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# INDIAN AND NON-NATIVE USE OF THE CAPILANO RIVER

## AN HISTORICAL PERSPECTIVE

by Brendan O'Donnell

Native Affairs Division Issue 5  
Policy and Program Planning

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## INTRODUCTION

The following is one of a series of reports on the historical uses of waterways in New Brunswick and British Columbia. These reports are narrative outlines of how Indian and non-native populations have used these rivers, with emphasis on navigability, tidal influence, riparian interests, settlement patterns, commercial use and fishing rights.

These historical reports were requested by the Interdepartmental Reserve Boundary Review Committee, a body comprising representatives from Indian Affairs and Northern Development [DIAND], Justice, Energy, Mines and Resources [EMR], and chaired by Fisheries and Oceans. The committee is tasked with establishing a government position on reserve boundaries that can assist in determining the area of application of Indian Band fishing by-laws.

Although each report in this series is as different as the waterway it describes, there is a common structural approach to each paper. Each report describes the establishment of Indian reserves along the river; what Licences of Occupation were issued; what instructions were given to surveyors laying out these reserves; how each surveyor laid out each reserve based on his field notes and survey plan; what, if any, fishing rights were considered for the Indian Bands; and how the Indian and non-native populations have used the waterway over the past centuries for both commercial and recreational use.

Primary sources for this information are found in the National Archives of Canada, the Provincial Archives of New Brunswick, the Harriet Irving Library of the University of New Brunswick, the British Columbia Provincial Archives, the Hudson's Bay Company Archives, the Indian Land Registry at DIAND, and in the Legal Surveys Division of EMR. Secondary sources are found in the National Library of Canada, DFO's departmental library, DIAND's departmental library, or are brought in from other libraries throughout Canada on inter-library loan.

Each report in the series is being distributed to the Reserve Boundary Review Committee members. It is hoped each will make this research available to other members of their department by depositing the reports in their departmental library.

## CAPILANO RIVER: REPORT ON ITS HISTORICAL USE

By Brendan O'Donnell

The Capilano River, sometimes referred to in historical documents and maps as a creek, is approximately twenty-two miles in length. From its source high in the mountains North of Vancouver, it begins as a stream spilling into a long glacial valley which curves around the eastern flank of the Lions peaks before heading Southeast in the trough formed between Hollyburn and Grouse mountains. A multitude of small tributaries add to its flow as it leaves the upper valley to plunge through three miles of deep canyon before entering the flat alluvial plain which leads to its mouth. Only two of the river's tributaries are of any importance: the Eastcap which enters the river seven miles from its source, and Sisters Creek which enters the river seven miles from its mouth. Historically, the river had two main channels which broke up into a multitude of streams as they entered tidewater. Today there is only one channel and the mouth of the Capilano River is at Burrard Inlet opposite Prospect Point in Stanley Park, just to the West of downtown Vancouver.

Until the turn of the twentieth century, most documents and maps referred to the river as the "Kahpillahno", or some variation of that spelling. Kahpillahno was a nineteenth century Indian Chief whose village was at the mouth of the Capilano River. However, one anthropologist, C. Hill-Tout, considered the word "Kahpillahno" to be a title. "The supreme siam of the tribe was known by the title of Te Kiapilanoq..."<sup>1</sup>

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<sup>1</sup> Quoted in James W. Morton, Capilano. The Story of a River. Toronto: McClelland and Stewart, 1970, P. 22.

There were two Indian tribes associated with the Capilano River prior to white contact, both members of the Coast Salish cultural group. The Musqueam, belonging to the Stalo tribe, lived along the Fraser River, while the Squamish occupied the Howe Sound area. Early anthropologists concluded that the Musqueam were probably the original settlers of Burrard Inlet but the Squamish had become the majority sometime in the nineteenth century.<sup>2</sup> Several Indian villages existed in Burrard Inlet prior to the arrival of the whiteman, including "Homulcheson" at the mouth of the Capilano River.

In 1876 Gilbert Malcolm Sproat, the Joint Commissioner of the Indian Reserve Commission, recounted in a report to the Minister of the Interior the following history of the Indians of Capilano River.<sup>3</sup>

There were Indians in Burrard's Inlet when [Captain] Vancouver visited the place in June 1792. He says he was met by about 50 Indians in canoes. They appear, from his description, to have lived on the north side of the First Narrows - now known as Kah-pil-lah-no Creek.

It is not known to what tribe these Indians belonged. Some think they were not Skwawmish but Muskweam Indians. Kah-pil-lah-no was a Musqueam chief of half Skawmish blood.

In 1825 or 1827 Mr. Yale in charge of the Hudson Bay Co. fort at Langley, accompanied Kah-pil-lah-no to the creek which now bears his name, in Burrard's Inlet to point out to him the best ground for potato patches.

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<sup>2</sup> Ibid., P. 19

<sup>3</sup> G.M. Sproat to the Minister of the Interior, 27 November 1876. Copy on file at the National Archives of Canada, RG 10, Volume 11028, File SRR-1. Microfilm T-3967.

This chief lived at that Creek in Burrard's Inlet until he became old and blind when he went back to Musqueam, and died there a few years ago.

Although Captain Vancouver may have passed the Capilano as he sailed into Burrard Inlet, no mention of the river or a village is made in his records. Chief Kahpillahno, like most Indians in this district, maintained two homes in different areas. Aside from a home in Homulcheson, he had a home in Musqueam on the Fraser. Kahpillahno is famous in local Indian legend because, sometime between 1820 and 1860, he led his people on their only victory over the northern Yacultas during one of this latter bands many raids on Burrard Inlet.

The first survey of the river is reportedly to have taken place in 1863. In February and March of that year Royal Engineers surveyed the mouth of the Capilano but attached no name to the river on their map.<sup>4</sup>

The Indian village at the mouth of Capilano River appears to have been constituted as an Indian reserve in 1870. In an undated memorandum [circa November 1914] to the Royal Commission on Indian Affairs for the Province of British Columbia, Commissioner J.A.J. McKenna wrote<sup>5</sup>:

The earliest official record that search now discloses of the constituting of Indian reserves at these points is contained in a field book of a survey of tracts of thereat as Indian Reserves dated August 1870. The survey of the reserves was made by

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<sup>4</sup> James Morton, P. 24

<sup>5</sup> J.A.J. McKenna, "Memorandum (Departmental File 459, 554) in re Kapilano Reserve, No. 5 of Squamish Band and Musqueam Reserve, No. 2 of Musqueam Band". Copy on file at the National Archives of Canada, RG 10, Volume 11020, File 520. Microfilm T-3957.

E. Mohun. His surveys show the acreage of the Kapilano Reserve to have been 165 acres and of Musqueam 342 acres, as shown by the Schedule of Indian Reserves dated 16th October, 1871 and appearing in the Yellow Book pages 104 and 105. The Joint Commission under the Agreement 1875-6 confirmed the reserves as then found to be constituted and made additions thereto.

No copy of E. Mohun's 1870 survey map or field book could be found at this time. The "Yellow Book" referred to by Commissioner McKenna in his memorandum is Papers connected with the Indian Land Question 1850 - 1875.<sup>6</sup> On page 104 of this book, under the heading of "Schedule of all Indian Reserves (surveyed) in the Province of British Columbia," is listed a reserve at "Burrard Inlet, Junction of 1st Narrows and Kapilana Creek" with a total area of 165 acres.

In 1877 an addition was made to the Capilano Indian Reserve. The addition was surveyed by E. Mohun and was described by him in his field book<sup>7</sup> as follows:

#### Kahpilano Creek

Original Reserve confirmed, and increased by the addition of a tract of land bounded as follows from the northwest corner of Lot 264 by a line running true north to its intersection with Kahpilano Creek thence down the left bank of Creek to northern boundary of original Reserve thence easterly along said boundary to its intersection with the western boundary of Lot 264 thence north up said boundary to initial point.

<sup>6</sup> British Columbia. Papers connected with the Indian Land Question 1850 -1875. Victoria: Richard Wolfenden, 1875. This compilation of letters and reports was called the "Yellow Book" because its original cover was yellow.

<sup>7</sup> "Indian Reserves Mainland Musquem to Jervis Inlet." No. BC 406/A. Copy available at Survey and Mapping Branch, Department of Energy, Mines and Resources, Ottawa.

A sketch, showing the original reserve and the addition, is included in the field book. The reserve, with its addition, was confirmed by the Joint Indian Reserve Commission on 15 January 1877. Their Minute of Decision reads exactly as the description in Surveyor Mohun's field book.<sup>8</sup>

On September 6, 1880 W. Jemmett surveyed Capilano Indian Reserve. In the introduction to his field book<sup>9</sup>, beside a sketch of the "Kahpillahno Creek Reserve," Jemmett wrote: "Ind Res prior to Aug 1870. Mohun survey lot 264 G.I. Plan traced by Sapper Meade." Jemmett began his survey "along shore at Southeast corner of Reserve at High Water Mark." He also made a separate note of the traverse of Capilano River.<sup>10</sup>

To the mid-1880s only the mouth of the Capilano River as far back as the Indian Reserve had been surveyed. The thick forest cover and the deep canyons had blocked all but the most adventurous prospector from travelling beyond the Indian Reserve. This changed, however, over the winter of 1885-86 when a group of engineer-businessmen decided to tap the clear waters of the Capilano for the growing community on the South shore of Burrard Inlet. The Capilano was chosen because it could best fulfill a gravity system of water supply. The river was surveyed for seven miles from tidewater and a site for a dam chosen six and a half miles upstream. On 6 April 1886, on the same day that the City

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<sup>8</sup> Minute of Decision on file at Lands, Revenues and Trusts Operation Branch, DIAND, Ottawa.

<sup>9</sup> "Squamish. Burrard Inlet. Book 2. Nos. 5 & 6 Reserves." No. BC 348. Copy available at Survey and Mapping Branch, Department of Energy, Mines and Resources, Ottawa.

<sup>10</sup> "Traverses of Res. for Burrard Inlet, Chilliwack." No. BC 410/A. Copy available at Survey and Mapping Branch, Department of Energy, Mines and Resources, Ottawa.

of Vancouver, which the Capilano was to service, was incorporated, the Vancouver Water Works Company received its charter.

The head of the Vancouver Water Works Company was George Alexander Keefer. Also associated with the company and the man who surveyed the Capilano was Henry Badeley Smith. In an article published on the water works company, Smith wrote the following about the Capilano River.<sup>11</sup>

For a distance of seven miles from its mouth, the river has been surveyed. Throughout this distance it flows at the average rate of five feet per second over a bed of granite, basalt and conglomerate boulders. Sand and gravel can be found only in a few sheltered bays. It passes through several canyons of granite and whinestone rock, one of which is only 15 feet wide at its base, 94 feet wide at its top, 500 feet long, and 218 feet deep. Previous to the creation of this canyon, the whole valley to the north must have been one large lake. The wall of rock through which the stream penetrated ages ago, by some sudden effort of the earth's hidden forces, stands like a huge gate at the south end of the valley, the valley itself being but a strip of flat land from 1,000 to 1,500 feet wide, lying at the base of two parallel ranges of mountains, which tower upwards to a height of 3,000 feet. The fall that took place when the river flowed over the summit of this rocky wall must have equalled the Niagara of to-day for depth, if not for volume ... These canyons are isolated, standing about a mile apart. Between them the river flows through low lying flats, forming many islands. The immediate banks are but a few feet above the level of the river, and from 100 to 200 feet in width, the ground on each side rising in terraces until it is merged in the uniform slope of the mountains. Both sides of the river are heavily timbered with the huge

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<sup>11</sup> Henry Badeley Smith, "Vancouver Water Works," Transactions of the Canadian Society of Civil Engineers, Vol. III (January to December 1889) : 315-363.

trees peculiar to the British Columbia coast, Douglas fir, cedar, hemlock, spruce, balsam and white fir being in abundance. The Douglas fir and cedar grow to an enormous size. One cedar in particular was measured by the writer, and found to be 64 feet in circumference, 4 feet from the ground.

Smith made the prophetic statement that: "Should the City of Vancouver increase to the magnitude predicted, it may be that its people at some future day will cause a dam to be constructed across the narrow gorge [of the canyon], and once again convert this valley into a lake." Such a dam was constructed in the early 1950s and the lake created in 1955.

The stone-filled timber dam built by Smith was constructed "where the river is confined to one channel, and the banks on either side are sufficiently high to admit of the construction of a dam." The structure was "of continuous cribbing, stone filled, planked and sheet piled. It consists of three principal parts, viz., the north abutment, the tumbling way, and the south abutment." The "tumbling way," according to Smith, was "165 feet in clear length, 41'2" broad, and 13'9" high in the deepest part of the original channel of the River". The dam created a reservoir which, in the high water season, was 380 feet wide by 700 feet long, and contained approximately fourteen millions of gallons. This original dam site today is situated beneath the upper third of Capilano Lake.

Surveyors had now ascended seven miles up the Capilano, but there was no idea where the river originated or its length. Henry Smith, for example, had been told by prospectors that the river was "no less than fifty miles" long. In an effort to determine the source of the Capilano River, and to scout out the land for possible commercial value, five men [and a dog] left Vancouver on 21 May 1890 and became the first known people to travel the

length of the River. Robert M. Fripp, A.P. Horne, Harry M. MacKay, Chief Capilano Joe and his nephew, Joe, [and Fripp's dog Curly] sailed to Howe Sound, then walked and paddled on crudely constructed rafts to the source of the Capilano, then walked down its length to Burrard Inlet. The total trip took six days, three of which were spent getting to the source of the Capilano. Sometime between 1910 and 1917 Fripp recorded the events of the trip from notes he had made on the voyage. This record was published in 1960.<sup>12</sup>

The majority of Fripp's account deals with the groups ordeal getting to the source of the Capilano. His account of the voyage down the river reads thus:

Resuming our packs we pushed ahead in great spirits and late that evening camped about 850 feet above sea level by the bank of the Capilano which is here a little rushing stream with lovely pools and rapids for trout ... Next day we passed through some really good land with heavy timber on most of it with occasional patches of open rich bottom land. During the next three days we trudged steadily on, the valley maintaining an average width of one mile with smaller valleys running into it here and there. We halted frequently to take notes, bearings and aneroid heights. Small streams paying their tribute the main river quickly assumed considerable proportions and many were the refreshing swims we enjoyed in the cold clear rapid water ...

Early on the seventh day, during the whole of which drenching rain fell, we approached the end of our journey, and were at the Vancouver waterworks dam at one o'clock and as we had been crossing and re-crossing the river to avoid bad bluffs which gave the finishing touch to our tattered clothing and worn-out shoes, we were glad enough to once again strike a trail ... Only two hours before arriving

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<sup>12</sup> J.S. Matthews, "Capilano Creek: Discovery of Source 1890," Vancouver Historical Journal Vol. 3 (January 1960) : 71-94.

at the dam we passed another party bent on reaching the headwaters from the sea by following the stream up, also with a view to taking up land, so we were just in time. This party, however, failed to get through.

By 1890 virtually all the land below the Vancouver Water Works Company dam had been alienated. The following year there was even a suggestion that white settlers were encroaching upon the Capilano Indian Reserve. In a letter dated 14 July 1891, F.G. Verron, the British Columbia Chief Commissioner of Lands and Works, wrote to Indian Superintendent A.W. Vowell<sup>13</sup> that:

I have the honour to acknowledge the receipt of your letter of the 11th inst, enclosing a copy of a letter from Mr. Indian Agent McTiernas in which he states that portions of the lands comprising the Kahpillahno Creek Indian Reserve have been deeded to Messrs Joseph and A.V. Bouillon by this Department.

In reply I beg to state that the addition to this Indian Reserve which was made by Mr. Commissioner Sproat, the plans of which were filed in this office in 1881, has never been confirmed or assented to by the Provincial Government.

This Reserve as originally defined and as it is shown upon the official plans of this Department has not been encroached upon. I enclose a tracing on which the original Reserve is indicated by a red tint, Mr. Sproat's proposed addition by a yellow tint and the part conveyed to Messrs Bouillon by hatched lines.

From this you will see that there is still a portion of the proposed addition yet available for Indian purposes if desired.

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<sup>13</sup> F.G. Verron to A.W. Vowell, 14 July 1891. Copy on file at the National Archives of Canada, RG 10, Volume 3747, File 29858-1. Microfilm C-10131.

If these Indians require a large area I beg to suggest that a portion of the lands lately held under Timber Lease and which are situated on the East Shore of the North Arm of Burrard Inlet might be set apart for their use.

The land that was conveyed to Messrs Bouillon, as indicated by the "hatched lines" on the map enclosed in Verron's letter, overlaps in large part with the land surveyed by E. Mohun in 1877 and confirmed in a Minute of Decision by the Joint Indian Commission on 15 January 1877 [see above pages 4 and 5]. No other correspondence could be found at this time concerning the allegation that the additional land to the Reserve was never confirmed or assented to by the Provincial Government.

On 4 January 1893 Peter O'Reilly, who had taken over from G.M. Sproat as Indian Reserve Commissioner thirteen years earlier, was ordered by the Deputy Superintendent General of Indian Affairs to have the boundary of the Capilano Indian Reserve re-staked and defined.<sup>14</sup> On 20 March 1893 O'Reilly wrote Surveyor F.A. Devereux requesting that he re-survey the reserve, "adding thereto on the North a strip of land ... bounded on the East by Lots 264 and 825, and on the North by Lots 764 and 790".<sup>15</sup> O'Reilly enclosed a map of the reserve showing the original reserve and the proposed addition. This map is similar to F.G. Verron's sketch and only includes part of the land confirmed by the 1877 Minute of Decision.

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<sup>14</sup> See Peter O'Reilly's reply letter to the Deputy S.G.I.A., 13 March 1893. Copy on file at the National Archives of Canada, RG10, Volume 1278, Page 152. Microfilm c-13900.

<sup>15</sup> Peter O'Reilly to F.A. Devereux, 20 March 1893. Copy on file at the National Archives of Canada, RG10, Volume 1278, Page 156. Microfilm C-13900.

Devereux surveyed the reserve on 24 March 1893 and submitted his field notes <sup>16</sup> and survey notes<sup>17</sup> on 26 March 1893. The map clearly indicates the high water mark on the reserve facing Burrard Inlet. On 24 April 1893 an "Amended Minute of Decision " was passed. This Minute of Decision reads<sup>18</sup>:

No 5. Capilano, a reserve of four hundred and forty four (444) acres, situated on the northern shore of Burrard Inlet, at the mouth of Capilano Creek.

Commencing at the southeastern corner of Lot 237, New Westminster District, and following its eastern boundary N 25.33 E, 37 74/100 chains; thence N 1.43 E, 1 8/100 chains to the southwestern corner of Lot 1042; thence S 64.32 E (along southern boundaries of Lots 1042, 1041, 1040 and 1039) 41 41/100 chains; thence N 34.59 E, 8 66/100 chains to the southwestern corner of Lot 790; thence S 65.31 E, 28 86/100 chains to the southeastern corner of said Lot 790; thence S 66.15 E, 11 77/100 chains; thence S 89.23 E, 4 55/100 chains to the northwestern corner of Lot 825, thence S 1.52 W (following the boundaries of Lots 825 and 264) 30 48/100 chains; thence S 32.37 W, 28 ?/100 chains to the southwestern corner of Lot 264, and thence following the shore of Burrard Inlet in a northwesterly direction to the place of commencement.

On 22 May 1893 the re-survey by Devereux, including the additional land, was "approved" by F.G. Verron, Peter O'Reilly and Indian Superintendent A.W. Vowell.<sup>19</sup>

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16 "Squamish re-survey of the Capilano Indian Reserve, Burrard Inlet." No. BC 347. Copy available at Survey and Mapping Branch, Department of Energy, Mines and Resources, Ottawa.

17 "Plan of the Skwawmish Indian Reserves, Burrard Inlet, New Westminster District, British Columbia." Copy on file at the National Map Collection, National Archives of Canada. NMC 12388.

18 Minute of Decision on file at Lands Revenues and Trusts, Operation Branch, DIAND, Ottawa

19 See "Plan of the Skwawmish Indian Reserves, Burrard Inlet, New Westminster District, British Columbia." No BC 72. Copy on file at Survey and Mapping Branch, Department of Energy, Mines and Resources, Ottawa.

As stated, by 1890 virtually all the land below the Vancouver Water Works Company dam had been alienated. After 1890 the land north of the dam was also being alienated. The largest landowner was the Capilano Park Company, incorporated on 3 March 1892. By 1 June 1892 this company had purchased 4,626.42 acres for exactly that number of dollars.<sup>20</sup> Among the owners of the Capilano Park Company were Robert Fripp, Harry Mackay and A.P. Horne, the three white members of the group who had first descended the river from its source to its mouth. They had purchased the land for speculative purposes. However, the economic depression of the 1890s forced them to leave this land completely dormant. In 1902 the Capilano Park Company finally was able to lease a large chunk of its property to the Capilano Lumber Company for twenty years. This marked the beginning of the forest industry in the Capilano River valley.

The Capilano River, however, was considered incapable of use in the floating of logs to tidewater. Moreover, the terrain was considered too difficult to haul the logs out using ox and horse. And a railroad into the valley would not be built until 1917. The solution was to build a wooden flume from above the dam to Burrard Inlet. On 13 February 1906 the Burrard Inlet Flume and Boom Company, later incorporated into the Capilano Flume Company, was completed. It ran from Sisters Creek down the western bank of the Capilano, past the dam and into the Second Canyon. It was between 100 and 200 feet above the river and clung precariously to the rock face. It was a V-shaped structure made of boards two feet wide with a catwalk constructed beside it to provide access to patrolmen who prevented log jams along its route.

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<sup>20</sup> James Morton, page 273

The flume could carry only shinglebolts. Cedars were felled in the valley, bucked and sawn into bolts by a small steam sawmill, split into quarter blocks with wedge and hammer, and floated to tidewater to be manufactured into shingles by the mills on Burrard Inlet and False Creek. The removal of large timber from the valley would have to await the construction of the railroad after the First World War.<sup>21</sup>

The President of the Capilano Flume Company was J.G. Woods and among its Directors was Dr. J.T. Carroll. Carroll was a land and timber speculator whose holdings were principally located in the Capilano Valley. A 1904 court case determined that Carroll owned Lot 673, on which the Vancouver Water Works Company dam was located, but that the City of Vancouver, having purchased the Water Works in 1891, owned the dam site, the pipeline and a small area on the east bank of the river.

In the autumn of 1905 the Capilano River was in flood. It had eroded and submerged ten to twelve acres of Indian Reserve land and was within fifteen feet of washing out the main before it dipped beneath the narrows to the city. It was discovered that the flood was caused by Dr. Carroll who had diverted the river into its old eastern channel some eighteen months before. This eastern channel was originally the larger of the two river channels, but it had been closed off by the Water Works Company to prevent it from interfering with their new main.<sup>22</sup> Before the flume was built [in 1906], Carroll had switched the river back to its eastern channel in a failed attempt to float his shinglebolts to tidewater.

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<sup>21</sup> David M. Rees-Thomas, Timber Down the Capilano. A History of the Capilano Timber Company and Railroad Logging on Vancouver North Shore. Victoria British Columbia Railway Historical Association, 1979.

<sup>22</sup> Ibid, p. 86

The diversion of the river had been done, under Carroll's instructions, by the Indians of the Capilano Indian Reserve. Apparently, the Indian Agent had been consulted before the river was diverted. In an interview with the Vancouver Daily Province on 3 September 1905, Indian Chief Capilano Joe recounted the transactions that led to the river's diversion<sup>23</sup>:

Chief Joe, the big medicine man of the Indians of the reserve, discussed the situation with a "Province" representative yesterday. It was hard to keep the chief concentrated on the topic as he desired to impress upon the palefaced interviewer some idea of his greatness. Throughout the conversation his talk reverted to the big silk hat he had lost in the destruction of his house by fire last year and the glories of life on the Capilano in the days of the first chief, old Capilano, and Governor Douglas.

"Mr. Woods come me and ask go Victoria and see Mr. Vowell, Indian superintendent, about fixing Capilano. That was more than two years ago," explained Chief Joe yesterday. "I say, no money, and Jack say, alright, go ahead, I pay. I go Victoria and Jack allow me \$5 a day. After a while he do nothing and Dr. Carroll come me and say, Joe, how much you take fix up Capilano so make him run new channel? Me say, I suppose \$3 a day. The Dr. Carroll tell me, Go ahead, Joe, I pay you and your Indians \$3.50 a day.

"That big money for Indian so we work perhaps eight months changing course of Capilano. Dr. Carroll good man and give fair play.

"Bime-by Dr. Carroll and Mr. Woods go law fight lawsuits, then all fix up. Capilano run high in new channel and both lose lots shinglebolts. I pick up over one thousand for them on inlet. So bime-by Dr. Carroll built flume past my house and fix up. Mr. Woods make one flume do. So I got job build new

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<sup>23</sup> Quoted in *ibid*, p. 86-87.

flume connect old ones. I now work in Capilano with Indians and Japs. Dr. Carroll, Mr. Houlgate, pay us \$3 day. Well we go fast, build say 1,000 feet of flume make him connect in canyon, five miles up. We blast 40 feet of rock for bed for flume. Big job sure, but when finished, shinglebolts come down safe and no lose," concluded Chief Joe before resuming the story of his big silk hat.

"Dr. Carroll good man," resumed the chief. "He no fix channel before see him Mr. Devlin, Indian agent, now dead. Suppose Mr. Devlin write Ottawa and fix up.

No correspondence could be found at this time from Indian Agent Develin on this topic. However, the river was diverted back to the western channel although, as one later commentator remarked, "...the old Capilano thereafter seemed to prefer its eastern mouth."<sup>24</sup>

In 1913 a report was made to the British Columbia Ministry of Lands concerning the possible consequences of cutting the timber in the Capilano Valley. E.A. Jamieson, in a report addressed to William Young, Comptroller of Water Rights, wrote:<sup>25</sup>

The Capilano River is a rapid mountain-stream about 20½ miles in length, and fed by many small tributaries and springs. The source or headwaters of the main stream are at an elevation of about 1,000 feet above sea-level. It rises almost due

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<sup>24</sup> Ibid, p. 86.

<sup>25</sup> Report of the Minister of Lands for the Province of British Columbia ... 1913. Victoria: William H. Cullin, 1914. Pages D146-D147.

north of the westerly end of Burrard Inlet, and flows in a southerly direction to its mouth, where it empties into the salt-waters at a point known as the First Narrows, the entrance to this inlet.

This stream has several important branches, chief amongst these being the creek known as Sister's Creek, about 4.5 miles long, which has its source at an elevation of approximately 5,000 feet, and the East Fork of the Capilano, about 5.5 miles long, whose source is at an elevation of approximately 2,700 feet. This East Fork has two large feeders -- one from the easterly slope about 1.1 miles long, and one from the westerly slope about three miles in length. The stream from the easterly slope of its watershed has a source in two small lakes of about 135 and 25 acres respectively, at an elevation of approximately 2,900 and 1,900 feet. The larger lake was tied in and made a part of the survey of the Lynn Creek and watershed which was made by W.C. Smith, of this Department, of which mention is made in his report.

These lakes are fed from melting snows and seepage from the surrounding mountains, but their value as reservoirs is small, entailing as it would the cost of large dams to impound any volume of water; the surrounding watershed area is small, and the only value as reservoirs would be, in the event of an unusually dry season, that their waters could be drawn off, and they could be allowed to regain their volume in time. The stream from the westerly slope of this East Fork watershed has a source at about 2,750 feet above sea-level, and is derived from the melting snows and springs. Near the headwaters of the main stream another fork is found, having a source similar to that of the others, at an elevation of approximately 2,950 feet. For the whole distance from the mouth to the source of the main stream small springs and creeks are contributing to the flow, but only the largest of these were investigated.

This river has a watershed area of approximately fifty-five square miles, and for the most part is heavily timbered and has a very heavy growth of underbrush on the lower slopes. The soil of the watershed is of a sand and gravel formation, with a very great amount of boulders in the sub-surface.

In places where the sub-surface has been exposed, nothing but small and huge boulders are to be seen.

The slopes around the watershed are very steep, and with the character of the formation a very rapid run-off is apparent. The soil cannot retain the waters from a few hours' rain, much less from the melting snows. An evidence of the rapidity of the run-off was experienced during the survey when there had been a heavy rainfall for several hours. The result was a freshet with an increase of from less than 100 c.f.s. discharge to over 2,000 c.f.s. inside ten hours, and much trouble was encountered by the City of Vancouver's Waterworks Department at their intake, which is located some 6.5 miles from the mouth of the river. The annual precipitation over this watershed is approximately 120 inches, causing a mean annual run-off of about 30,000,000 cubic feet per day.

The importance of retaining the timber on this watershed for all time cannot be too forcibly emphasized. It is absolutely necessary in order to regulate the run-off of the waters. The growth is very dense, and considering the nature of the soil a great amount of moisture is retained; but were this timber removed, one can readily see that this greatest aid to the retention of the waters would be lost, with disastrous results on the regularity of flow from this stream. The timber caused the loose, porous soil and sub-soil, such as it is, to be bound together, thus aiding the retaining-powers. In many places there are signs of freshet streams where the sub-surface is seen to be nothing but a mass of boulders, and at the sides of these courses can be seen the shallow depth of surface soil, bound as it were into a mat by the roots of the timber, which, if allowed to become cleared off, would soon cause the formation in many places to be washed down, leaving nothing but boulders. In the upper elevations, also, the timber saves the snow from melting too rapidly and running off, often causing freshets.

There are no feasible reservoir-sites on this stream. At several places near the headwaters there are large flats, but the volume of any reservoir thus obtained would not warrant the expense of the dam. There is a small lake situated about half a mile above the junction of the East Fork with the

main stream, but its value as a reservoir is negligible. The grade of the main river is high, some 80 feet to the mile, at an average, and much greater in places. With the existing side-slopes of the stream it is impossible to obtain a feasible reservoir.

Also in 1913 the Royal Commission on Indian Affairs for the Province of British Columbia was appointed to resolve the long-standing federal-provincial dispute concerning Indian lands in that province. The Royal Commission was given the power to investigate Indian land matters, to adjust reserve acreage by reducing the size where the Commissioners deemed that the Indians had more land than needed, to determine the area to be added in cases where bands had insufficient land, and to set aside reserves for bands that had not yet received any. The Commissioners were also authorized by a separate federal order in council of June 1913 to gather information on issues which, although extraneous to the terms of the McKenna-McBride Agreement setting up the Commission, were nevertheless considered to effect the rights and interests of the Indian population. From 1913 to 1916 the Commission travelled the province compiling their evidence.

On 21 June 1913 the Commission held a meeting at the Capilano Indian Reserve. Chief Mathias Joe spoke for the Band<sup>26</sup>:

I am going to speak to you in English. We Indians on the North Shore and the [?] have some complaints which I will put before you. We Indians of British Columbia who have been [?] down in our lands are looking forward to a new life when we are able to open up our lands.

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<sup>26</sup> Evidence before the Royal Commission on Indian Affairs for the Province of British Columbia. Copy on file at Lands, Revenues and Trusts Operation Branch, DIAND, Ottawa.

We are men and we have wives and children and some of us have mothers to feed. The white people say the Indian lands are idle. Why? There is no way to start. The Indians cannot start anything -- I have been to school to try to get civilized like the white people, but you can't make the Indian like the white people. It is a different breed. No man can improve land by his will alone; you need something else. You can't kill deer by your will. You need an instrument to do it, and the land is the same way. As I say we have mouths to feed and you can't get food or clothes for nothing, you must have money. You must have money to buy the tools with which to clear the land. When a man is in prison he is looking always for a way out, when he is sick he is always looking for a way to get well. That is what the members of the Capilano Band are doing, trying to see a way to a new and a better life. The only thing we can do is to sell and get money, and have land working like the white people. The white people are growing and increasing because they have money; the Indians are poor. That is why the Indians are not civilized. It is because they have no money. They cannot sell a rock or a stick of wood off their reserve to get money. We want to sell the land and each family gets its share of the money in its pockets. I am not asking you to give me a title, because I know that we own the land. Your Government's own the outside land but the reserve is my land until the day comes that I will want to change to the new life. If we sell the land here, we will go to the reserve in the Squamish Valley after we get the money to open it up with. We know that we would be far better off there than we are to-day if we could only get a start at clearing the land. That is all I want to say about the land...

The Commissioners explained to the Band members their powers concerning reserve adjustments, but assured the Indians "that land can only be cut off with the consent of the Indians interested. For instance if we should recommend that a portion of this reserve should be cut off, it could not be done unless you Indians here consented to it being done."

The following month, on 17 July 1913, the Royal Commissioners returned to the Capilano Indian Reserve "and examined the lands for which application has been made by the Pacific Great Eastern Railway Co., for right of way and other railway purposes."<sup>27</sup>

The following day, 18 July 1913, Chairman E.L. Wetmore sent a copy of his Interim Report No. 4 to the Governor-General in Council and to the Lieutenant Governor of British Columbia in Council recommending that a right-of-way be turned over to the railway.<sup>28</sup>

The Commission pursuant to Section 8 of the Agreement referred to in the Commission, has had under consideration the application of the Pacific Great Eastern Railway Company for lands required for right-of-way, station grounds, roundhouse, repair shop and regular railway purposes (shown in yellow colour upon the blueprint plan marked "A" and initialled by the undersigned this 18th day of July, 1913) and forming part of the Capilano Indian Reserve No. 5 of the Squamish Tribe, and upon reading the said application and the correspondence and material on the File of the Department of Indian Affairs and examining the plans submitted and viewing the lands and premises, and it appearing that the said lands are required for right-of-way, station grounds, roundhouse, repair shop and regular railway purposes by the said Company.

The Commission recommends that, subject to compliance with the requirements of the law, permission be given to the said Railway Company to enter forthwith upon the said lands and to acquire such parts thereof as have been applied for by such Company, for such right-of-way, station grounds and

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27 "Minutes and Proceedings of the McKenna-McBride Commission," 1913, Volume 1. Copy on file at Lands, Revenues and Trusts Operation Branch, DIAND, Ottawa.

28 "Interim Report No. 4 of the Royal Commission on Indian Affairs for the Province of British Columbia." Copy on file at the National Archives of Canada, RG 10, Volume 1044. Microfilm T-1461.

railway purposes aforesaid, according to the plans filed in the Department in respect to such application, and

The Commission further recommends that before the amount of compensation for such lands be fixed and determined, careful inquiry should be made as to land values in the locality.

The right-of-way turned over to the Pacific Great Eastern Railway Company consisted of 11.89 acres. On a copy of F.A. Devereux's 1893 "Plan of the Skwawmish Indian Reserves, Burrard Inlet, New Westminister District, British Columbia,"<sup>29</sup> the P.G.E. Railroad right-of-way is indicated. A marginal notation giving the total acreage of the reserve, and indicating the various cut offs, states: "Less P.G.E.Ry 20.50 which includes 2.00 acres of water not in I.R." The map shows that the right-of-way crossed over several branches of the Capilano River as it passed through the Indian reserve.

Three years later the Royal Commission cut off an additional 130 acres of the Capilano Indian Reserve. On 13 May 1916 a Minute of Decision was passed which reads<sup>30</sup>:

ORDERED: That the area contained in Kapilano Indian Reserve No. Five (5), of the Squamish Tribe, New Westminister Agency, described in the Official Schedule of Indian Reserves, 1913, at Page 101 thereof, BE REDUCED by the cutting off there-from of an area of One Hundred and Thirty (130) acres, more or less, as per sketch plan of Ashdown H. Green,

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<sup>29</sup> See "Plan of the Skwawmish Indian Reserves, Burrard Inlet, New Westminister District, British Columbia." No BC 72. Copy on file at Survey and Mapping Branch, Department of Energy, Mines and Resources, Ottawa.

<sup>30</sup> Copy of Minute of Decision on file at National Archives of Canada, RG 10, Volume 1045, pages 792-793. Microfilm T-1461. For a map of the cut off section see RG10, Volume 7745, File 23167-4 (PT.1). Microfilm C-12041.

B.C.L.S. filed in duplicate with the Governments of Canada and British Columbia, and that the residue of the said Kapilano Indian Reserve No. Five (5) BE CONFIRMED as now fixed and determined and shewn on the Official Plan of Survey, viz

"No. 5 - Kapilano ----- #293.50 acres".

#Further reduced by allowance of Pacific Great Eastern Railway Company's right-of-way of 11.89 acres, to 281.61.

The cut off area of the reserve was a 130 acre rectangular swath across the southern portion of the reserve to the water's edge.

Meanwhile, in 1910, negotiations got underway between the federal government, the provincial government, the Capilano Indian Band, and private entrepreneurs to dredge the bed of the Capilano River and the foreshore of the reserve for sand and gravel. This sand and gravel was to be used as building materials for the City of Vancouver and its expanding suburbs. The protracted negotiations took ten years before the first lease was issued. However, as is indicated by the excerpts from the correspondence outlined below, the common theme throughout this period was that the Capilano Indian Band owned the sand and gravel on the bed of the Capilano River and on the foreshore fronting the reserve.

In October 1910 W.C. Weeks, through his lawyer, F.C. Saunders, applied to both the Department of Marine and Fisheries and the Department of Indian Affairs for permission to dredge the foreshore adjoining the Capilano Indian Reserve. On 3 November 1910 John D. McLean, Secretary of the Department of Indian Affairs, wrote Saunders that<sup>31</sup>:

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<sup>31</sup> John McLean to F.C. Saunders, 3 November 1910. Copy on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

... provided satisfactory arrangement is made with the Indians owning the reserve through this dept. for compensation for any injury that may be done to their reserve or for what they may consider should be paid for their interest in the foreshore, the department would raise no objection to the granting of the permission desired.

The following month, on 27 December 1910, McLean wrote the Deputy Minister of Public Works that the Department of Indian Affairs had no objection to the dredging of the foreshore, again stating that this was providing the Capilano Band "... be paid for their interest in the foreshore."<sup>32</sup> On 24 June 1911 McLean requested of the Inspector of Indian Agencies, A.R. Tyson, that he "ascertain what compensation the Indians desire for the granting of the privilege asked."<sup>33</sup>

On 4 July 1911 a new group entered the negotiations, requesting permission to dredge the bed of the Capilano River as it lay within the Indian Reserve. C.H. Taylor, W. Mueller and W. Aiken, through the law firm of Abbott and Hart-McHarg, wrote the Superintendent General of Indian Affairs that they had obtained permission from Chief Mathias Capilano and the Band to dredge the bed of the river for sand and gravel. They enclosed a copy of a letter, dated 13 May 1911, signed by Chief Mathias Capilano and witnessed by Walty H. Mueller, which stated<sup>34</sup>:

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<sup>32</sup> John McLean to the Deputy Minister of Public Works, 27 December 1910. Copy on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

<sup>33</sup> John McLean to A.M. Tyson, 24 June 1910. Copy on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

<sup>34</sup> Abbott and Hart-McHarg to S.G.I.A., 4 July 1911; and Chief Mathias Capilano, 13 May 1911. Copies on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

This is to certify that I have leased to Messrs. Aiken and Taylor the bed of the rivers together with the banks of same on my property, namely the Capilano Reserve, and use of warf for the period of one year with the option of renewing indefinitely, for the sum of ONE HUNDRED AND FIFTY DOLLARS (\$150.00) per year payable in advance.

It is further agreed upon that no other operations are to be started along the banks of the rivers without the permission of Messrs. Aiken & Taylor.

However, McLean replied to Abbott and Hart-McHarg that<sup>35</sup>:

Pending the settlement of the question of title between the Dominion and the Province, the department is not in a position to give favourable consideration to this application. I may say that no disposition of this gravel could be made in any case without a surrender from the Indians.

Then, on 12 September 1911, Inspector Tyson wrote John McLean that<sup>36</sup>:

I visited the Capilano Reserve and called a meeting of the Indians there, when I submitted to them the request made by the Department of Public Works, in connection with a dredging lease in the foreshore of the First Narrows, fronting on the Indian Reserve, Capilano Creek. After they had discussed the question in all its pros and cons, the following resolution was drawn up by Chief Mathias and seconded by Billy Williams: -

That, at the present time they do not wish to deal with any rights they may have at the mouth of the Capilano River, which runs through their Reserve, and that they oppose any lease being given to W.C. Weeks.

This resolution was carried unanimously.

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<sup>35</sup> John McLean to Abbott and Hart-McHarg, 13 July 1911. Copy on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

<sup>36</sup> A.M. Tyson to John McLean, 12 September 1911. Copy on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

The following year, on 25 June 1912, James Stuart, the Purchasing Agent for the City of Vancouver, applied to the Department of Indian Affairs for a lease to dredge the tidal flats fronting the Capilano Indian Reserve. He forwarded maps and a description of the foreshore-dredging lease. The maps show the two main channels of the Capilano River as it passed through the Indian Reserve. The easterly channel is designated on the maps as being a "recent channel." The westerly channel is designated as "original main channel." The maps indicate a location for a "suggested diversion dam" on the eastern channel which would, presumably, divert the river to the western or "original" channel.<sup>37</sup> On 3 July 1912, McLean informed Stuart that<sup>38</sup>:

Some little time ago the question of giving permit for the use of a dredging lease adjoining this reserve was before the Indians, when they decided that they did not wish to dispose of any rights they had at the mouth of Kapilano River.

Then, on 9 January 1913, Chief Mathias J. Capilano and eleven members of the Capilano Band wrote directly to the Governor General, informing him that<sup>39</sup>:

Henry A. Mitchell, of Vancouver, British Columbia, is desirous of obtaining a lease of the old bed of Capilano Creek, as shown on the accompanying

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<sup>37</sup> James Stuart to Deputy S.G.I.A., 25 June 1913. Copy on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

<sup>38</sup> John McLean to James Stuart, 3 July 1913. Copy on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

<sup>39</sup> Chief Mathias J. Capilano et al to the Duke of Connaught. Copy on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

tracing, for the purpose of taking out sand and gravel for building and other purposes.

... your petitioners are both willing and anxious that said Henry A. Mitchell should obtain said lease.

Mitchell's address was also care of City Hall, Vancouver. The tracing map mentioned in the letter, supplied by Mitchell, shows both principal channels of the river as it passes through the Reserve.<sup>40</sup> The gravel lease request was for the easterly channel. Dams indicated on the map presumably were to divert the water to the westerly or "main" channel. Where the easterly channel is indicated on the map is written: "Overflow bed Capilano Creek." The lease was for the bed of this eastern channel of the Capilano River from above the spring tide high water mark to the northern boundary of the reserve. Mitchell was informed, however, that pending a solution on the Indian title question by the Royal Commission, his application would not be considered.

On 15 April 1913 the Capilano Band again met and unanimously resolved<sup>41</sup>:

That it is in the interests of the Band that the offer of the said James Stewart should be, and the same is hereby, accepted.

And that the Band hereby consents to a license to dredge and remove sand and gravel on the part above mentioned of the fore-shore opposite the reserve being granted to the said James Stewart ...

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<sup>40</sup> Plan of Gravel Lease, Capilano Creek, North Vancouver, B.C. No. BC 294. Copy on file at Survey and Mapping Branch, Department of Energy, Mines and Resources, Ottawa.

<sup>41</sup> Petition, 15 April 1913. Copy on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

Stewart was also informed by the Department of Indian Affairs that his application would stand until the question of the reserve and been dealt with by the Royal Commission. However, on 7 July 1913, John McLean was informed by the Secretary of the Royal Commission on Indian Affairs for the Province of British Columbia "that the Commission cannot see that the subject matter of the papers on said file comes within the scope of the Commission's authority ..."<sup>42</sup>

The First World War appears to have intervened with the plans to dredge the foreshore and bed of the Capilano River. No correspondence could be found on this topic for the period 1914 to 1919. Then, on 19 December 1919, Deputy S.G.I.A. Duncan Scott replied to an inquiry from Mitchell concerning the dredging that<sup>43</sup>:

We would have no objection to granting this concession, but, as the sand and gravel applied for form part of an Indian reserve, before any favourable consideration could be given to the application, we would have to obtain a surrender from the Indians, as no portion of a reserve can be alienated until after surrender under and in accordance with the provisions of the Indian Act.

Mitchell was also informed that permission would have to be obtained from the provincial government since title to Indian reserves in British Columbia had not been settled.

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<sup>42</sup> J.G.H. Bergeron to John McLean, 7 July 1913. Copy on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

<sup>43</sup> D.C. Scott to H.A. Mitchell, 19 December 1919. Copy on file at the National Archives of Canada, RG10, Volume 7603, File 11167-4. Microfilm C-11571.

On 7 February 1920 the Capilano Band signed a surrender. On 17 March 1920, ORDER IN COUNCIL P.C. 547 was passed acknowledging the surrender:<sup>44</sup>

of the sand and gravel in that portion of land covered by water in the Capilano Indian Reserve, No. 5 ... containing an approximate area of 45 acres and being composed of the bed of the Capilano Creek within the limits of the said reserve.

The description of the surrendered portion of the reserve was as follows:

Commencing at the edge of the water on the left bank of the easterly channel of said creek at a point two hundred feet north of high water mark at spring tide; thence north sixty-nine degrees and sixteen minutes west across the mouth of the creek four hundred and ninety feet more or less to the water's edge on the right bank of said creek; thence following the water's edge northerly in all the windings of the said creek to the north boundary of the said Indian reserve; thence southeasterly following the said north boundary to the water's edge of the said creek on the left bank of the said creek; thence southerly following the said water's edge to the point of commencement. The said tract is shown on plan of survey made by M.L. Gordon, D.L.S., dated 30th November, 1912, and recorded in the Surveys Branch of Department of Indian Affairs under Number B.C. 294.

Mitchell received a lease from the Provincial Minister of Lands on 15 May 1920.

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<sup>44</sup> ORDER IN COUNCIL P.C. 547. Copy on file at the National Archives of Canada, RG2/1, 17 March 1920.

In the mid-1920s, serious discussion began in Vancouver concerning the possibility of building a bridge across Burrard Inlet at the First Narrows. Such a bridge would enter onto the cut off section of the Capilano Indian Reserve. On 6 August 1926, Indian Agenc C.C. Perry informed John McLean:<sup>45</sup>

I beg to acknowledge receipt of Departmental letter of July 7th, No. 23167-4, together with a blueprint of the proposed right-of-way for the Lions Gate Bridge on the First Narrows, Vancouver Harbour, which enters upon a portion of the Capilano Reserve No. 5, of the Squamish Indians.

In reply, I beg to say that I have investigated the particulars asked for by the Department as near as I can at present and now beg to report: -

1. I am informed by the Engineer of the applicant company that no proper survey has as yet been made and it would, therefore, be difficult, in the absence of proper stakings to state whether or not any Indian improvements would be affected. Any Indian improvements, however, would be in the cut-off area which the Department states will be handled by the Provincial Government.

As to the width of the four hundred feet for the proposed right-of-way being necessary, I beg to say that I have ascertained from Messrs. Congdon, Campbell and Meredith that their application for the width metioned is on account of the turbulent character of the Capilano River. The River at its mouth and for a long way up-stream is deltaic, and in time of extreme flood is liable to sudden and erratic changes of course. The approach to the proposed bridge will be a high trestle for a great part of the distance and in order to ensure this trestle against destruction the Company will have to put in elaborate and extensive protection works. The Company considered that not less than three

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<sup>45</sup> C.C. Perry to the Secretary, Department of Indian Affairs, 6 August 1926. Copy on file at the National Archives of Canada, RG10, Volume 7745, File 23167-4 (Pt. 1). Microfilm C12041.

lines of defence against the water should be created for safety and, in addition, they consider that it will be necessary as a precaution to straighten the channel at several points and construct training works to keep the water away from the bridge approach...

A marginal notation, dated 19 August 1926, states: "D.M. advises no further action on this matter until Co. has permission of Dom Gov to erect bridge." The federal government, which owned a bridge at the Second Narrows, opposed the building of the Lions Gate Bridge. As well, the City of Vancouver held a plebiscite to determine public reaction to the constructing of a bridge whose approach would necessitate the building of a road through Stanley park. The Vancouver voters rejected the idea.

Meanwhile, work was begun on the lower reaches of the Capilano River to protect the banks from erosion. As one commentator later remarked:<sup>46</sup>

One of the special features of the lower reaches were the cribbings, sometimes referred to as wing dams. There was one at the Loon Run below Marine Drive and five above, though numbers three and four were washed out, probably in the 1930s. They were constructed to protect the banks from direct erosion, which they certainly did, by they also reduced the accelerating flow of the river as it rushed its last impatient mile to the sea.

The idea of building a bridge across the First Narrows was revived in the 1930s. The British Pacific Properties Ltd., representing the Guinness Brewery of Dublin, Ireland, purchased 4,000 acres of mountainside land in West Vancouver. Access to

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<sup>46</sup> James Morton, P. 148

this potential residential suburb was an essential part of their development plans. When it was again suggested that a roadway be built through Stanley Park to provide access to the bridge, the City of Vancouver, suffering financially from the Depression and seeing the potential jobs that the bridge construction would create, assented to the project. Work on the bridge began on 31 March 1937 and was completed on 12 November 1938.

Eight months later, on 12 July 1939, Indian Agent F.J.C. Ball wrote the Secretary of the Department of Indian Affairs concerning the diversion of the Capilano River as a result of the construction of the Lions Gate Bridge.<sup>47</sup>

I beg to acknowledge receipt of your letter of the 7th instant enclosing copy of one to the Deputy Minister from the First Narrows Bridge Company regarding protection work on Capilano River. I wrote you on the 4th instant in this matter, and this report was probably received by you on the 8th, the day after your letter was written. If, however, you have not received it, I will send a copy.

I do not see why this Department should be called upon to pay any of the expense, as the Reserve will not be benefitted in any appreciable extent.

The Bridge Company has commenced work. They have a bull-dozer which is throwing gravel from the river bed on to the east bank of the river. The tendency will be for the water to be diverted to the west side of the present channel, protecting the bridge right-of-way, but not making any material difference to the Reserve.

The best part of the Reserve at this location lies on the west side of the river. The old maps show that the Capilano River formerly entered the sea several hundred yards east of its present mouth, but this old channel is fairly well overgrown and could not be used again on account of the bridge

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<sup>47</sup> F.J.C. Ball to Secretary, Department of Indian Affairs, 12 July 1939. Copy on file at the National Archives of Canada, Volume 8315, File 987/8-4-7-5, Pt. 1. Microfile C-13784.

right-of-way which at this point is fifty feet above ground level, and has been filled, thus making a natural embankment. The bridge cuts the Reserve in two and lessens its value to that extent, although against that, we have the advantage of easier access to the Reserve and no doubt the value of the land is increased, should it ever be sold.

While the work being done by the Bridge Company may protect a corner of the Reserve, the great part protected is in the cut-off area of Capilano River. As stated before, the whole area is only a gravel bed, covered with scrub.

Meanwhile, a year earlier, on 29 July 1938, the British Columbia Government passed Order-in-Council 1036. This Order-in-Council was the formal instrument of transfer which conveyed the Indian Reserves outside the Railway Belt and the Peace River Block from British Columbia to Canada.

The question of ownership of the foreshore of the Capilano Indian Reserve and of the exact location of the southern boundary of the Reserve was again raised in 1954. In a letter to the Indian Affairs Branch of the Department of Citizenship and Immigration, W.S. Arneil, Indian Commissioner for British Columbia, wrote concerning the British Columbia Bridge and Dredging Company:<sup>48</sup>

We have for several weeks been considering a proposal from the above mentioned Company involving the deposit of material dredged from the bed of Burrard Inlet in the vicinity of the Lions Gate Bridge on the low lying waterfront area of the above mentioned Reserve, and have now completed negotiations to a point where a submission with regard to the matter would appear to be in order. Initial consideration and negotiation was based on the assumption that the dredge material would be for the most part placed on the foreshore fronting the

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<sup>48</sup> W.S. Arneil to Indian Affairs Branch, Department of Citizenship and Immigration, 16 July 1954. Copy on file at the National Archives of Canada, RG10, Volume 8315, File 987/8-4-7-5, Pt. 1. Microfilm C-13784.

Reserve and, in fact, the National Harbours Board and the Dredging Company had practically completed an agreement before it became apparent to us that the area to be filled, shown cross-hatched in red on the attached plan marked Drg. 655, was practically all Indian Reserve proper if it is conceded by all concerned that the Southerly boundary of the Reserve is the line of high water mark as established by Devereux in 1893 and as shown on Indian Affairs Survey Records Plan B.C. 749 which should be viewed in conjunction with a perusal of the plan attached.

The Company's proposal is briefly set out in their letter of June 26th, attached, and you will note that in addition to permission required for the deposit of material on the Reserve, an area 50' X 50' in the locations shown on the Plan, is required for a transformer site and permission is requested for the temporary installation of an electric power line, as shown for the operation of the electric dredge. The Company's plan clearly shows the elevations of the Reserve land in question and an on the ground inspection clearly reveals the desirability of building up this low lying area, making it an extremely valuable waterfront property.

The Squamish Band Council, as will be noted from the Resolution dated June 27th, attached, is in agreement with the proposal and it would appear that in view of all the circumstances the necessary permission might be granted to the Dredging Company. I may say that I personally visited the Vancouver Harbour Master and showed him a copy of Mr. J.R. Burns' survey of Capilano I.R. 5, Plan B.C. 749, and the Field Notes of the original survey of the Reserve, and although he has not so indicated in writing, it seems to me that the National Harbours Board has no alternative but to concede that the area above high water mark, as established by Devereux in 1893, regardless of any erosion or accretion that may have taken place in the interval, is Indian Reserve land. I mentioned this point specifically as it would be undesirable to have a filled area fronting the Reserve, title to which was with any one other than the Crown in trust for the Squamish Band.

The consideration involved in connection with the whole arrangement involves payment of \$250.00 by the Company for the temporary transformer site and temporary power line easement. There is no payment involved for the permission to deposit material on the Reserve, which is as it should be having in mind the anticipated substantial increase in the value of the property through an increase in the general elevation. It is though that the transformer site and power line easement should be the subject of one permit, with a second general permit authorising deposit of the dredge material on the area shown on the plan to the elevation indicated in cross sections.

The following year, however, on 31 October 1955, W.C. Bethune, the Acting Superintendent of Reserves and Trusts, informed Indian Commission W.S. Arneil:<sup>49</sup>

Having reference to your letter dated September 1st, 1955, enclosing Mr. Anfield's letter to you dated August 31st, 1955, we now wish to advise that the question of the foreshore rights in Vancouver Harbour has again been reviewed in the light of Mr. Andrew Paull's representations, as reported by Mr. Anfield.

Our answer still is that these foreshores do not form part of the Indian Reserves concerned nor did they ever. It may be that up until a few years ago some doubt existed in the minds of Branch officials as to whether the foreshores actually belonged to the Reserve or not, largely because the matter of riparian rights was also involved; the two were not always clearly differentiated. However after Mr. F.P. Varcoe, Q.C., Deputy Minister of Justice gave his opinion on November 29th, 1952 with regard to the question of accretion on the shore of the Fraser River this confusion (if there was any), was fairly well cleared up.

<sup>49</sup>

W.C. Bethune to W.S. Arneil, 31 October 1955. Copy on file at the National Archives of Canada, RG10, Volume 8315, File 987/8-4-7-5, Pt. 1. Microfilm C-13784.

Mr. Varcoe writing to our Deputy Minister under date mentioned makes the following statements:

"You asked for my opinion as to whether certain natural accretions, on the south shore of the Fraser River at New Westminster, should be regarded as forming part of the above mentioned Indian Reserves. I have formed the opinion that, while these natural accretions should be regarded as the property of Her Majesty in right of Canada, they are not vested in Her Majesty for the use and benefit of Indian bands concerned. I have reached this conclusion principally for the reason that the reserves in question were surveyed and constitute land of a specified and limited area, set apart by the Crown for the use and benefit of these bands. This fact precludes the extension of the reserves by natural accretion."

You will note that Mr. Varcoe makes the point that the Indian Reserve only contains the lands that were "set apart by the Crown for the use and benefit of the Indian Bands". In the case under consideration we must look to the Provincial Order-in-Council of July 29th, 1938, number 1036 in order to determine what lands were actually set apart. Reference to the schedule containing the description makes it clear that it is only the land to the highwater mark. The foreshores were not included.

Mr. Paull makes a great deal of the apparent fact that certain surrenders, given by the Squamish Band of Indians on the Capilano Indian Reserve, included some foreshore and, therefore, they must have been owners. You cannot acquire ownership or title to land by quit claiming it but you must obtain it by conveyance from the rightful owner. The fact that the Indians quit claimed lands which did not belong to them does not establish ownership. Mr. Anfield has asked us to use simple language that the Indians understand and we can illustrate this point by saying: if the Squamish Band today gave a surrender to the site on which the present Vancouver Hotel stands, they cannot tomorrow claim title by virtue of that surrender. If certain lands were included in some surrenders which did not belong to the Indians it probably was because some doubt existed as to the ownership and the official drafting the surrender document wanted to make sure the surrender was all inclusive.

Another point we wish to make is that the fact that title to the foreshores is actually vested in the Crown in Right of Canada may have had something to do with the confusion or misunderstanding. As already pointed out, it is only the land set apart as a Reserve that constitutes the Reserve. The fact that the Crown in right of Canada does actually own the foreshores does not make it a part of the Reserve.

With regard to the quit claim granted the Vancouver Harbour Board by the Department of Marines and Fisheries with the apparent consent of the Department of Indian Affairs does not mean that such consent was with regard to the disposition of foreshore lands but rather for the interference of the riparian rights held by the Indians. There was no formal consent only consultation. No enabling legislation was required in so far as any Indian interests were concerned. We are today receiving revenues for the interference of these riparian rights on behalf of the Squamish Band. All consultation between the two departments was with regard to the value of this interference of riparian rights.

We are satisfied that these foreshores were never set apart for the use of the Indians and unless this can be established all other argument fails. You should proceed with your proposed meeting with the officials of the National Harbour Board.

In the 1950s, construction began on a new dam at the Second Canyon. Plans for this dam can be traced back to 1929 when the Greater Vancouver Water District [G.V.W.D.] surveyed the Capilano and Seymour watersheds. However, the coming of the Depression ended this project before it ever got underway. The idea was revived in the late 1930s, but the outbreak of the Second World War again scuttled the project. Finally, in 1951, the G.V.W.D. purchased the Second Canyon portion of Capilano Park from the Vancouver Parks Board and tenders for the project were called. Work began on 31 May 1951 and was completed in July 1954.

The new dam, called the Cleveland Dam honouring the late Commissioner of the G.V.W.D., E.A. Cleveland, created a lake behind it that extended three and a half miles up the Capilano Valley. The lake has a maximum width of one-half mile. Near the dam, the lake is 80 meters deep.

In 1971-72, the Department of Fisheries and Oceans build the Capilano Salmon Hatchery approximately one kilometer below the Cleveland Dam. A weir was build across the Capilano River to block the upward migration of salmon and trout.

The Capilano River Regional Park, which has managed a park along the river since 1926, maintains a 7.5 km trail along the Capilano from the Cleveland Dam downriver to Ambleside Park.

Among the activities offered by the Regional Park authority is whitewater paddling in the Capilano River. A brochure put out by the group explains:

The use of open boats is not recommended on Capilano River. The river is moderately difficult at medium water levels for whitewater kayaks and closed-decked canoes. The river should not be paddled in very high water. Flood water pouring through the narrow canyon creates whirlpools and eddy fences and makes rescue difficult.

Each spring a major kayak slalom competition occurs in the river canyon below the hatchery weir. Kayakers and spectators from Western Canada and the Pacific Northwest of the United States come to this competition.

CONCLUSION

Historical evidence indicates that the Capilano River was not used for commercial or transportaton uses. Indians had established a vilage at the mouth of the river prior to white contact, but there is no evidence that they travelled upstream far beyond this point.

The first whites to walk the length of the Capilano River completed their journey in 1890. Shortly after, land in the Capilano Valley was acquired for speculative purposes and in 1902 the local forest industry began. However, the river was considered incapable of use in the floating of logs to tidewater.

In the mid-1880s the first dam was built on the Capilano to collect water to supply the Vancouver and its suburbs. In 1954 a new dam was consructed, creating a lake behind it that extended three and a half miles up the Capilano Valley.

Today, the river does provide recreational use for whitewater kayakers. However, the river is described as being moderately difficult at medium water levels.

ADDENDUM TO "CAPILANO RIVER: REPORT ON ITS HISTORICAL USE"

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However, on 17 November 1876, Alex C. Anderson, the Dominion Representative on the Indian Reserve Commission, wrote Indian Superintendant James Lenihan that the Capilano Indian Reserve, which he claimed was approximately 500 acres in size, had to be divided to accomodate two factions living on this territory. His letter reads<sup>1</sup>:

With reference to the Kapilano Creek Reserve (which contains [?] about 500 acres) we have, in order to assist your future [?], and to equalize the land appropriated to the two segments of the tribe residing on that portion of the general reserve, and the disconnected portion occupied by the Mission Band, settled with Lâ-wah, the nominal Chief of the Kapilano Portion (the son of Kapilano) that he and his immediate followers shall occupy about 200 acres (so as to include the grave-yard) of the Eastern portion. The remainder of the Reserve (i.e. towards and beyond Kapilano Creek) is to be open for pasturage for the cattle of the Mission Indians (Joseph's Band); Lâ-wah, for himself and peoples, promises to grant them free access through the portion (200 acres) of the Eastern end which he and his people are to occupy - and to which they promise to remove their huts.

I mention this in explanation of the surveying notes accompanying [?] official titles.

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<sup>1</sup> Alex C. Anderson to James Lenihan, 17 November 1876. Copy on file at the National Archives of Canada, RG10, Volume 3638, File 7346. Microfilm C-10112.

That same day, 17 November 1876, the three members of the Indian Reserve Commission wrote a memorandum to Lenihan concerning the survey of reserves in the New Westminister District.<sup>2</sup>

Concerning the Capilano Reserve, the memorandum reads:

This reserve requires to be surveyed; as although the side lines were run a few years ago, the back or northern boundary has not been established. It has also been recommended by the Indian Reserve Commission that it shall be divided into two parts, the eastern portion to contain two hundred acres or thereabouts, but must include the grave-yard in any case.

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<sup>2</sup> "Memorandum for Survey of Indian Reserves, New Westminister District"; Alex C Anderson, Arch. McKinley and G.M. Sproat to James Lenihan, 17 November 1876. Copy on file at National Archives of Canada, RG10, Volume 3638, File 7346. Microfilm C-10112.



