, and that he could “only assume that these figure were given you for the purpose of making it appear that the development of the Seine powers [were] not worth the attention of the Hydro Electric Commission”.³³⁴ In another letter to Howard Ferguson, the Premier of Ontario, Marks urged that the Hydro Electric Commission develop and control the Seine river instead of issuing a lease to a private company that would place mining and timber resources “entirely at the mercy of the holders of such power rights”.³³⁵ Similarly, Seth T. Gano, owner of a large acreage of iron lands in the Atikokan and Steep Rock lake area, wrote to Ferguson protesting against a lease to the “Backus interests”, and requested that development on the Seine River be undertaken by the Hydro Electric Commission.³³⁶ In a March 8, 1926 letter, A.A. Shaugnessy of the Central Paper Company, wrote to Forest supervisor Legris, about high water conditions on Lac des Mille Lacs. He complained that the dam had been kept closed

³³³AO, RG3-06-0-1287, Ferguson Papers, Box 9, J.E. Marks, to F.H. Keefer, Parliamentary Undersecretary, Department of Lands, Forests and Mines, January 22, 1926.

³³⁴Ibid.

³³⁵AO, Ibid., Marks, to Howard Ferguson, Premier of Ontario, February 11, 1926.

³³⁶AO, Ibid., Seth T. Gano, to Ferguson, March 3, 1926.

almost continually since the previous September, which raised the water level “several feet above normal high mark”, that if this condition was not changed timber in low lying areas would die, and that the “whole watershed, drained by the main Savanne River, as well as the North branch, is more or less under water and much Crown Land timber, as well as the company's limits, are being flooded”.³³⁷

Shaugnessy also requested that the matter be brought to the attention of the Department of Lands and Forests, and his letter was later enclosed with a letter from Legris to W.C. Cain, Deputy Minister of Lands and Forests. Legris wrote that the forest rangers, stationed at Savanne, confirmed that the water level had been kept above the high water mark since the previous May, that there was two feet of water in the boiler room of the Central Paper Company's Saw Mill, as well as one foot of water over their dock, and that due to the “flat nature of the country in the vicinity of the lake if the water is kept above the high water mark” it would destroy a large quantity of timber under the license of the company as well as timber on Crown Lands.³³⁸ Later, in a November 24, 1926 letter to Cain, the president of the Central Paper Company issued a notice of complaint concerning damages from the Backus dam, and wrote that:

Previous to the present year we were forced to make a number of complaints as to the water being drained out of the lake because it suited the interest of the lessees to drain it out. This year on the contrary, to suit the convenience of the lessees, they have dammed the water back and raised them to a point far above the ordinary high water mark of the lake... our wharf at Savanne has been practically destroyed, our Mill has been badly damaged, and still more serious damage is being done to the timber on the lands leased by us from the department... if the waters are frozen over at their present high water mark, a

³³⁷MNR, f.16799, A.A. Shaugnessy, Central Paper Company, to Legris, August 28, 1926.

³³⁸MNR, f.16799, Legris, to Cain, August 30, 1926.

very great amount of damage will be done to our timber on the low-lying parts of our limits, and the damage will be very serious...³³⁹

In an August 31, 1926 letter from J.H. Milway, Crown Timber Agent, to Cain, he wrote that the waters of Lac des Mille Lacs were three or four feet above high water level and damaging timber around the lake, that he had already brought the matter to the attention of Legris, but thought that the Backus-Brooks company should be immediately notified by the department to lower the levels of the lake.³⁴⁰ On September 13, 1926, Legris sent a telegram and a letter to Cain regarding the “water situation at Lac des Mille Lacs”.³⁴¹ In the telegram, he wrote that the water on the lake was three feet above normal high, and that if it wasn't lowered to normal high mark the timber in the flooded area would freeze and die over the winter.³⁴² In the letter, he wrote that all the gates on the dam had been closed until June and July, 1926, when two gates were opened, that Frank Edwards of Savanne had been in contact with the Backus-Brooks company, and that the company wanted to “partly close” the gates to facilitate the building of their dam downstream.³⁴³ Legris also reported that there was two feet of water in the basement of Edwards store and home, as well as two feet of water in the basement of the schoolhouse in Savanne.

Even though water levels on Lac des Mille Lacs were reported to be above the normal high water mark since May 1925, until July 1926, and even though complaints about damages had been submitted from residents and business interests in the area, as well as recommendations from provincial officials that the water

³³⁹ MNR, *Ibid.*, Pagensticher, to Cain, November 24, 1926.

³⁴⁰ MNR, *Ibid.*, Milway, to Cain, August 31, 1926.

³⁴¹ MNR, *Ibid.*, Legris, to Cain, September 13, 1926.

³⁴² *Ibid.*

³⁴³ *Ibid.*

levels should be lowered, inexplicably, in October 1926, W.C. Cain, the Deputy Minister of Lands and Forests, still allowed Backus to close all the gates on the dam except one, as long as he agreed to accept liability for damages.³⁴⁴ Furthermore, despite the large number of complaints from the mining and timber industry, damages to reserve lands, that Backus's first lease to the Seine River had been revoked for failure to meet the requirements of the contract, that Backus continued to operate the dams along the Seine river even though his lease had been revoked, and that Backus's re-application for a lease to the Seine River again relied on E.H. Low's 1922 survey plans which conflicted with the ordinary high water mark in Gillon's October 16, 1923 survey plans, despite all this, on May 4, 1927, the province of Ontario still approved Backus's re-application for a lease to water powers on the Seine River.

A 'cat and mouse' policy

After Backus's lease was re-issued in May of 1927 for a term of 20 years, there continued to be high water levels on Lac des Mille Lacs, and damages to lands and property. According to a graph from Ontario Hydro depicting the annual elevation levels, in September 1927 as well as in September and December 1928, the lake water levels exceeded Low's inflated 1500 level high water mark.³⁴⁵ These high water levels can be explained by a September 6, 1927 Wood Rangers report to the Crown Timber Agent, which pointed out that all the gates on the Backus dam were closed, and that the water would be "up to its highest formal level in a short time".³⁴⁶

³⁴⁴MNR, *Ibid.*, Cain, to Legris, October 22, 1926.

³⁴⁵MNR, f.16799, J.E. Sorel, Manager – Operations Northwestern Region, Ontario Hydro, to Chief Harvey Churchill, Lac des Mille Lacs First Nation (Hydrograph enclosed with letter), October 24, 1980.

³⁴⁶MNR, *Ibid.*, H.S. Spofford, to J.H. Milway, September 6, 1927.

Later, during Treaty payments in the summer of 1931, the Lac des Mille Lacs Ojibwa complained “of being seriously affected when the water became unusually high”.³⁴⁷ Between 1928 and 1944, this Lac des Mille Lacs hydrograph also shows a relatively extreme annual fluctuation of water levels. These water levels regularly exceeded Gillon’s 1498 level high water mark, often approaching the 1500 level, they regularly dropped down near a 1496 level, and from September 1940 until June 1941, they were below a 1495 level.



Figure 15 “Portage Bay, Lac des Mille Lacs”, 1891³⁴⁸

According to Ojibwa Elders and former residents on or near the Lac des Mille Lacs reserve, these extreme fluctuations, the inconsistency of water levels, as well as high water levels, affected the First Nations ability to continue using traditional

³⁴⁷ MNR, *Ibid.*, C. Prouty, to L.V. Rorke, Surveyor General, Department of Lands and Forests, June 4, 1931.

³⁴⁸ LAC, PA-037570, William McInnis.

resources both on the reserve and in the immediate area. For example, Lawrence Chapman, born in 1937, and Roy Peters, born in 1943, recalled locations where their Elders had told them wild rice had been grown on Lac des Mille Lacs, in the northeast and southwest corners of Sawmill Bay, and in Duck Bay and Portage Bay on the south end of the Lake.³⁴⁹ According to Lawrence, after their Elders could no longer cultivate wild rice on Lac des Mille Lacs because it was “drowned”, they were forced to go to other lakes in order to gather rice: “after they couldn’t pick their rice here [on LDML] they had a trail through here... it went down here to... Rice Stalk [Lake], they had a trail right through here [indicating northeast of Savanne River], to CN, and into Kelly Lake... and that’s where they got the rice from”.³⁵⁰ Likewise, in a 1993 report, Francis May was quoted as stating that “the wild rice drowned and disappeared from the lake... we had to go to up Rice Lake and Muskeg Lake just to get our rice”.³⁵¹ Shirley Churchill, born in 1936, also commented on wild rice: “there was no more rice... it was convenient if it was near by and you could pick there... when it was gone it was devastating, you had to go somewhere else for food”.³⁵² Roy Peters recalled that “... they were completely flooded out, for like my parents’ side and Elders some of them said their houses were right, the water was touching their door... that’s what I heard from the Elders... my dad, one of the oldest, [and] the Ogimaa’s, they lived

³⁴⁹ Roy Peters, William Chapman, Fred Chapman, Kelly Peters, Lawrence Chapman, and Wesley Chapman, Group Interview by Author, Video Recorded, Lac des Mille Lacs First Nation Elders Gathering, April 10, 2010.

³⁵⁰ Ibid.

³⁵¹ Anderson and Associates, “Final Report – Lac des Mille Lacs and Ontario Hydro Joint Problem Solving Team, 1993.

³⁵² Shirley Churchill, Interview by Author, Audio Recorded, Thunder Bay, Ontario, July 21, 2008.

on the highest part [of the reserve]”.³⁵³ Wesley Chapman, born in 1946, added that the reason the Ogimaa family had “lived on the highest part of the land” was because “they moved up” as a result of flooding.³⁵⁴ Mary Ellen Kuurila, born in 1956, when asked about how people lived on the Lac des Mille Lacs reserve, said “I remember my grandmother talking, like that they had beautiful gardens... they were self sufficient, like hunting, fishing, [and] gardens”.³⁵⁵ Roy also recalled that flooding on the reserve effected “the gardening areas and the farm lands, [and that] there wasn’t enough land to use to supply hey for the cows they had”.³⁵⁶ Lawrence, when asked about why people left the reserve, said that “opening of the dam and flooding killed muskrat and beaver” and that “lots of them left cause there was nothing for them to live on”.³⁵⁷ According to Mae Adler (Peters), born in 1947, “people were still hunting for their food at that time”, and “a whole bunch of the land base would have disappeared [from flooding], all the animals would have been affected, beaver, deer, muskrat, fox, bear, fish”. Adler also explained: “I was just a kid when we were living [at Savanne]...” but that Bill Edwards (Store owner Frank Edwards son), had told her that there used to be “one hundred families living on the reserve”.³⁵⁸

For over a decade from 1927 to 1938, E.W. Backus – and his successor’s³⁵⁹ who eventually took control of his company’s that were involved with the regulation

³⁵³Roy Peters, William Chapman, Fred Chapman, Kelly Peters, Lawrence Chapman, and Wesley Chapman, Group Interview by Author, Video Recorded, Lac des Mille Lacs First Nation Elders Gathering, April 10, 2010.

³⁵⁴ Ibid.

³⁵⁵ Mary Ellen Kuurila, Interview by Author, Audio Recorded, Murillo, Ontario, July 26, 2008.

³⁵⁶ Op Cit.

³⁵⁷ Lawrence Chapman, Interview by Author, not digitally recorded (notes), July 23, 2008.

³⁵⁸ Mae Adler, Interview by Nathan Adler, not digitally recorded (notes), 2008.

³⁵⁹ As mentioned earlier in this chapter, Backus lost control of his cartel of company’s during the Great Depression, including his parent company the Minnesota and Ontario Paper Company, and subsidiary company’s such as the Ontario and Minnesota Power Company, and the Seine River Improvement

of the Seine River – employed a ‘cat and mouse’ policy, in which they ignored and avoided requests from the Department of Indian Affairs for plans showing flooding damage to reserve lands on Lac des Mille Lacs. This absurdly prolonged exchange began with an October 8, 1927 letter to Indian Affairs from Surveyor E.H. Low, in the employ of the Fort Francis Pulp and Paper company, who wrote that the Moose Lake, Calm Lake, and Sturgeon Falls developments were not affecting Indian reserves, while the Lac des Mille Lacs dam had “slightly effected the shoreline on the Indian reserve [sic]” and that “we are intending to make a survey of the entire flooded land and as soon as those are completed copies of the plans showing the flooding of the Indian reserve will be forwarded”.³⁶⁰ Later that month, on October 24, 1927, although the Indian department replied to Low’s letter, requesting the promised survey plans of flooding damage on reserve 22A1, it appears as though the Seine River Improvement Company ignored this request, and that the Indian Branch didn’t follow up on the issue again until six years later, on September 2, 1933, when they sent another letter to the company requesting the plans “as soon as possible”.³⁶¹ Shortly after, the Indian Department sent another letter dated October 11, 1933, again requesting survey plans of flooding damage on the Lac des Mille Lacs reserve, as well as requesting survey plans of flooding damage to Sturgeon Falls reserve 23.³⁶² Apparently Backus was avoiding sending survey plans of damages to both of

Company. Backus’s parent company was placed into receivership by the United States District court of Minnesota on February 28, 1931. “Statement to International Joint Commission in behalf of C.T. Jaffray and R.H.M. Robinson receivers for Minnesota and Ontario Paper Company, 23 March, 1933”.

³⁶⁰ LAC, RG10, Volume 6612, File 6009-12, E.H. Low, to Department of Indian Affairs.

³⁶¹ LAC, Ibid., T.R.L. MacInnes, Acting Secretary, Department of Mines and Resources, Indian Affairs Branch, to Engineering Department, Seine River Improvement Company, September 2, 1933

³⁶² LAC, Ibid., A.F. Mackenzie, Secretary, Department of Indian Affairs, to Engineering Department, Seine River Improvement Company, October 11, 1933.

these reserves. For example, although in 1927 Low claimed Backus's water projects were only damaging reserve 22A1, by August of 1933 Chief Ogemaquayuckquape of the Seine River band "protested that a great deal of damage had been caused to his reserve at Sturgeon Falls by the dam constructed by" the Seine River Improvement Company.³⁶³ H.J. Bury, Supervisor of Indian Timber Lands, noted that the company had not filed "plans showing the flooded lands" on Sturgeon Falls reserve with the Department of Indian Affairs, despite having been "asked to do so from time to time".³⁶⁴ The Land Department of the Seine River Improvement Company eventually responded in an October 16, 1933 letter, claiming to have made a "diligent search" of their records, but that they could not find any survey plans of flooding damage on the Lac des Mille Lacs reserve, or of any correspondence regarding it.³⁶⁵ The company also denied damages to the Sturgeon lake reserve stating that they had been "advised that there has been no damage to Indian Reserve No.23".³⁶⁶ Indian Affairs replied with a November 29, 1933 letter, requesting that the company send the survey plans for both reserves, and quoting E.H. Low's October 8, 1927 letter, which had promised that the company would conduct a survey of damages to reserve 22A1 and send them the plans.³⁶⁷ In February 1934, yet another request was made by Indian Affairs for Survey plans of both reserves.³⁶⁸

Three years later in October 1937, T.R.L. MacInnes, Secretary, Indian Affairs

³⁶³ LAC, *Ibid.*, H.J. Bury, Supervisor Indian Timber Lands, Lands and Timber Branch, Department of Indian Affairs, to Mr. Robertson, Department of Indian Affairs, August 31, 1933

³⁶⁴ *Ibid.*

³⁶⁵ LAC, *Ibid.*, R.M. Merrick, Land Department, Seine River Improvement Company, to MacInnes, October 16, 1933.

³⁶⁶ *Ibid.*

³⁶⁷ LAC, RG10, Volume 6612, File 6009-12, Mackenzie, to Seine River Improvement Company, November 29, 1933.

³⁶⁸ LAC, *Ibid.*, MacKenzie, to Seine River Improvement Company, February 2, 1934.

Branch, wrote a letter requesting survey plans for both reserves, stating that an official of the Department had visited the Lac des Mille Lacs reserve, and that from “examination of the affected territory, it is quite evident that the Indians sustained a serious loss”.³⁶⁹ In a November 15, 1937 letter, to A. Spencer, the Indian Agent Located in Fort Francis, MacInnes explained the “difficulty in getting answers to correspondence from the Minneapolis office of the Seine River Improvement Co... believed to be a subsidiary of the Fort Francis Pulp and Paper Company” and requested that Spencer ask the latter company to give their attention to the issue of flooding damages to reserves 23 and 22A1.³⁷⁰ Spencer contacted E.H. Low of the Fort Francis Pulp and Paper Company, who reported, “the only reason” he could give was that “they have run out of excuses, at Minneapolis”, and Spencer recommended that the Department contact Low to “see if he can get some answer to your correspondence”.³⁷¹ MacInnes took Spencer’s advice, and in a February 6, 1936 letter to Low, wrote that “[c]ommunications addressed to your head office have not been answered”, and threatened that “we shall be compelled to take necessary action for the recovery of damages unless the matter is given immediate attention”.³⁷² In addition to threatening the company with legal action, it appears that the Indian department had also previously attempted bribery, by granting an easement for power lines across reserves 18B, 23B, and 26A, on the “understanding” that “claims for flooding would receive prompt attention”.³⁷³ In a January 12, 1938 letter, R.D. Main, the Secretary of the Seine River Improvement Company, blamed the

³⁶⁹LAC, *Ibid.*, MacInnes, to Seine River Improvement Company, October 15, 1937.

³⁷⁰LAC, *Ibid.*, MacInnes, to A. Spencer, Indian Agent, November 15, 1937.

³⁷¹LAC, *Ibid.*, Spencer, to MacInnes, December 30, 1937.

³⁷²LAC, *Ibid.*, MacInnes, to Low, February 6, 1936.

³⁷³*Ibid.*

company's failure to reply to letters on the death of "two individuals" within the last few months "to whom your previous communications were referred", and assured that the company would give the matter "preferred attention".³⁷⁴ This excuse may have some merit, yet it certainly does not explain a decade of ignoring correspondence from Indian Affairs and denying damages to reserve lands, or why the first serious consideration of flooding damage only came after threats of legal action. Conversely, the commitment of the federal Indian Department to administer lands and assets for the benefit of the Lac des Mille Lacs Ojibwa was clearly lacking in the way it responded to flooding damage to reserve lands and traditional resources. Not only did the Department fail to adequately respond to repeated complaints from the Lac des Mille Lacs Ojibwa about flooding, or to protest against the regulation of water levels that continued to damage reserve lands and Ojibwa resources, the Department failed in its responsibilities by narrowly viewing its duty as being simply a pursuit of monetary compensation from the company that had caused flooding damage, and, moreover, the Department failed to adequately make such a pursuit for compensation by allowing years to pass between each ineffectual demand on the company for a survey of damages, or for compensation.

In the end, over a decade passed before the federal government was able to secure a meagre compensation from the Seine River Improvement Company for flooding damages to reserve lands and traditional resources. For example, in a January 20, 1938 letter, H.J. Bury, Supervisor, Indian Timber Lands, recalled a conversation with Indian Agent Frank Edwards from five years prior, in 1933, when

³⁷⁴ LAC, RG10, Volume 6612, File 6009-12, R.D. Main, Secretary, Seine River Improvement Company, to MacInnes, January 12, 1938.

Edwards had opined that \$400 would be a “fair and reasonable” compensation for damage to the reserve.³⁷⁵ Bury also claimed that “last fall” Chief Joseph Rat had “agreed that this amount would be satisfactory”.³⁷⁶ He concluded that the company should be billed for \$500, arriving at this amount from his estimate of approximately 300 cords of spruce that were “lost to the Indians”, which he valued at \$1 per cord, plus “some loss due to the flooding of musk rats”.³⁷⁷ In a February 2, 1938 letter from MacInnes, Secretary of Indian Affairs, to Indian Agent Frank Edwards, he wrote that the Department had been “successful” in securing a \$500 compensation from the company for the “slight damage” caused to the reserve “by the construction of the dam at the western extremity of the lake in the year 1923”, and that the money had been “credited to band funds”.³⁷⁸ It appears as though the Seine River Improvement Company attempted to make their payment absolve them of any possible future damages, as the letter accompanying their payment stipulated that the amount covered “full payment of any and all claims... heretofore or *hereafter* arising in connection with water elevations due to the building, maintenance and operation of the dam [emphasis added]”.³⁷⁹ Interestingly, Indian Affairs accepted payment from the company, regardless of this stipulation, suggesting their acquiescence to this provision. Furthermore, in 1927, J.H. Milway, Crown Timber Agent, estimated that “6455 cords Spruce, 270 cords Balsam Pulpwood, and 14’000 f.t.B.M. White Pine” on the North shore of Lac des Mille Lacs had been “damaged by high water”,

³⁷⁵LAC, *Ibid.*, Bury, to The Director, January 20, 1938.

³⁷⁶*Ibid.*

³⁷⁷*Ibid.*

³⁷⁸LAC, *Ibid.*, MacInnes, to Edwards, February 2, 1938.

³⁷⁹LAC, *Ibid.*, R.D. Main, Secretary-Treasurer, Seine River Improvement Company, to MacInnes, January 24, 1938.

and significantly, Milway valued spruce at \$2.60 per cord, balsam at \$1.50 per cord, white pine at \$10 per thousand board feet, and jackpine at \$8 per thousand board feet.³⁸⁰ The \$500 compensation that Indian affairs requested and accepted on behalf of the Lac des Mille Lacs Ojibwa was based solely upon damages to one type of timber, Spruce, which Bury seems to have significantly undervalued at \$1 per cord. Moreover, according to a 1933 Order in Council, timber flooded from high waters in 1927 on the land of the Central Paper Company's Timber Limit #8, on the south shore of Lac des Mille Lacs, amounted to \$10,828.30³⁸¹, and, according to a 1921 map showing timber limits on Lac des Mille Lacs, Timber Limit #8, although larger, was comparable in size to the Lac des Mille Lacs Reserve, suggesting that the Ojibwa were largely under compensated for damages to on reserve timber.³⁸² Furthermore, the language used by MacInnes to describe the damage to reserve lands as "slight", differs from previous descriptions of a "means of livelihood" being "taken away", of the Ojibwa being "deprived of a part of their living", and of "a serious loss by this flooding".

Ultimately, the \$500 compensation for flooding damages accepted by government on behalf of Lac des Mille Lacs First Nation, only considered damages that occurred during construction of the dam, ignoring subsequent fluctuations of water levels. Moreover, it only took into account damages to two resources, timber and muskrat, ignoring effects to other fur bearing animals, fish, wild rice, agriculture, and livestock, as well as ignoring damages to burial grounds and other

³⁸⁰MNR, f.16799, Milway, to Spofford, September 6, 1927.

³⁸¹AO, RG75, Orders in Council, 204/450, November 6, 1933.

³⁸²See for example: "Map Showing Timber Limits of Nyando Pulp and Paper, Thunder Bay District, Ontario", Scale 1 Inch to 1 Mile, Vitale and Rothery, Forest Engineers, New York, July 1921.

sites of importance. Considering that reserve lands and traditional resources were significantly impacted by flooding, that the Lac des Mille Lacs Ojibwa's use and occupation of their reserve land had declined, that they were increasingly forced into using resources distant from Lac des Mille Lacs, forced into low wage temporary employment, forced into urban areas³⁸³, and that water levels had been regulated for over a decade with little concern for their welfare, Chief Joseph Rat would likely have accepted any payment that was offered in order to assist the remaining families living on or near the Lac des Mille Lacs reserve. Although in 1927 Chief Rat had apparently agreed to the amount of \$500, he was not adequately involved or consulted in the compensation process. Comparably, despite the fact that the Sturgeon Lake band had also complained of damages to Reserve 23 from Backus's dam at Sturgeon Falls, their claims were dismissed as survey plans submitted by E.H. Low allegedly showed that it would be "impossible for this development to cause any flooding [on the reserve]".³⁸⁴

³⁸³ Lovisek, "Lac des Mille Lacs 'Dammed and Diverted': An Ethnohistorical Study", in *Actes Du Vingt-Cinquieme Congres Des Algonquinistes*, (Ed. William Cowen, Carleton University, Ottawa, 1994), 303.

³⁸⁴ LAC, RG10, Volume 6612, File 6009-12, Low, to MacInnes, January 22, 1938.

CHAPTER 4

“Return To Our Lands”

“[T]hey wished to be all as one”

On the Lac des Mille Lacs reserve in 1910 “about 100 Indian families were residing there in permanent frame dwellings”, and by June of 1955, when “the Indian Agent, a member of the R.C.M.P., and a doctor made the Upsala hotel their Headquarters for treaty day, not one Indian appeared to claim their rightful due”.³⁸⁵ Prior to the abandonment of the reserve, “monster” powwows were held in a “great dome shaped circular enclosure of birch bark”, the “celebrations usually lasted from two weeks to one month with as many as 1,000 [people] participating”.³⁸⁶ Treaty 3 specifies that reserves were meant for the benefit of First Nations, yet it has been nearly sixty years since Lac des Mille Lacs First Nation was forced to leave their reserve lands to find “conditions” that would “enable them to make a livelihood”.³⁸⁷ In fact, today there are many band members who have never even set foot on their reserve. Accordingly, not only did the Canadian federal government fail it its treaty obligations in the way that it managed reserve lands during the construction of dams, and the flooding of reserve lands, resources, and traditional territories, it could also be argued that the federal government has been in breach of Treaty 3 for the sixty years that Lac des Mille Lacs First Nation has not been benefiting from its reserve lands.

Ann Hua, a proponent of critical race feminism, on discussing the topic of diaspora and cultural memory, cautions that “it is important to challenge and rethink

³⁸⁵William McKeown (Conservation Officer), *A History of Lac des Mille Lacs Area*, from Bob Thompson, Ministry of Natural Resources, Fish and Wildlife [Thunder Bay Brodie Resource Library: #12 History-Thunder Bay & District], 1960.

³⁸⁶*Ibid.*

³⁸⁷TARR, Newsletter, “Reservation Days” and “The Original Inhabitants of Upsala Township”, 1956.

earlier versions of diasporic narratives with their fixed notion of home, identity, and exile, where the homeland is perceived nostalgically as an ‘authentic’ space of belonging, and the place of settlement as somehow ‘inauthentic’ and undesirable”.³⁸⁸ Hua also advises that an “uncritical, nostalgic gaze may ignore the realities of the home country” that one “may cultivate a memory of an idealized homeland that has nothing to do with contemporary history, or one may pretend that the homeland has not changed since one left its shores”.³⁸⁹ Indeed, the shores of Lac des Mille Lacs have changed. According to Elder Wesley Chapman, the Birch Islands in Sawmill Bay on Lac des Mille Lacs “were all connected at one time... but [now] they’re all separated you can drive a boat through them”.³⁹⁰ Accounts from numerous Elders also describe an island off Sand Point that used to be connected to the main landmass of the reserve. For example, when asked about this island, Roy Peters explained “I don’t think it had a name, that used to be joined to the reserve and after the flood it’s an island now... because my dad said they used to walk out, that’s what he, I didn’t see it in my time but he said in his time he used to walk out to that”.³⁹¹ These oral accounts from Elders may be substantiated by an 1895 *Report of the Bureau of Mines*, that described Sand Point on Lac des Mille Lacs as being “occupied... as a garden by one of the Indians of the Poplar Point Reserve”, and that it “extends nearly across the lake”.³⁹² Additionally, Shirley Churchill stated that much of the Lac des Mille Lacs reserve became swamp: “not only the flooding in the front of the

³⁸⁸Anh Hua, “Diaspora and Cultural Memory”, in *Diaspora, Memory, and Identity: A Search for Home*, Edited by Vijay Agnew, (Toronto: University of Toronto Press 2005)

³⁸⁹*Ibid.*

³⁹⁰Roy Peters, William Chapman, Fred Chapman, Kelly Peters, Lawrence Chapman, and Wesley Chapman, Group Interview by Author, Video Recorded, Lac des Mille Lacs First Nation Elders Gathering, Thunder Bay, April 10, 2010.

³⁹¹*Ibid.*

³⁹²Archibald Blue, “Tour of Inspection Northwestern Ontario”, in *Report of the Bureau of Mines*, (Ontario, Bureau of Mines, Toronto, 1895 Report, Published in 1896), 115.

reserve, Sand Point, where we lost land there, but we also lost land in the back of it [which is not along the shoreline] where there's a swamp".³⁹³ Revealing how extensive flooding actually was, analysis of measurements "traced by a planimetric comparison of maps dating to the earliest survey of the reserve (by Ross in 1875) with recent topographic maps... shows that approximately 40% of the land mass on Lac des Mille Lacs has become marsh".³⁹⁴

Beyond simply physical changes to the Lac des Mille Lacs reserve – bearing in mind Hua's warning that an "uncritical, nostalgic gaze may ignore the realities of the home country" – the very concept of an Indian reserve should also be considered. They are often portrayed as isolated havens of poverty, rampant with unemployment and social ills. Without doubt these are stereotypes, yet statistically there may be some truth to these descriptions. For example, according to the 2006 census, "over one-quarter (26%) of on-reserve First Nations people lived in crowded conditions" and the "poor condition of dwellings was especially common on reserves, where 44% of First Nations people lived in a home requiring major repairs".³⁹⁵ The reserve system in Canada has also been described as akin to the legally endorsed racial segregation of apartheid in South Africa, a system "synonymous with oppression, injustice and racism".³⁹⁶ Despite these bleak, yet

³⁹³Shirley Churchill, Interview by Author, Audio Recorded, Thunder Bay, Ontario, July 21, 2008.

³⁹⁴J.A. Lovisek, "Lac des Mille Lacs 'Dammed and Diverted': An Ethnohistorical Study", in *Actes Du Vingt-Cinquieme Congres Des Algonquistes*, (Ed. William Cowan, Ottawa: Carleton University, 1994), 297. See also: Mariange Beaudry, "Planimetric Study of Lac des Mille Lacs I.R. 22A1", (Treaty and Aboriginal Rights Research, October 10, 1987).

³⁹⁵"2006 Census: Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census: First Nations people: Reduction in crowding over past decade", *Statistic Canada*, <http://www12.statcan.ca/census-recensement/2006/as-sa/97-558/p18-eng.cfm#01>

³⁹⁶Michelle DuCharme, "The Segregation of Native People in Canada: Voluntary or Compulsory?" in *Currents*, (Urban Alliance on Race Relations, Summer 1986, 3-4), <http://www.tgmag.ca/magic/mt3.html>; See also "Apartheid in Canada? Babb to visit Peguis Indian Reserve: South African Ambassador causes an uproar for comparing native Canadians to blacks in his country" in *CBC Digital Archives*, (Broadcast March

perhaps accurate, understandings of what an Indian reserve is it is quite clear that Lac des Mille Lacs First Nation has always wished to remain together as community on their reserve. For example, on the Lac des Mille Lacs reserve, at some point prior to 1895:

The Roman Catholics had desired to establish a mission and a school on the reserve; but while the Indians were willing enough to have a school, they objected very decidedly to a mission, saying that it would bring about divisions among their people, and *they wished to be all as one*”[emphasis added].³⁹⁷

In the 1980’s, members of Lac des Mille Lacs First Nation made an effort to live on their reserve lands, in tents or trailers, and without financial support from Indian Affairs.³⁹⁸

Community member Mary Ellen Kuurila, when asked about this event, explained that her cousin Ron Peters had been involved, and that “his ideology was to get, like, ten families out there in a tent, and call, you know, the media in... he wanted to show that people were willing to live out there and that the government would have had to deal with us”.³⁹⁹

Indeed, for at least thirty years Lac des Mille Lacs First Nation has demonstrated a desire to re-establish a community on their traditional lands, and to address the history of flooding. During the 1990’s the First Nation attempted to hold Ontario Hydro accountable for much of the flooding that occurred from their concrete dam on Lac des Mille Lacs, and negotiated for them to finance research into flooding grievances.⁴⁰⁰ This research resulted in a report that Ontario Hydro “rejected... stating that it did not own the

9, 1987), http://archives.cbc.ca/politics/international_politics/clips/4143/; And: Tannis Fiss, “Apartheid Canada’s Ugly Secret” (Centre for Aboriginal Policy Change, Canadian Taxpayers Federation, April 2004).

³⁹⁷Archibald Blue, “Tour of Inspection Northwestern Ontario” in *Report of the Bureau of Mines*, (Ontario, Bureau of Mines, Toronto, 1895 Report, Published in 1896), 115.

³⁹⁸Joan Lovisek, “The Lac des Mille Lacs Tragedy: Anatomy of a Century of Flooding”, in *Sacred Lands, Aboriginal World Views, Claims, and Conflicts* (Ed. Jill Oakes, Edmonton, Canadian Circumpolar Institute Press, 1998) 135, 136.

³⁹⁹Mary Ellen Kuurila, Interview by Author, Audio Recorded, Murillo, Ontario, July 26, 2008.

⁴⁰⁰“Band Seeking Hydro Compensation”, in *Chronicle Journal* (Thunder Bay), Staff Reporter, December 24, 1993, A3.

dam and was not responsible for flooding”.⁴⁰¹ In 1996, on the subject of flooding the First Nation submitted a ‘specific claim’ – the system that addresses historical grievance related to breaches of treaties or the Indian Act – to the federal government, and the claim is still currently in the process of being assessed.⁴⁰² In a March 14, 1999 newspaper article, Roy Peters was attributed as saying that band members “would love to move back permanently, or at least have summer homes on the reserve”.⁴⁰³ In January 2002, band member Kelvin Boucher-Chicago, frustrated that nothing was being done to build a community on the reserve, “moved into an old trappers shack – without heat, running water, or electricity” on the Lacs des Mille Lacs reserve, with plans to eventually build a permanent residence.⁴⁰⁴ According to a December 2004 resolution of “Political support” by the Assembly of First Nations, the “People of Lac des Mille Lacs First Nation have clearly expressed their desire to live on their Traditional Lands from which they were displaced” and they plan to develop “social and economic infrastructure to sustain their community.”⁴⁰⁵ In April 2010, at the Lac des Mille Lacs First Nation’s Elders Gathering,

⁴⁰¹Lovisek, “Lac des Mille Lacs Tragedy”, 137.

⁴⁰²To paraphrase, Lac des Mille Lacs First Nation’s statement of claim alleges that Her Majesty the Queen in Right of Canada, and in Right of Ontario was at all times a trustee or fiduciary for the First Nation in relation to the LDMLFN reserves and “dealings” were in breach of that trust; were at all relevant times under duties –and breached duties – to the First Nation pursuant to the Constitution, and to Aboriginal title and the statutory scheme surrounding the disposal of Aboriginal Interests as affirmed by *Guerin v. The Queen*; that servants and agents of Her Majesty the Queen in Right of Canada, and in Right of Ontario, owed a duty of care to the First Nation and they breached this duty of care, and were negligent in failing to properly protect the interests of the First Nation and their reserve lands; Her Majesty the Queen in Right of Canada, and in Right of Ontario, was at all relevant times under duties – and breached those duties – of a contractual nature arising from Treaty 3 in relation to the LDMLFN reserves; and claims “damages for breach of trust, breach of fiduciary duties, negligence, breach of contract, and breach of constitutional, statutory, and common law duties”. *Statement of Claim*, (Specific Claim #0189-602 – Lac des Mille Lacs Flooding Compensation, Received January 4, 1996).

⁴⁰³Kimberly Hicks, “Band Leadership Disputed”, *Chronicle Journal* (Thunder Bay), Sunday March 14, 1999, A5.

⁴⁰⁴Kris Ketonen, “Frustrated band member builds for future on own”, *Chronicle Journal* (Thunder Bay), Friday, May 31, 20002, A4.

⁴⁰⁵Assembly of First Nations, *Resolution No. 99*, “Political Support for Lac des Mille Lacs First Nation”, Special Chiefs Assembly, December 7, 8 & 9, 2004, Ottawa, Ontario. <http://www.afn.ca/article.asp?id=223>

Elder Ernest Boyes expressed “one thing about Lac des Mille Lacs, I would surely like to move back home, because that is my home... I have talked to a lot of people, a lot of people want to move back, [and] they have the will to move back there”.⁴⁰⁶ During interviews, and in informal conversations with community members, many people have voiced a desire to move back to the Lac des Mille Lacs reserve. Moreover, indicative of the community’s mindset as a whole, for the past three years the Lac des Mille Lacs First Nation’s newly revived annual powwows have been titled “Return To Our Lands”.

Chapter 2: The Dawson Dam

This thesis examined the context in which two dams were constructed on the outlet of Lac des Mille Lacs. The Dawson dam was built for navigation purposes along the Red River Route during negotiations for Treaty 3, and directly related to Canada’s nation building project, and its drive to “settle the west”. The Backus Dam was built to use Lac des Mille Lacs as a storage basin to assist in generating electricity further downstream for both public and private non-native interests, and it was set in the political backdrop of a division of powers between federal and provincial governments that made little consideration for treaty rights, and amid government attitudes that reserves could simply be canceled whenever it suited non-native interests.

Chapter 2 analyzes the Shebandowan Adhesion through which the Lac des Mille Lacs Ojibwa adhered to treaty. This study differs from other histories of Treaty 3 as they make only fleeting references to the adhesion. Although there is little documentation of this, it was studied here by examining the political unity displayed by Chiefs from the Shebandowan area, their discontent regarding damages from the Dawson Route and

⁴⁰⁶Ernest Boyes, and Loius Sawdo, Group Interview by Author, Video Recorded, Lac des Mille Lacs First Nation Elders Gathering, April, 9, 10, 11, 2010.

mining in their territory, and their opposition to the terms of the treaty that did not consider these grievances. The adhesion was also considered within the context of animosity between prominent Shebandowan leader, Chief Blackstone, and Indian Commissioner Simon James Dawson. By examining the correspondence of events leading up to the Adhesion, it was tentatively concluded that Dawson might not have met with the Shebandowan Ojibwa prior to the 1873 treaty negotiations in order to confirm that they would later adhere to treaty. Moreover, considering their past opposition to the terms of treaty, Dawson's previous conflict with Head Chief Blackstone, as well as a past incident where Dawson suggested the exclusion of Blackstone and the Shebandowan Ojibwa, it was further concluded that they may have been intentionally excluded from the 1873 Treaty Negotiations. This analysis is important for a study of damming and flooding of Lac des Mille Lacs First Nation reserve lands and traditional territory, as this exclusion from treaty is linked to damages from the dams constructed for the Dawson Route.

Chapter 2 also calls into question the validity of an adhesion. The adhesion process was not a negotiation, but simply an agreement wherein terms and boundaries of the treaty were already determined. In particular, this chapter specifically questions the validity of the Shebandowan adhesion, which appears to have occurred due to the improper actions of Indian Commissioner Dawson. Nevertheless, for all intents and purposes the First Nation's that agreed to the Shebandowan Adhesion have interacted with government as signatories to Treaty 3. Later in chapter 3, legal scholar John Borrows is cited as stating that "Canada's assumption of underlying title" to land "violates both fundamental principles of the rule of law", and that "[d]octrines of

discovery, *terra nullius*, conquest, and adverse possession have all been discredited in the common law and international legal systems as a legitimate basis to dispossess Aboriginal peoples of their land.⁴⁰⁷ Essentially, the only legitimate basis upon which Canada can have any right to own or control land is through consent and negotiation, that is, through treaties' with Aboriginal peoples. Therefore, it is imperative that Canada upholds its treaty obligation with First Nations, especially in a country that claims to be a multicultural, free and democratic country, lest its actions contradict such assertions. The significance of this analysis of the Adhesion is simply to establish that the manner in which Lac des Mille Lacs First Nation agreed to the terms of Treaty 3 is problematic to say the least. From the very beginning of Lac des Mille Lac First Nation's relationship with the federal government, damming and flooding of their traditional territory has been implicated in an imbalanced relationship.

Specific Claims

During treaty negotiations the Ojibwa, and in particular the Shebandowan Ojibwa, had repeatedly insisted on first dealing with prior grievances related to the Dawson Route and mining operations, before they were willing to consider the terms for a treaty. When Lac des Mille Lacs First Nation submitted its specific claim in 1996, Canada's specific's claim policy *Outstanding Business* did not acknowledge pre-Confederation claims, and thus may have barred consideration for flooding damages that resulted from the Dawson dam on land that became part of the Lac des Mille Lacs reserve.⁴⁰⁸ Not considering the Dawson dam would have been analogous to the way government proceeded with Treaty

⁴⁰⁷John Borrows, "Questioning Canada's Title to Land: The Rule of Law, Aboriginal Peoples and Colonialism", in *Recovering Canada: The Resurgence of Indigenous Law*, (University of Toronto Press, 2002) 2.

⁴⁰⁸Bradford W. Morse, "The Resolution of Land Claims", in *Aboriginal People and the Law: Indian, Métis, and Inuit Rights in Canada*, (Carleton University Press Inc., 1985), 652.

3, refusing to consider the Ojibwa's prior grievances, and it would have been tantamount to repeating the mistakes of an earlier age.

By many accounts the specific claims process was flawed, with excessive delays, a backlog of claims, a general lack of resources, and a conflict of interest regarding the role of government.⁴⁰⁹ Although Canada's 2007 specific claims policy *Justice at Last*⁴¹⁰ apparently resolves many of these issues – including no longer excluding pre-confederation claims – there may still be significant flaws in the process. For example, currently a claim “cannot be based on, or allege, Aboriginal rights or title”(note that Aboriginal title is pre-existing, and *sui generis* or unique in law).⁴¹¹ This is problematic as Lac des Mille Lacs First Nation's claim alleges that Canada was in breach of duties to them “pursuant to the Constitution, and to the nature of Aboriginal title and the statutory scheme surrounding the disposal of Aboriginal interests, as affirmed by *Guerin v. The Queen*”.⁴¹² Note that in the *Guerin* case, the Supreme Court ruled that the Crown had a fiduciary obligation to manage surrendered lands for the use and benefit of Aboriginal peoples. For example, one Supreme Court judge stated:

I think that when s. 18 [of the 1951 Indian Act] mandates that reserves be held by the Crown for the use and benefit of the bands for which they are set apart, this is more than just an administrative direction to the Crown. I think it is the acknowledgment of a historic reality, namely that the *Indians have a beneficial interest in their reserves and that the Crown has a responsibility to protect that interest...* [the Crown] does hold the lands subject to a *fiduciary obligation to*

⁴⁰⁹Emma Butt and Mary C. Hurly, “Specific Claims in Canada”, (Library of Parliament, Parliamentary Information and Research Service, Law and Government Division, April, 1 2006); Indian Specific Claims Commission Final Report 1991-2009: A Unique Contribution to the Resolution of First Nations Specific Claims in Canada” (Copyright: Minister of Public works and Government Services Canada 2009), <http://www.ainc-inac.gc.ca/>

⁴¹⁰*Specific Claims: Justice at Last*, (Specific Claims Action Plan 2007) <http://www.ainc-inac.gc.ca/al/ldc/spc/pubs/pamp/pamp-eng.asp>

⁴¹¹“Specific Claims Policy Process Guide”, (Indian and Northern Affairs Canada), <http://www.ainc-inac.gc.ca/al/ldc/spc/plc/plc-eng.asp>

⁴¹²*Statement of Claim*, (Specific Claim #0189-602 – Lac des Mille Lacs Flooding Compensation, Received January 4, 1996).

protect and preserve the bands' interests from invasion or destruction.[emphasis added]⁴¹³

A significant element of the *Guerin* case is that its decisions were based on limits to Aboriginal title as “inalienable except to the Crown” and that this “limitation imposes obligations on the Crown to act in the best interests of the Indians”.⁴¹⁴ Essentially, *Guerin* suggests that Aboriginal title was pre-existing, and thus the Crown’s fiduciary duty does not arise from the *Indian Act*, but from the fact that Aboriginal title to land can only be surrendered to the Crown

The implications of the specific claims process forbidding claims based on Aboriginal title can be hard to discern. One might think that it would not have an effect on the Lac des Mille Lacs specific claim, since the claim also alleges that “Her Majesty the Queen in Right of Canada [and in Right of Ontario]” was in breach of duties “of a contractual nature arising out of Treaty #3 in relation to the Lac des Mille Lacs reserve lands”.⁴¹⁵ That is to say – given that Treaty 3 also stipulated that reserves were to be managed by the Crown for the ‘benefit of the Indians’ – how does a breach of duty arising from Treaty 3 differ in any way from a breach of duty arising from Aboriginal title? In order to answer this question, it must be noted that in the 1930’s when Indian Affairs pursued and accepted compensation for flooding damages to the Lac des Mille Lacs reserve, it did so under the provisions of unilaterally imposed *Indian Act* legislation that had usurped the role of Treaty 3. For example, according to the “Lands taken for Public Purposes” clause in the 1906 *Indian Act*, it specifies that:

⁴¹³*Guerin v. The Queen* [1984] 2 S.C.R. 335, [with annotations], <http://www.bloorstreet.com/200block/rguerin.htm>

⁴¹⁴*Ibid.*

⁴¹⁵*Statement of Claim*, (Specific Claim #0189-602 – Lac des Mille Lacs Flooding Compensation, Received January 4, 1996).

... if any act occasioning damage to any reserve is done under the authority of an Act of Parliament or of the legislature of any province, compensation shall be made therefor [sic] to the Indians of the band in the same manner as is provided with respect to the lands or rights of other persons. The Superintendent General shall, in any case in which arbitration is had, name the arbitrator on behalf of the Indians, and shall act for them in any matter relating to the settlement of such compensation.⁴¹⁶

Essentially, the *Indian Act* empowered the Crown with a wide discretion to make decisions about reserve lands and where the best interests of Indians might reside. Consequently, if one elides Aboriginal title (which Guerin states is the source of the crown's fiduciary duty) from the specific claims process, then governments actions can only be interpreted as being empowered or legitimated from provisions of Indian Act legislation. Moreover, from the apparatus of the Canadian State, Indian affairs may not have technically done anything improper, or illegal, in taking over a decade to secure a clearly inadequate compensation for flooding damages to the Lac des Mille Lacs reserve lands, since, as already mentioned, the *Indian Act* provides a wide discretion in deciding what the best interests of Indians might be. In contrast, as the Supreme Court ruled in Guerin, the Crown has "a fiduciary obligation to protect and preserve the bands' interests [in reserve lands] from invasion or destruction".⁴¹⁷ Surely then, the prohibition of claims based on Aboriginal title is an intentional maneuver on the part of government to limit the scope of claims eligible for compensation. Furthermore, under the *Justice at Last* policy, a claim also "cannot be based on treaty rights related to activities of an ongoing and variable nature, such as harvesting rights".⁴¹⁸ This could be interpreted as excluding the extensive flooding damages that occurred to a variety of on and off reserve resources used by Lac des Mille Lacs First Nation.

⁴¹⁶ *Indian Act*. R. S., c. 43, s. 46., Chapter 81. Short Title: "An Act Respecting Indians", July 13, 1906.

⁴¹⁷ *Guerin v. The Queen* [1984].

⁴¹⁸ "Specific Claims Policy Process Guide", INAC.

Chapter 3: The Backus Dam

Chapter 3 considers the progression of the St. Catherine's Milling case, an unofficial policy for the removal of Ojibwa and the cancelation of their reserves, the federal and provincial governments role in the construction of dams along the Seine river and a dam in Fort Francis, and a prolonged exchange over flooding damages to the Lac des Mille Lacs reserve between Indian Affairs and the company that owned the Backus dam. This chapters study of the Backus dam differs from Joan A. Lovisek's histories of damming and flooding on Lacs des Mille Lacs, by providing a more in depth analysis of events, situating this flooding and damming in a larger context, and by stressing each way, and each instance that federal and provincial governments were negligent or culpable.

The St. Catherine's Milling Case was based on Victorian racism, theories of social Darwinism, illegitimate assertions of the crowns underlying title to the land, and unfounded arguments that the Ojibwa had no concept of property or any form of government. Nevertheless, the outcome of this legislation resulted in the division of federal-provincial powers that had significant import to the Ojibwa of Treaty 3. Reserves within Ontario formerly set aside under Treaty 3 were deemed to require the concurrence of the province, consequently the federal government compromised Ojibwa treaty rights by accommodating provincial demands that certain reserves be cancelled. It was also under the auspices of Ontario's Ministry of Lands and Forests that Edward Wellington Backus was permitted to construct a dam in Fort Francis, as well as dams along the Seine River, including one on the outlet of Lac des Mille Lacs. Despite the fact that Backus was engaged in litigation with the federal government over

the dam in Fort Francis that had flooded nearby reserves, that his subsequent application to build dams along the Seine River were on waterways nearby more reserve lands, the province still granted his application without any communication with Indian Affairs, or the Ojibwa that might be affected. Indeed, at that time Ontario's *Rivers and Streams Act* required no such communication with Indian Affairs in cases where reserve lands might have been effected by such projects. Furthermore, despite having received complaints from the Lacs des Mille Lacs Ojibwa stating that the Backus dam would damage their reserve lands and resources, Indian Affairs made no attempt to oppose the works since the terms of Backus's lease stipulated that he would be liable to pay for any damages that might occur. It is argued that this constituted a violation of the federal government's responsibility to manage reserve lands for the benefit of the Ojibwa, by extending its liability onto third parties. As we saw in this chapter, when Backus's waterpower lease to the Seine River was revoked in 1925, in the two-year intermediate period his company still regulated water levels on Lac des Mille Lacs causing much damage to reserve lands and resources, as well as damage to non-native properties. Despite this knowledge, and a report on the Lac des Mille Lacs dam by Ontario Lands Surveyor D.J. Gillon – that recommended that Backus's application not be granted, and set a lower high water mark than Surveyor E.H. Low specified in the plans attached to Backus's application for waterpower's – the province still re-issued Backus's license to regulate waters on the Seine River based on Low's plans. For that reason, it is argued that the province was negligent and complicit in the damages that occurred to Lac des Mille Lacs reserve lands and resources. It is also argued that the federal government was complicit in the flooding that occurred, and negligent of its treaty obligations, by ignoring complaints of flooding

damages from the Lac des Mille Lacs Ojibwa, and justifying its inaction on the fact that much of the damages occurred to off reserve resources – such as wild rice and fur-bearing animals – which were deemed to be “provincial resources”.⁴¹⁹ Furthermore, it is argued that the federal government continued to neglect its treaty obligations to manage reserve lands for the benefit of the Ojibwa by simplistically viewing its treaty duty solely as an obligation to secure compensation for flooding damages from the company that licensed the dam.

In this thesis, it is further suggested that Indian Affairs had a duty to oppose and protest against an industry that it knew to be causing damage to reserve lands, and should have taken action to prevent such damage from occurring. Moreover, it is argued that Indian Affairs failed its treaty obligations by inadequately pursuing compensation for damages – by allowing years to pass between ineffectual requests for compensation and surveys of flooding damages from the company that leased the dam – and that it eventually accepted insufficient compensation on behalf of the First Nation that did not consider the entirety of damages caused, or the damages that continued to occur to reserve lands and resources.

The war

In sum, this thesis conclusively argues that Ontario’s Ministry of Lands and Forests, and/or Canada’s Department of Indian Affairs, were indifferent, complicit, negligent, and ultimately responsible for the construction of dams that flooded and damaged the Lac des Mille Lacs First Nation’s traditional territory, resources, and reserve lands, resulting in the dispersal of their community. However, it is important here to

⁴¹⁹LAC, RG10, Volume 6612, File 6009-12, Frank Edwards, Indian Agent, to A.F. MacKenzie, Assistant Deputy and Secretary at Indian Affairs, September 23, 1925.

acknowledge that during interviews many people indicated that their families had also moved away from their reserve lands for employment reasons. Although persistent flooding damages to on-reserve, and to nearby resources off-reserve, certainly would have compelled members of Lac des Mille Lacs First Nation to find non-traditional modes of employment, there were also other factors. Namely, discriminatory provincial game laws – that despite treaty rights guaranteeing continued “avocations of hunting and fishing throughout the tract surrendered”⁴²⁰ – significantly impaired the Ojibwa’s ability to continue traditional forms of subsistence. Similar to the effects of flooding on the Lac des Mille Lacs community, game laws “forced the Saulteaux into temporary low-wage labour and social assistance and into urban areas, often far away from their communities”.⁴²¹ Indeed, during interviews, Elders Lawrence Chapman and Roy Peters, shared a story about the way game laws were sternly enforced:

Roy: “...about that time when they were, when they left the reserve, after that the natives moved, like we moved to Savanne River, some of them moved to Raith Ontario, some went to Ignace, some went to Lac Seul, Kashabowie but we weren’t allowed to hunt, the government brought the law that we couldn’t hunt even, so we had nothing to eat, that’s why people, most of them moved away to get a job to make money, you couldn’t live off the land anymore... I remember old Souzaye Rat had meat in her cabin and the Department of Lands and Forests... came and took it away, and she had nothing else to eat”

Lawrence: “I remember that I was there, my Aunt [Francis Peters], she was screaming at them game wardens, they were tearing, ah, all she was drying that moose meat, they were pulling it off”

Roy: “we couldn’t fish or hunt so why live there”?

Lawrence: “She had flour only in a bag, it was about that much, it was that wartime flour that was kind of a little brown, that’s all they had, my Aunt was screaming at them ‘that’s all she’s got to eat’”

⁴²⁰Morris, 323.

⁴²¹Joan A. Lovisek, “Algonquians/Subarctic”, Multicultural Canada, <http://www.multiculturalcanada.ca/Encyclopedia/A-Z/a4/7>

Howard: “Did that happen to other people?”

“That guy shot that moose, it was Frank Chicago, and he got, he went to Jail for that, ah that was, that was, I guess I was about ten years old, nine years old [based on his date of birth this occurred in 1946 or 1947]”⁴²²

It should be emphasized that damming and flooding of the Lac des Mille Lacs First Nation reserve lands, resources, and traditional territory, and the resulting dispersal of their community, did not occur in isolation from other events. Indeed, as the methodology section of this thesis indicates, dispersal also weakened the social fabric of this community leaving its members more vulnerable to become institutionalized in residential schools and foster care, or to be adopted, lose their status, or to become addicted drugs or alcohol. Provincial game laws impeded the continuation of traditional hunting and trapping activities, while legislation under the Indian Act prohibited First Nations from hiring lawyers in order to defend their rights.⁴²³ While damming and flooding enormously contributed to the dispersal of Lac des Mille Lacs First Nation, this did not occur in a vacuum. The resulting urbanization can be linked to an increase of a European diet, and to ill health such as diabetes, obesity, and cardiovascular disease.⁴²⁴ To revisit the metaphor of war used at the beginning of this thesis – that Elder Shirley Churchill used in order to describe her experience living in Canada as a member of Lac des Mille Lacs First Nation – flooding can be thought of as only one colonial weapon among an arsenal of policies, legislations, Acts and initiatives, implemented to

⁴²²Roy Peters, William Chapman, Fred Chapman, Kelly Peters, Lawrence Chapman, and Wesley Chapman, Group Interview by Author, Video Recorded, Lac des Mille Lacs First Nation Elders Gathering, Thunder Bay, April 10, 2010.

⁴²³*The Indian Act*, R.S., c. 81, s.141., Chapter 98, Short Title: “An Act Respecting Indians”, 1927.

⁴²⁴Russel Lawrence Barsh, “Canada’s Aboriginal Peoples: Social Integration or Disintegration?”, (Native American Studies, University of Lethbridge, Alberta) 20, <http://www2.brandonu.ca/Library/cjns/14.1/barsh.pdf>; “Why do Aboriginal People have so much diabetes?”, Gender and Health Collaborative Curriculum Project, http://www.genderandhealth.ca/en/modules/globalization/globalization_case2_stem.jsp

circumscribe treaty rights, to assimilate, and to disposes Aboriginal peoples from their traditional lands, cultures, and ways of life.

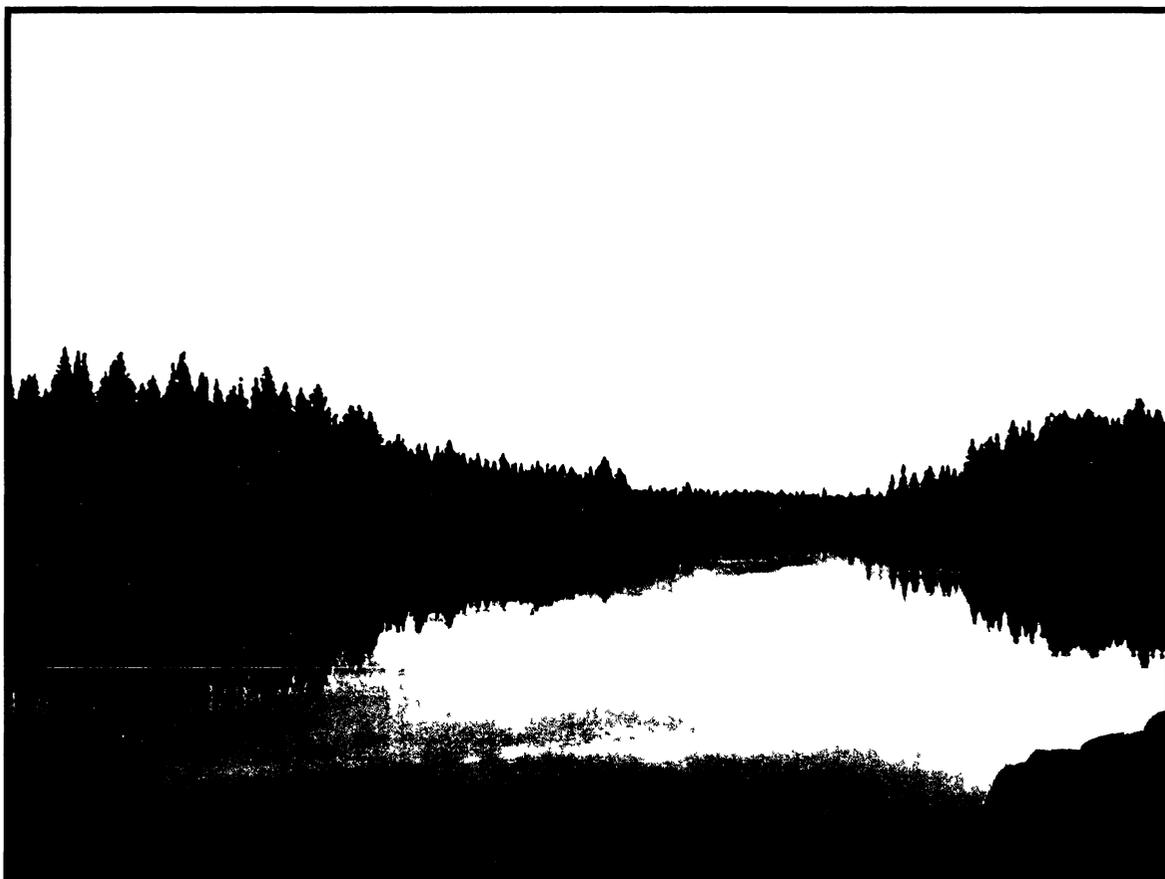


Figure 16 "View of Savanne River", July 2009⁴²⁵

⁴²⁵Photo credit: Charity Chapman, (taken during 2009 LDMLFN Powwow)

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