

Reconciliation, land tenure & surveying

SLSA - Regina
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Canada's relationship with Indigenous Peoples

- Crown is committed to achieving reconciliation with Indigenous peoples “through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship.”
- Based on “recognition of rights, respect, co-operation, and partnership as the foundation for transformative change.” DoJ - 2018

Territoriality



10 principles

- Rooted in:
 - *Constitution Act* 1982, s35 (Aboriginal & treaty rights recognized and affirmed)
 - RCAP (October 1996)
 - UNDRIP (September 2007 & May 2016)
 - TRC Calls to Action (June 2015)
 - *Bill 262* (April 2016)
- Question: How to “practise” – not merely “talk” – about reconciliation vis-à-vis land tenure?
(National Centre for Truth & Reconciliation, Univ of MB, p11)

575 First Nations = 3,100 IR* = 35,524 sq km*



Reconciliation

- Inter-societal (integrating both Indigenous and common/civil law)
- Patina of “uncomfortability” (being comfortable with being uncomfortable)
- Nine land tenure projects that:
 - Illustrate engagement (“dialogue meaningfully and grapple with the concerns expressed in good faith” – 2018 FCA 153, at 754)
 - Use evidence-based methodology
 - Are novel
 - Provide socio-economic benefits to First Nations

FNLMA: Opinions on community bounds

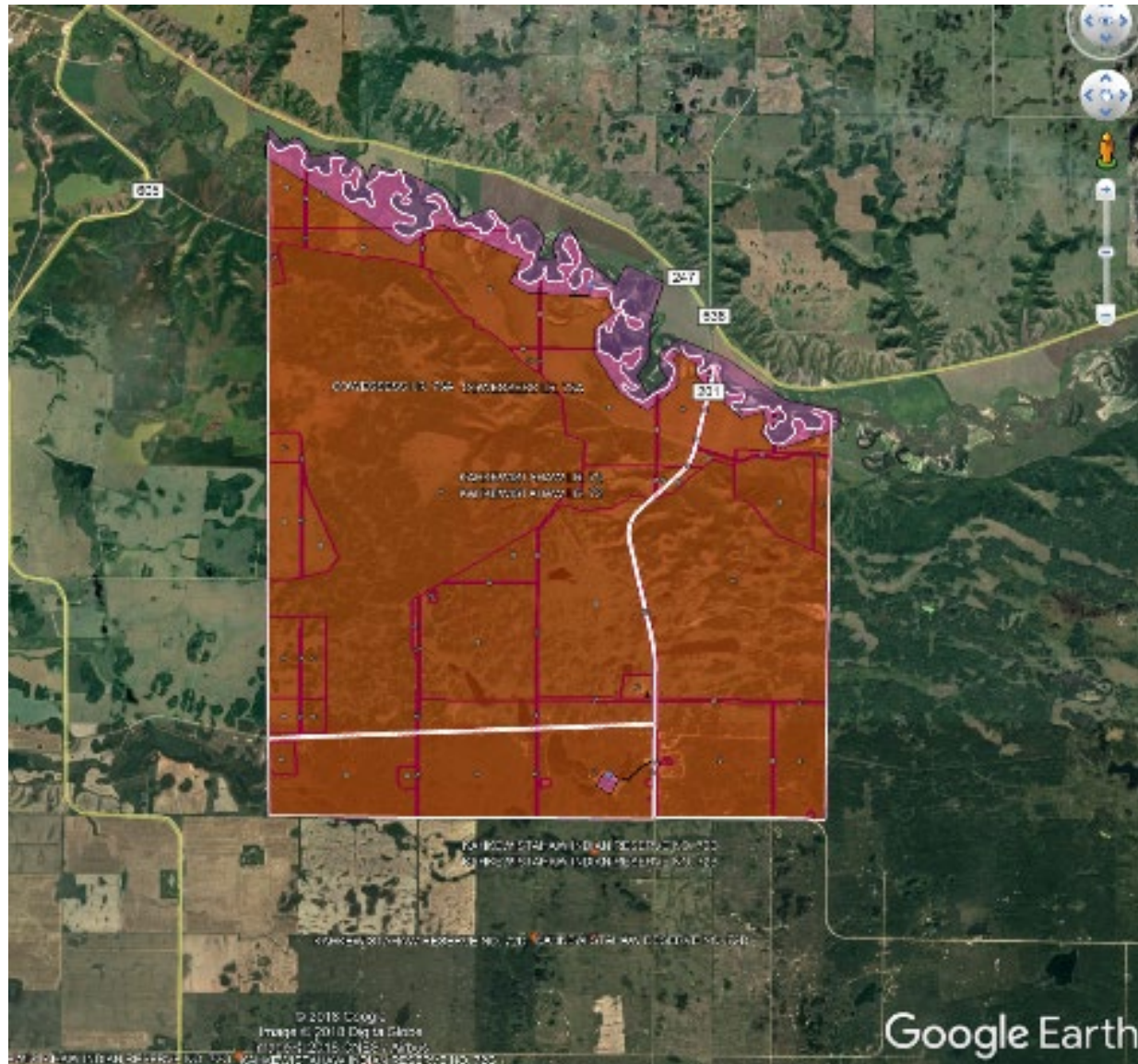


First Nation Land Management Act

6(1) A First Nation that wishes to establish a land management regime ... shall adopt a land code:

A description of the land that is to be subject to the land code that the **Surveyor General may prepare ...** or any other description that is ... sufficient to identify those lands.

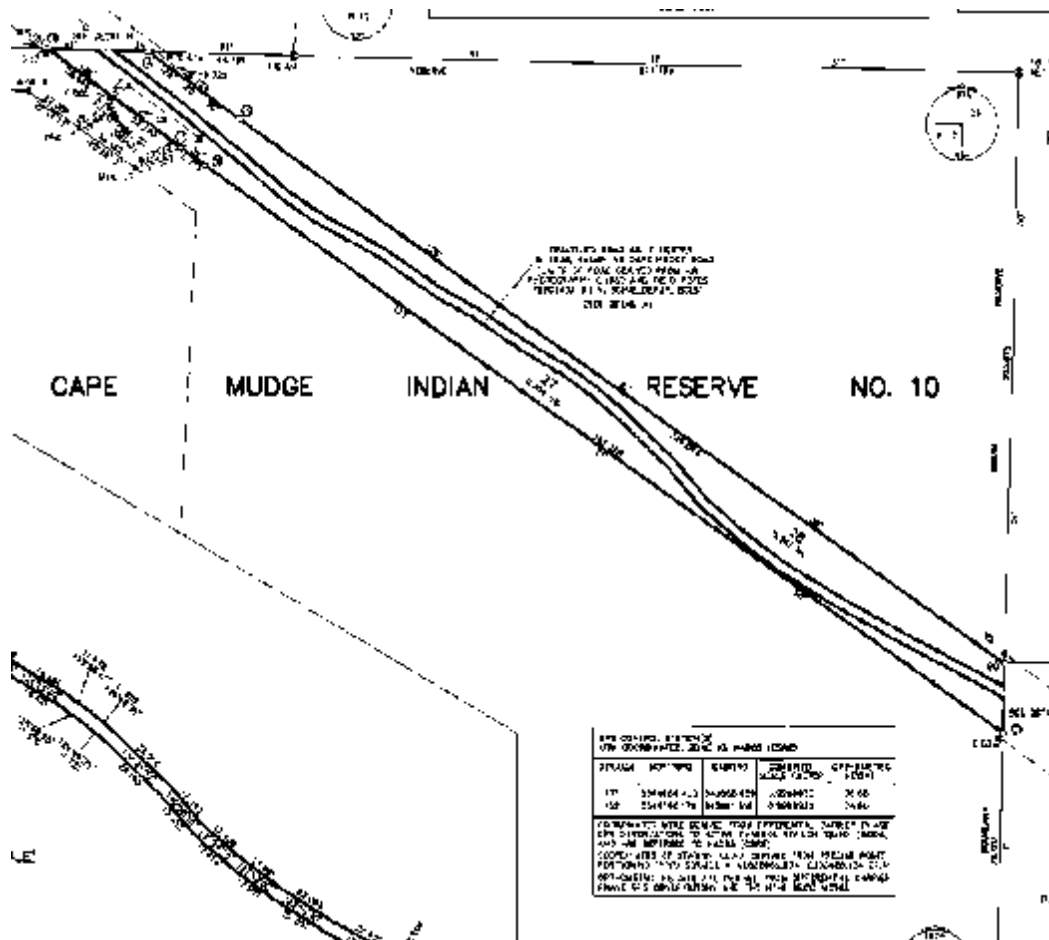
SK – Riparian bound



BC - Encroachment



BC: Travelled road



ON – Title to inlet?

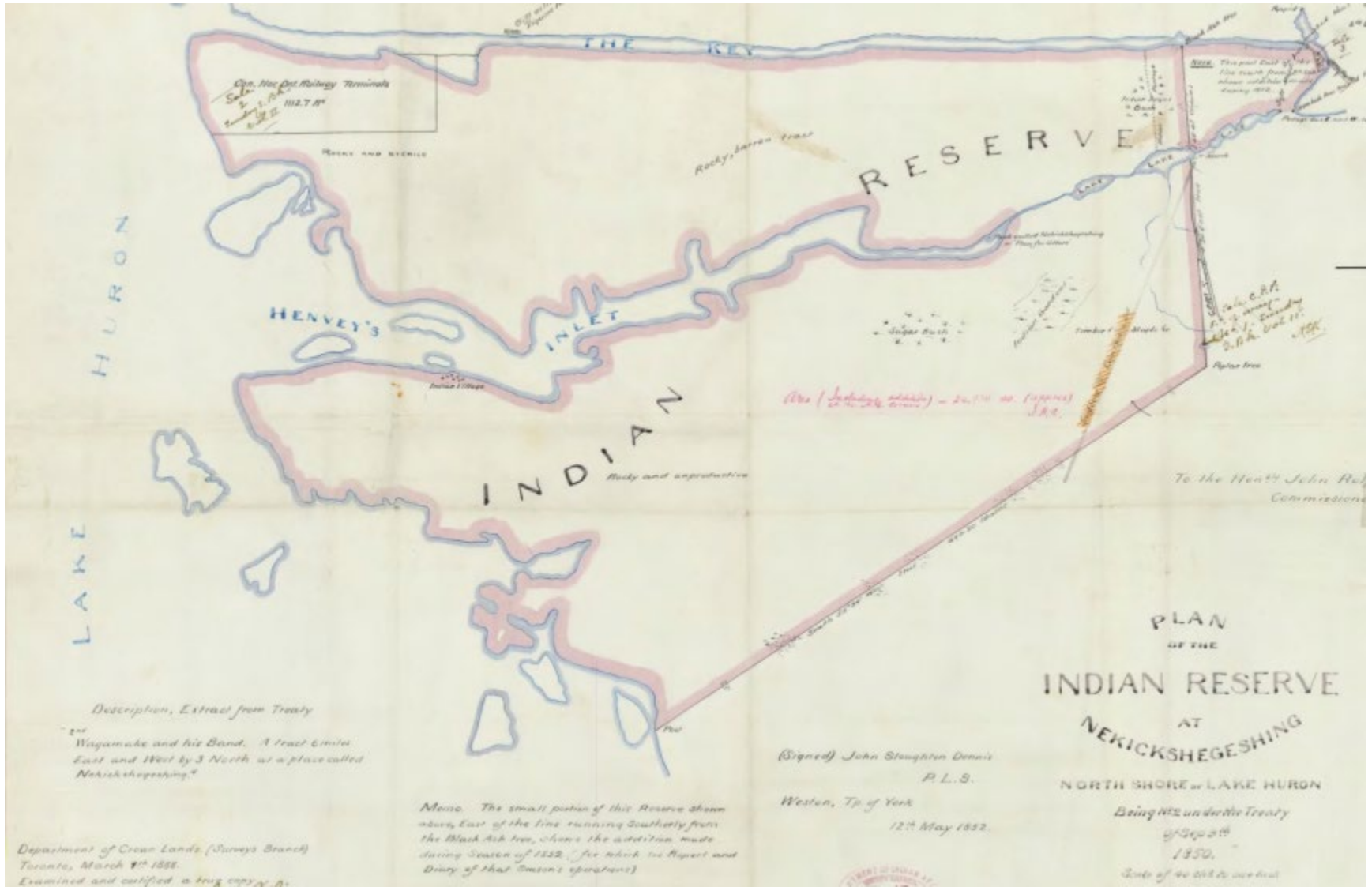




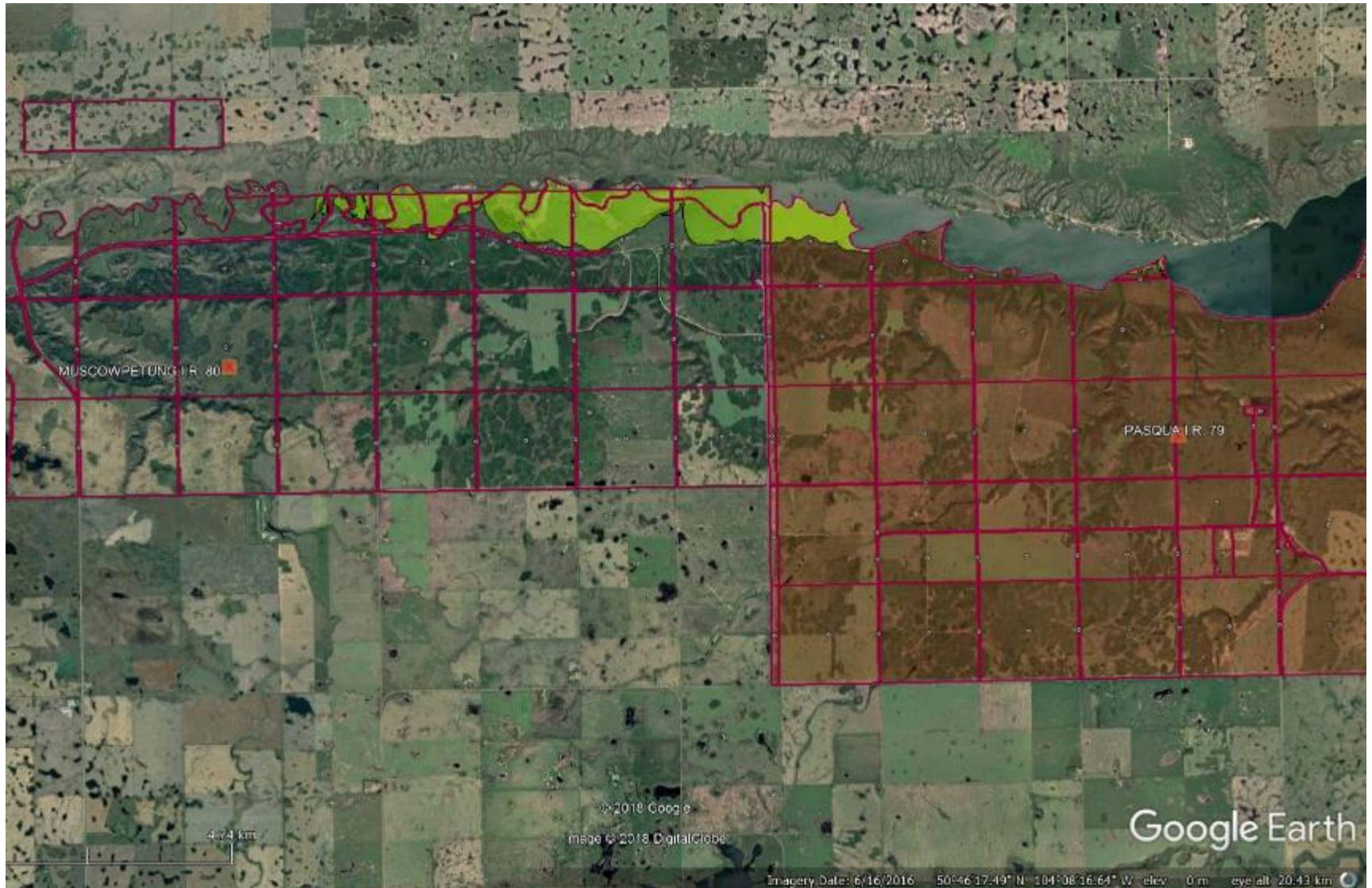
Dennis' report:

- “... their Reserve was up at or near the head of the Bay on the south side of which their village is situated.”
- “The Bay I identified as Henvey's Inlet ...”
- “... and after some talking he proposed another outline (the black line on sketch) ...”

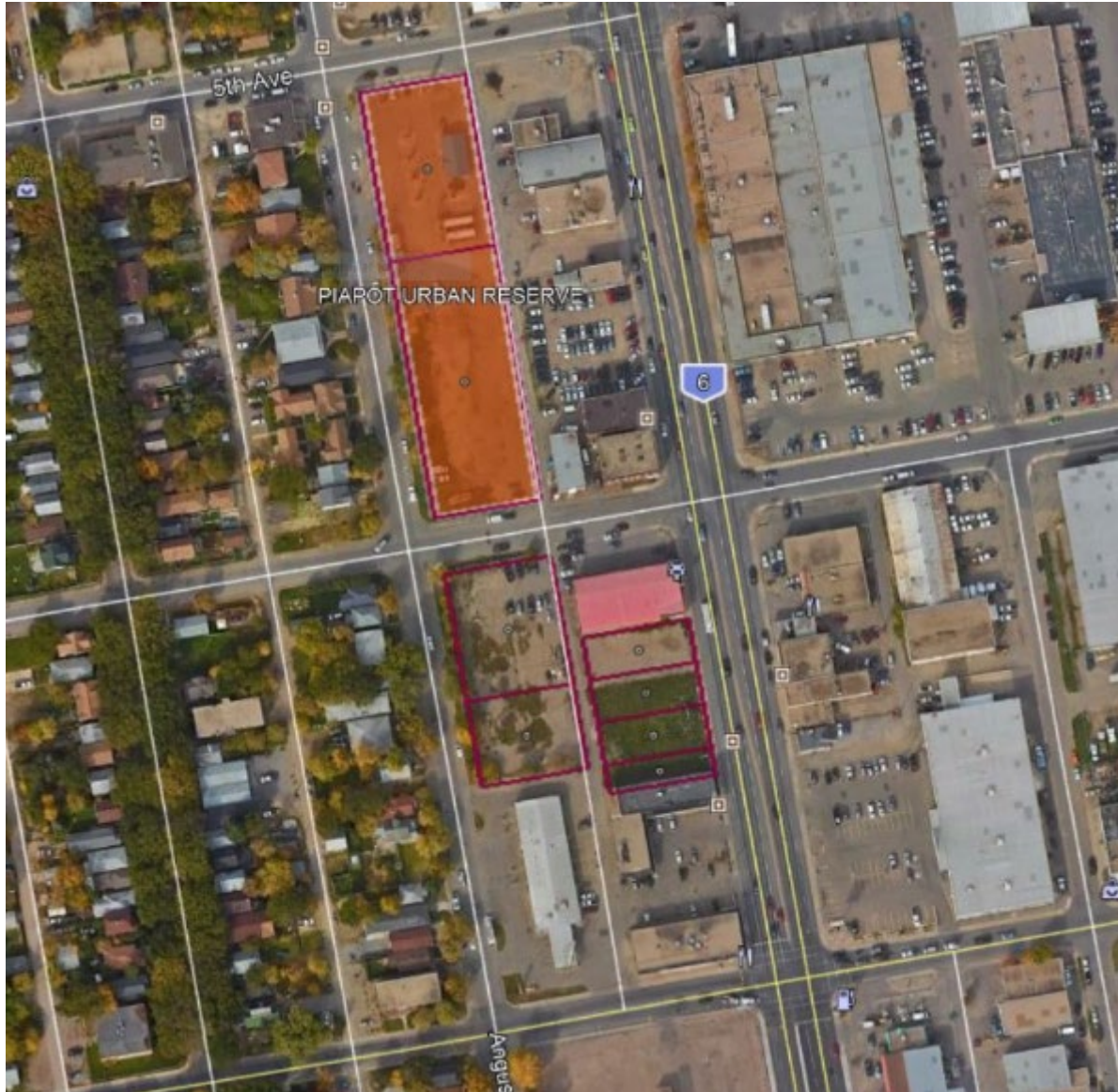
2. — Chief Waganakee and Band. A Tract commencing at a post planted on the North East Shore of Lake Arvon about five miles South East of Henvey's inlet, thence following the said Shore of the said Lake Northward crossing said Henry's inlet to the Channel or deep bay called the Key, thence following the



Specific Claims & TLE - Flooding



Urban Reserve



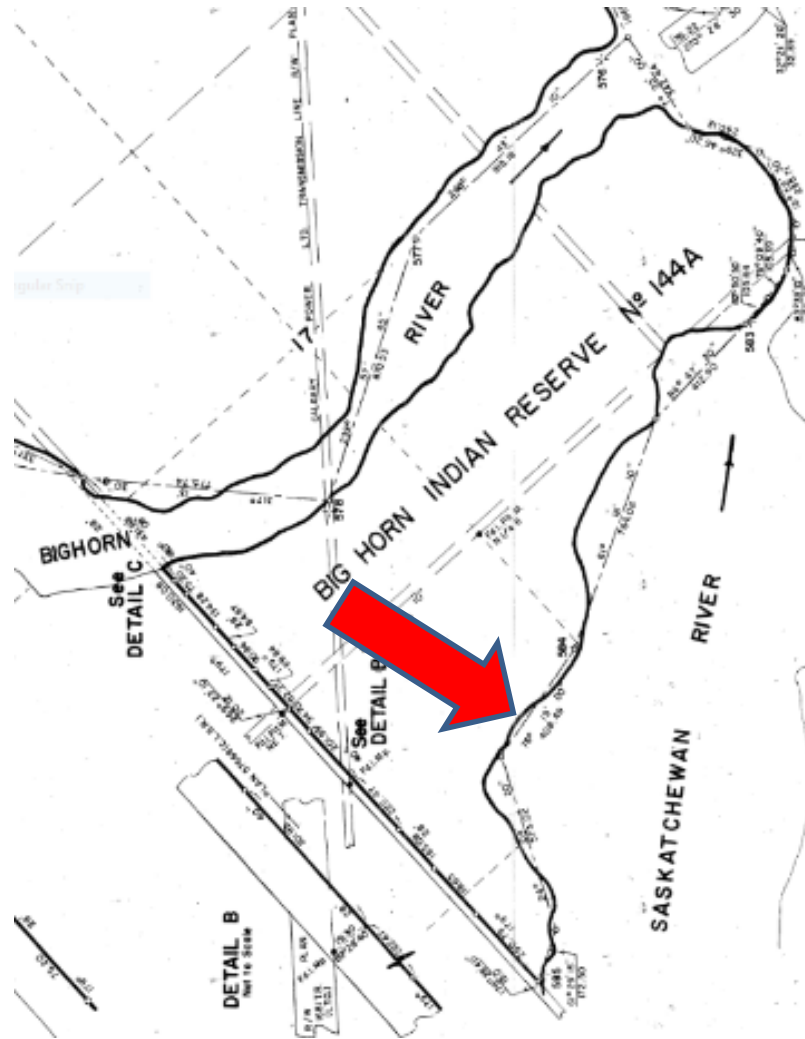
R v Kitselas FN (2014)



Regularization



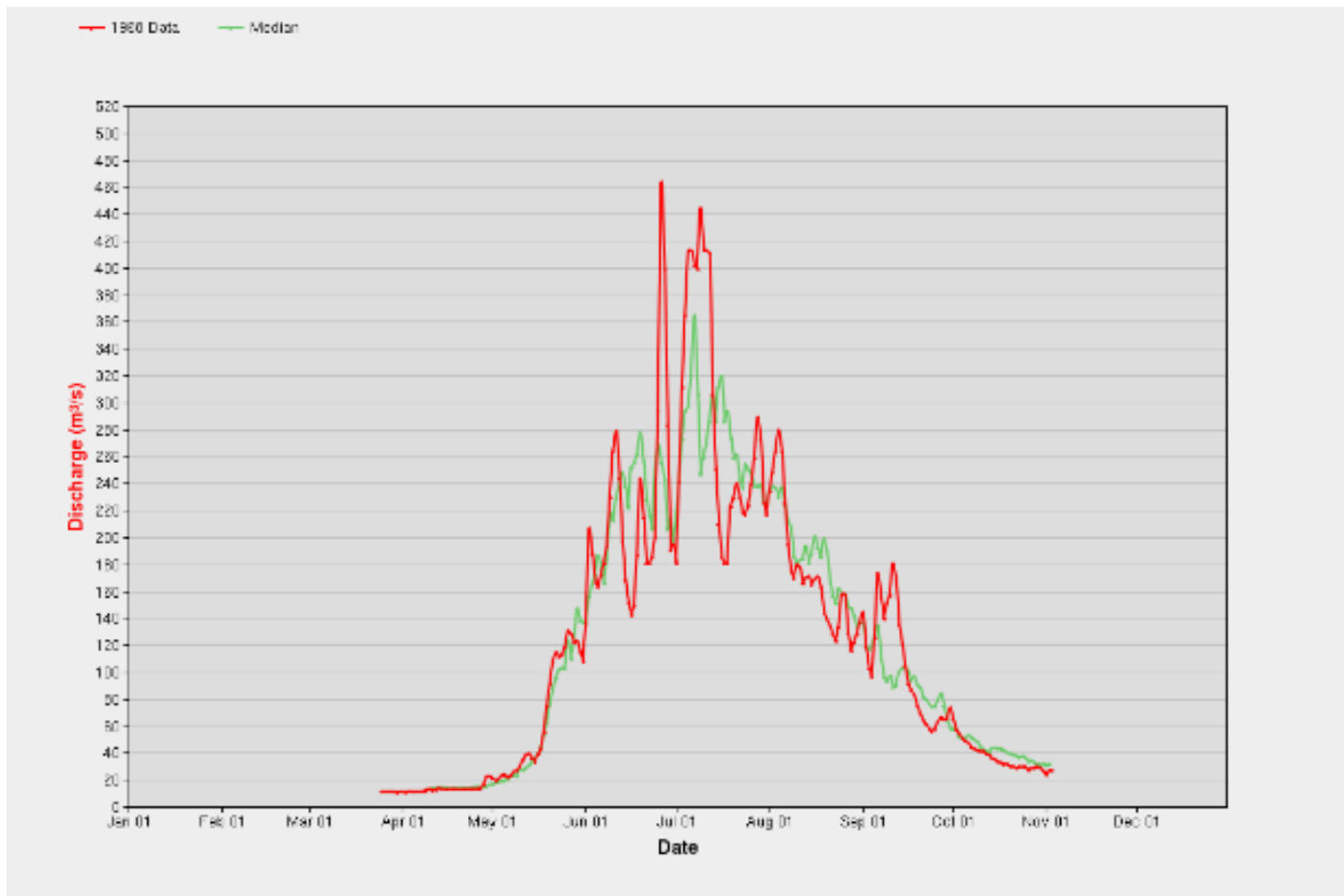
Plan 65535 CLSR = 1979 opinion



North Sk River at IR

(Gauge 05-DC-007:Terishner Creek, 1968)

Green = Pre-dam median from 1953 to 1968



North Sk River at IR

(Gauge 05-DC-010: Bighorn Plant, 2017)

Green = Post-dam median from 1972 to now



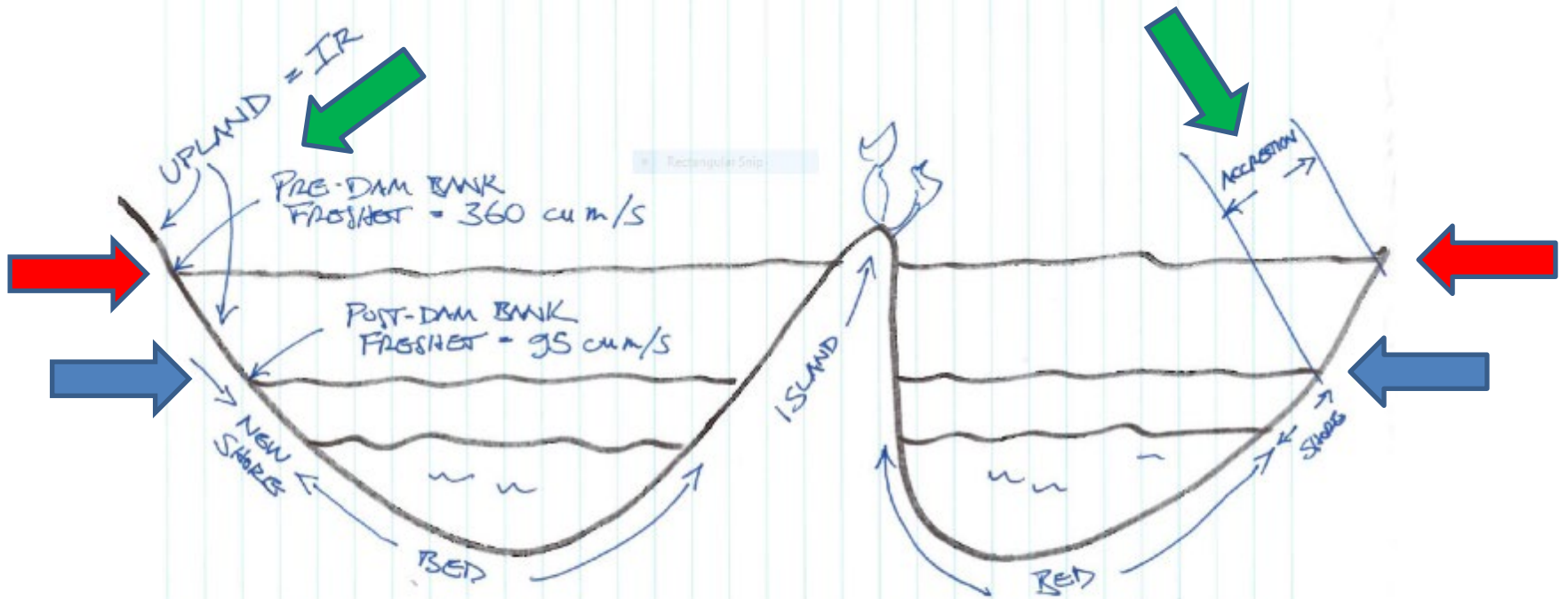
Effect of dam

Spring freshets are now much lower:

- Before dam = Highs of 360 cu m/s (average over 16 years)
- After dam = Highs of 95 cu/m (average over 46 years)
- Reduced to 26% of pre-dam highs!

Seasonal variation is much less:

- Before dam = Flow varied from 30 to 360 cu m/s
- After dam = Flow varied from 65 to 95 cu m/s
- Reduced to 9% of pre-dam variation!



CROSS-SECTION OF WATERCOURSE
(PRE- & POST-DAM AT BIGHORN IR (44 A))

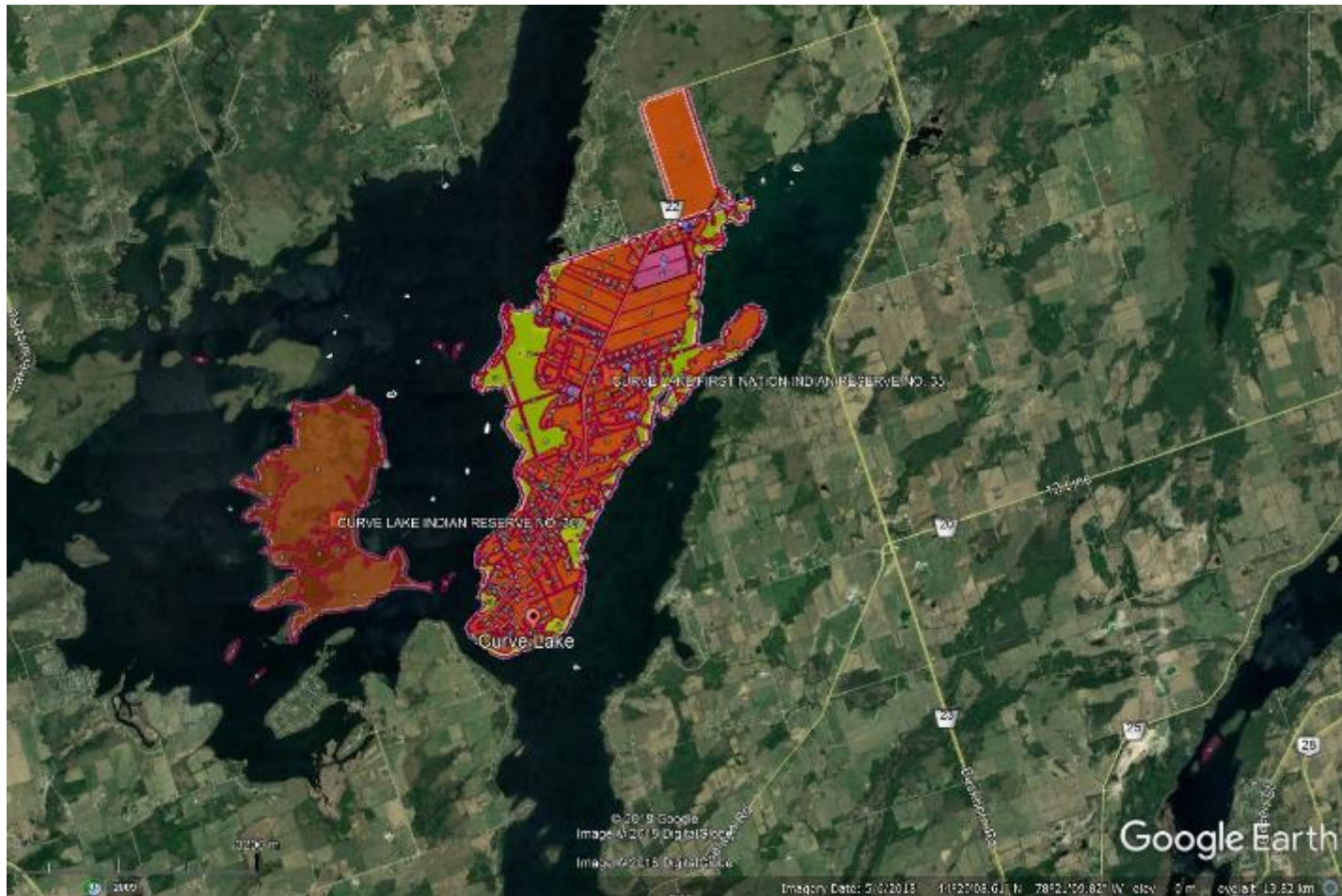
Survey capacity partnerships



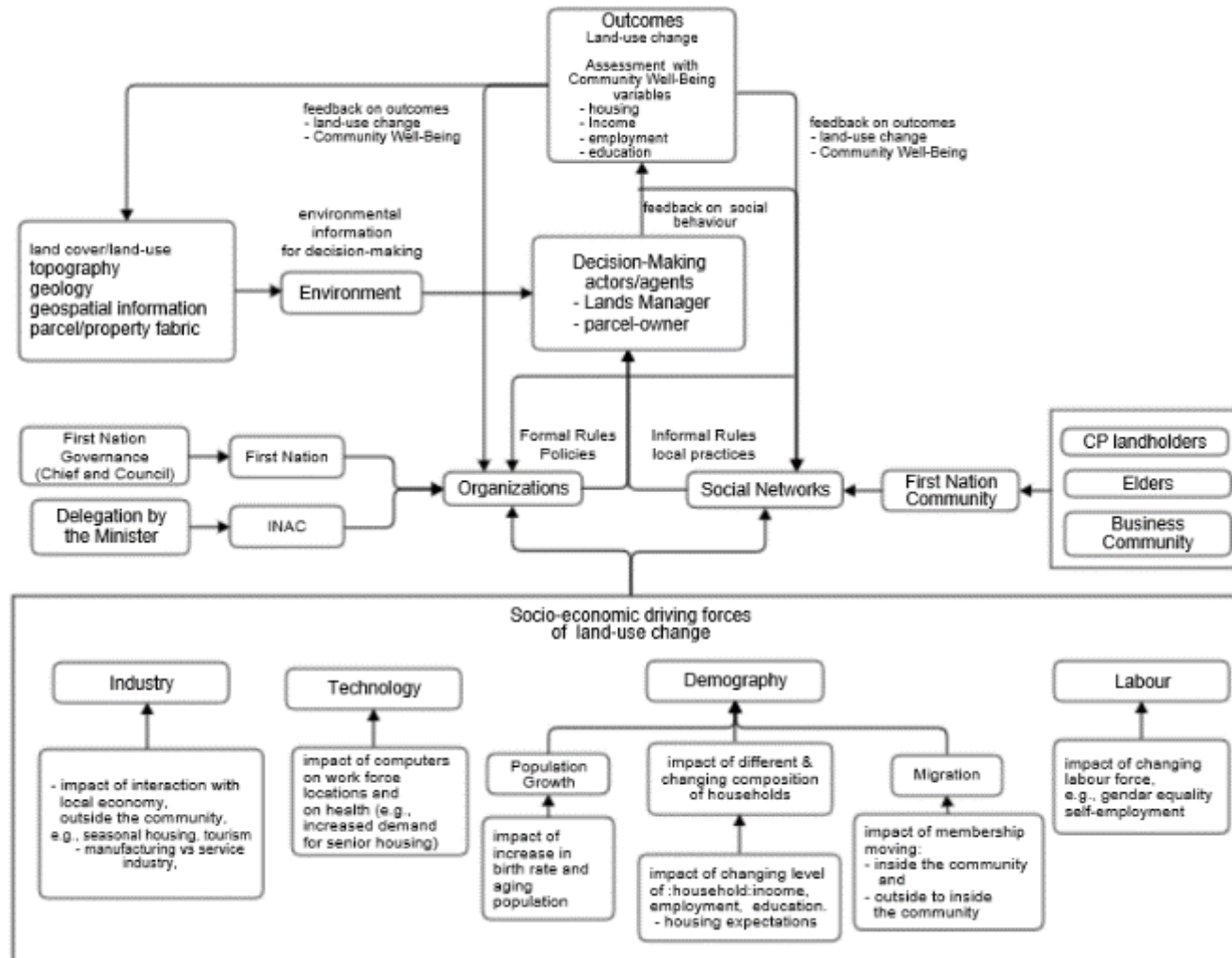
Wiikwemkoong FN: First cohort



Modelling, socio-econ development & CWB



Land use change





Rectangular Snip

Tulo Centre of Indigenous Economics

Proposal: Building First Nation Lands
Management Capacity – *Certificate in
First Nation Applied Lands Management*
March 2017

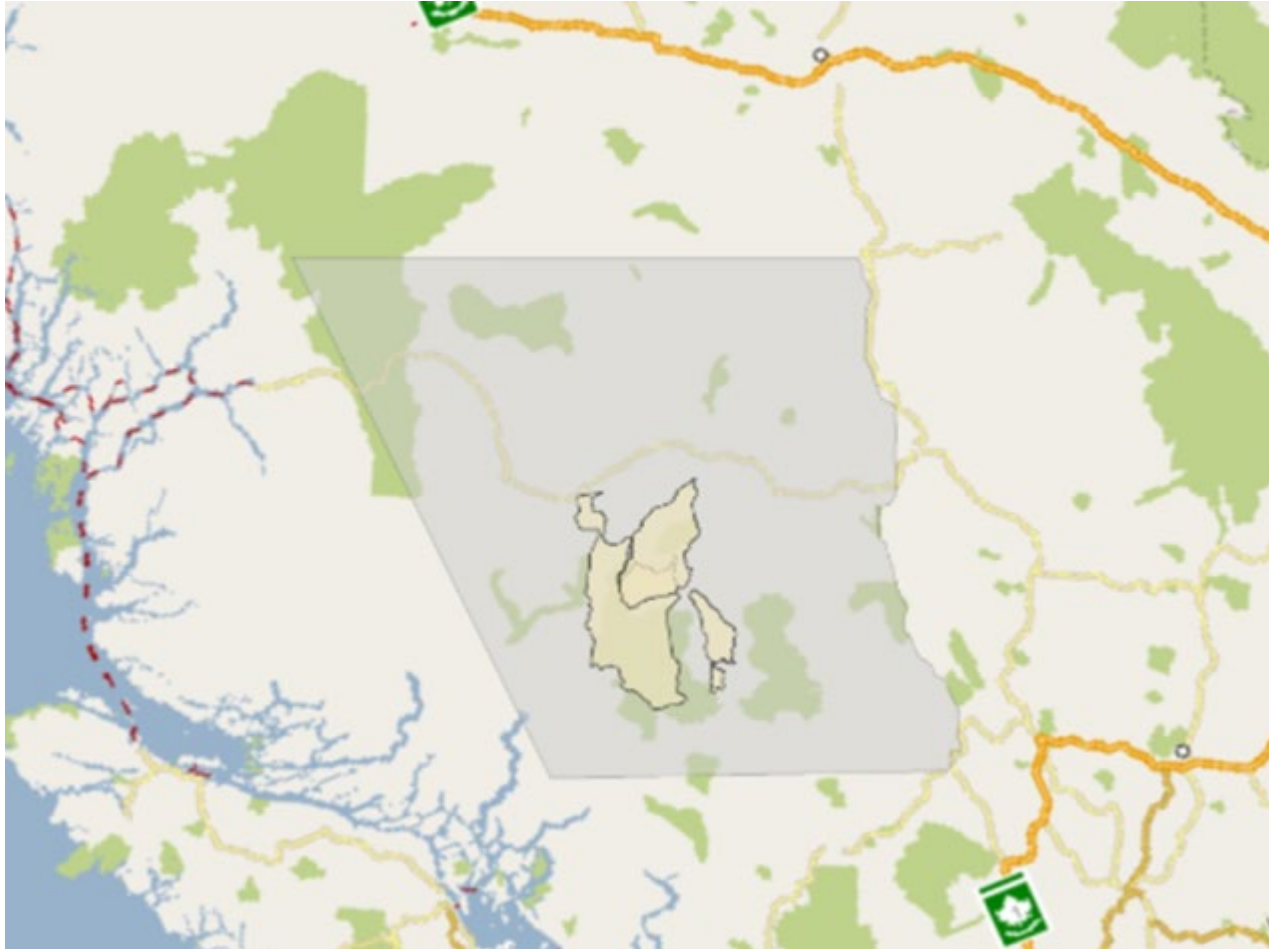
First cohort: March 2018 to Feb 2019



Boundary dispute resolution unit (BDRU)

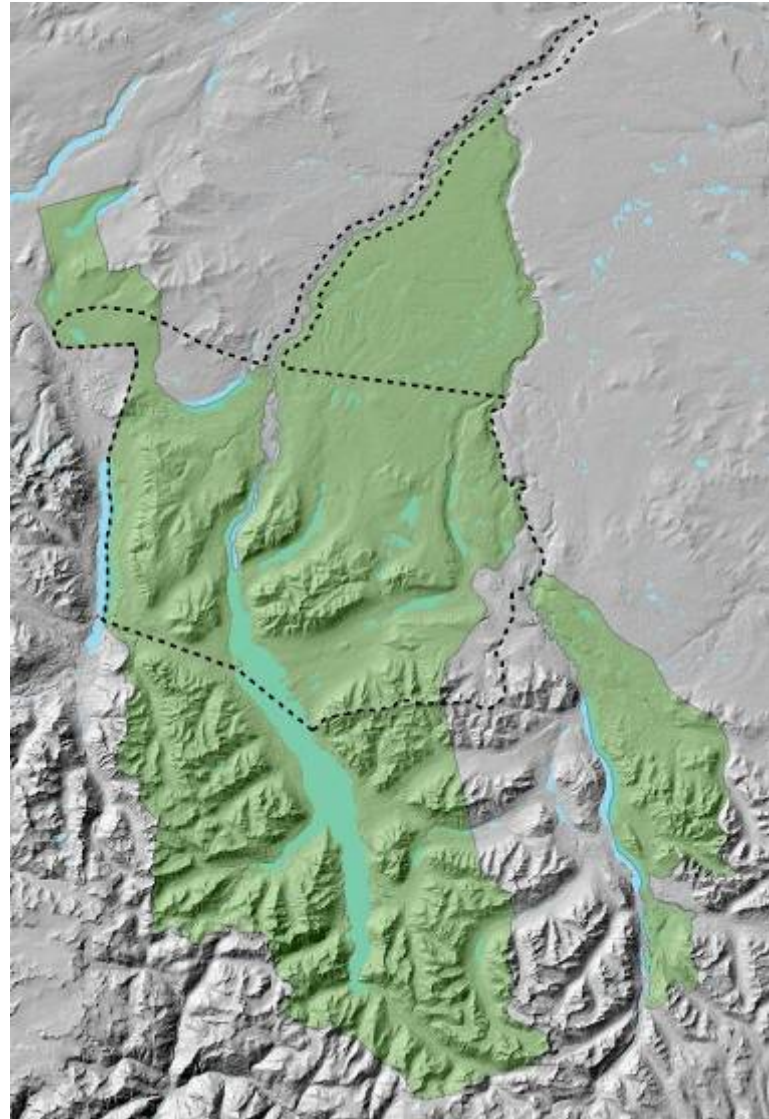
- Five-year project
- Year 1:
 - To gauge interest among FN
 - To compile inventory of boundary disputes
 - To craft hybrid (Indigenous/ADR) mechanism
- Fact-finding, or mediation between parties, or binding arbitration, or ...

Tsilhqot'in v BC (2014) = 88,000 sq km



Green:
Area claimed
(4,200 sq km)
5% of traditional territory

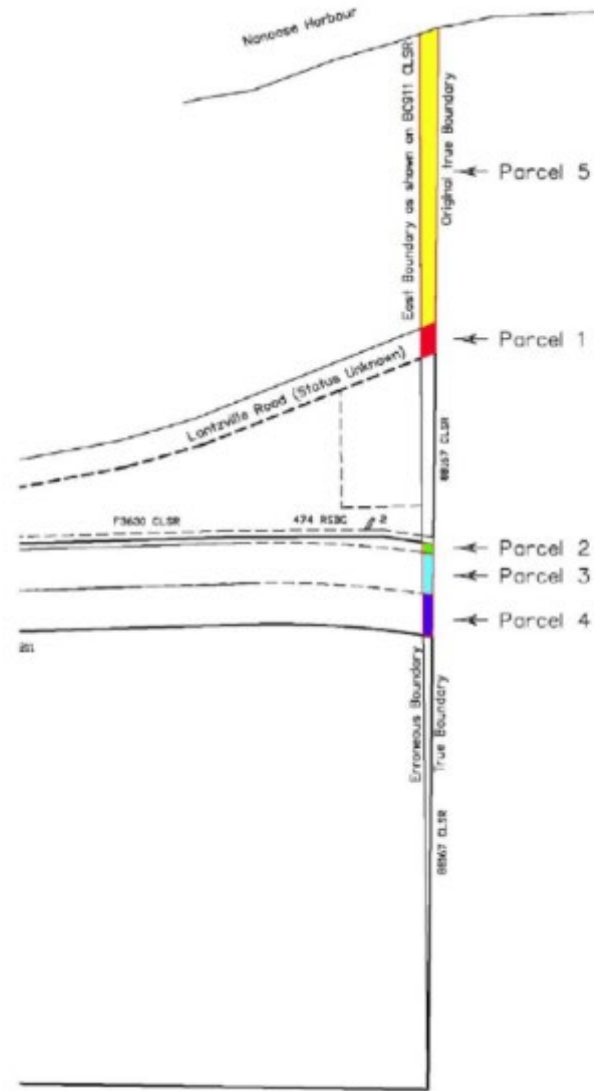
Dashed:
Area affirmed
(1,900 sq km)
Sites in/out



BC – Mediation between Crowns

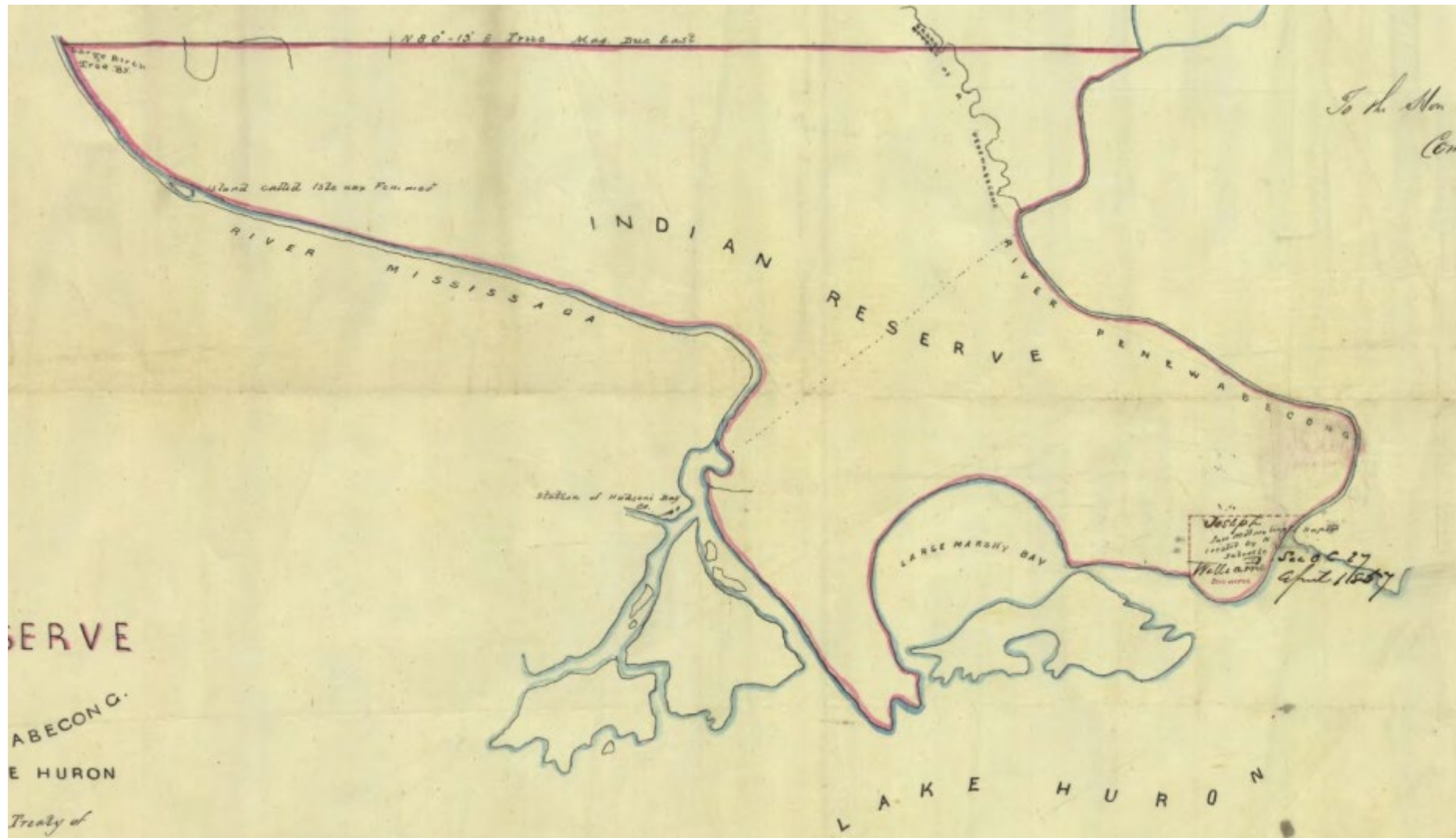


Encroachment

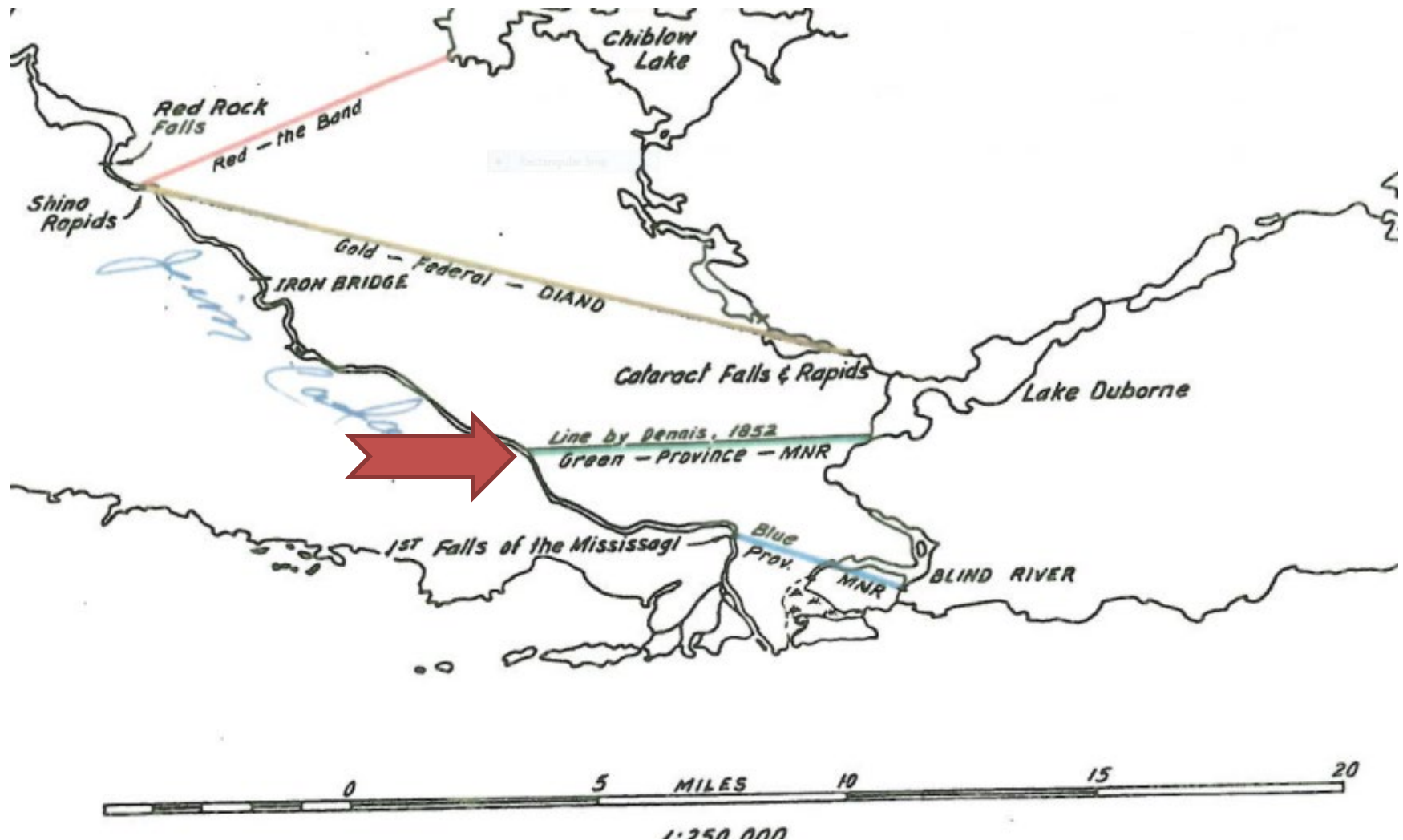


ON – Third-party fact-finding

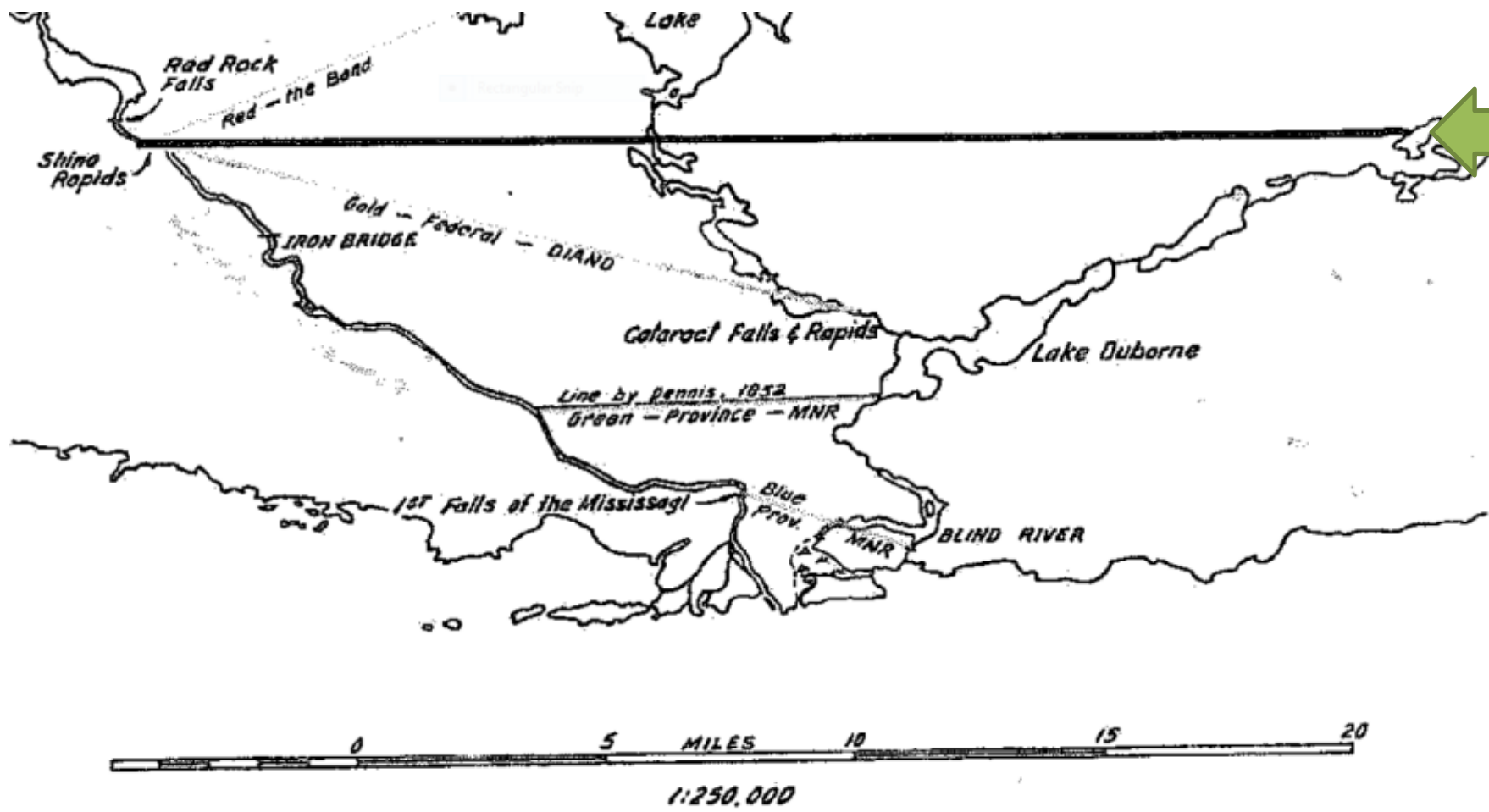
- 1850 Treaty reserved “the land contained between the River Mississaga and the River Penebewabecong, up to the first rapids.”
- Parcel was defined (i.e. bounded)
- Survey marks the bounds on ground & shows the bounds on plan



Sadly, survey did not reflect definition



OIC: 1994-1109 (Settlement) & 2010-426 (ATR)



Answer = ATR



Good fabric

- Hurons Wendake 7A (QC)
 - Improvements (TNI) = 611
 - Vacant parcels (VP) = 25
 - Improvements on boundaries (IOB) = 12

$$PFI = \frac{611 + 25 + \frac{1}{2}(0) - (12 + 0 + 0)}{611 + 25 + \frac{1}{2}(0)}$$

$$PFI = 0.98$$

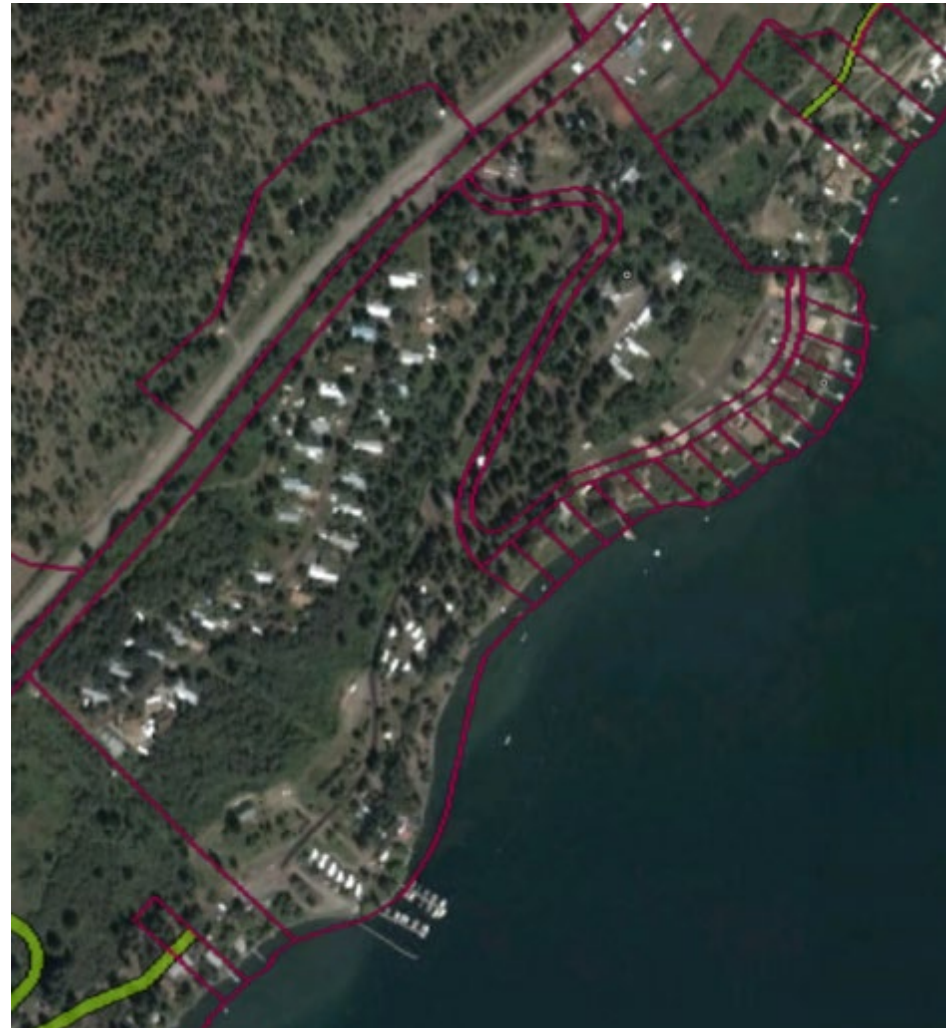


Medium fabric

- Okanagan IR 1 (BC)
 - Improvements (TNI) = 2203
 - Vacant parcels (VP) = 56
 - Improvements on boundaries (IOB) = 41
 - Improvements with no parcels (INP) = 498

$$PFI = \frac{2203 + 56 + \frac{1}{2}(0) - (41 + 498 + 0)}{2203 + 56 + \frac{1}{2}(0)}$$

$$PFI = 0.76$$



4 Findings:

- Many coherent informal parcels (some mapped; many fenced; most bounded)
- Reconciling formal/informal parcels is at community discretion (social process = much negotiation)
- First Nations drive renewal = $f(\text{political will, lands capacity, development pressure, planning tools})$
- Crown can reduce disconnect between ground (informal) & registry (formal).

Effects of informal land tenure



In practice: Results of titling

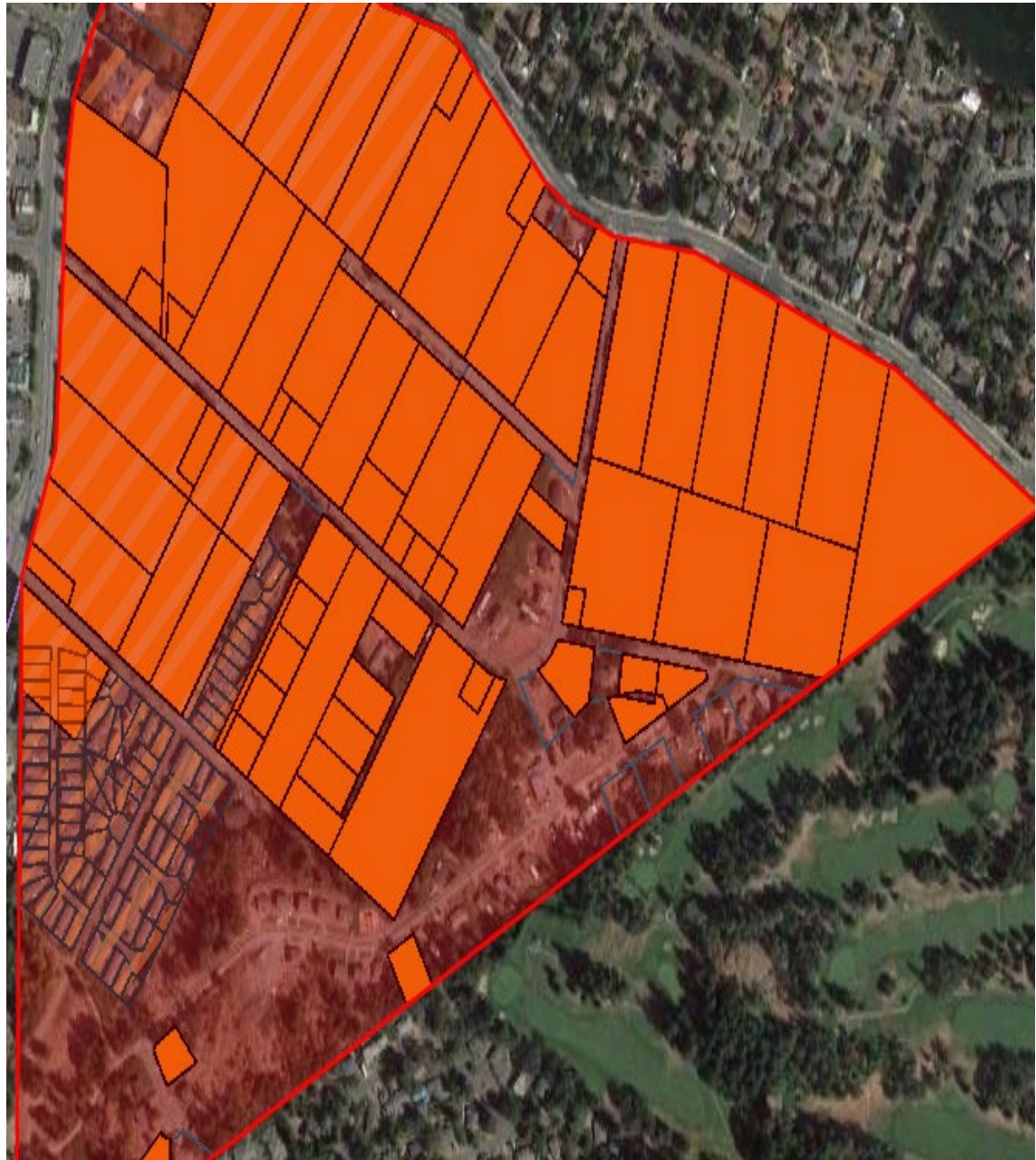
- Peru:
 - increased labour force participation
- Argentina:
 - more infrastructure investment
 - reduced fertility rate
 - smaller household size
 - higher educational outcomes
- Collateralization?
- Reversion to informality?

Research question

- Does informality hinder socio-economic development (CWB)?
 - 95 Reserves in BC and 74 in ON have CWB data
 - 34 Reserves in BC and 44 in ON have data for Income, LFA, Education, Housing

Measuring informality

- Census: total dwellings = (formal + informal)
- Indian Lands Registry: formal
- Imagery: informal
- Informality ratio = (informal/total)



Variables

Dependent

- Community Well-Being

Independent

- Informality
- Reserve population
- Reserve area
- Distance to service centre
- Distance to urban centre (pop. over 50,000)
- Global Non-Response rate (GNR)

Summary stats

- Overall: total housing count = 23,614
- Informal = 55.1%
 - 56% in Ontario (with 11,917 houses *in toto*)
 - 55% in BC (with 11,697 houses *in toto*)

Results (p1)

- Informal housing significantly reduces CWB!
- 10% increase of informality decreases CWB by:
 - 0.90 points in British Columbia
 - 0.83 points in Ontario
- Thought experiment for an IR:
 - At time 1, 100% informal
 - At time 2, 100% formal
 - Change in CWB = 9 points!

Results (p2): Components of CWB

British Columbia

- Significant at 0.05 level:
 - Income
 - LFA
 - Housing
- Significant at 0.07 level:
 - Education

Ontario

- Significant at 0.05 level:
 - Income
 - Education
 - LFA
- Significant at 0.16 level:
 - Housing

To conclude

Indigenous peoples have long used parcels and bounds:

“First Nations people have always had an acute sense of where we are in the world. We navigated throughout our territories guided by our stories, landmarks, waters and the heavens. Present-day mapping geospatial tools will help guide us in the future as adaptability has always been our strongest asset.”

– Graeme Sandy, National Aboriginal Lands Managers Association

Honour of the Crown

- Relationship founded on good faith, trust, cooperation, openness, fairness, consultation and reasonableness

(Roger Earl of Rutland's case, 1608)

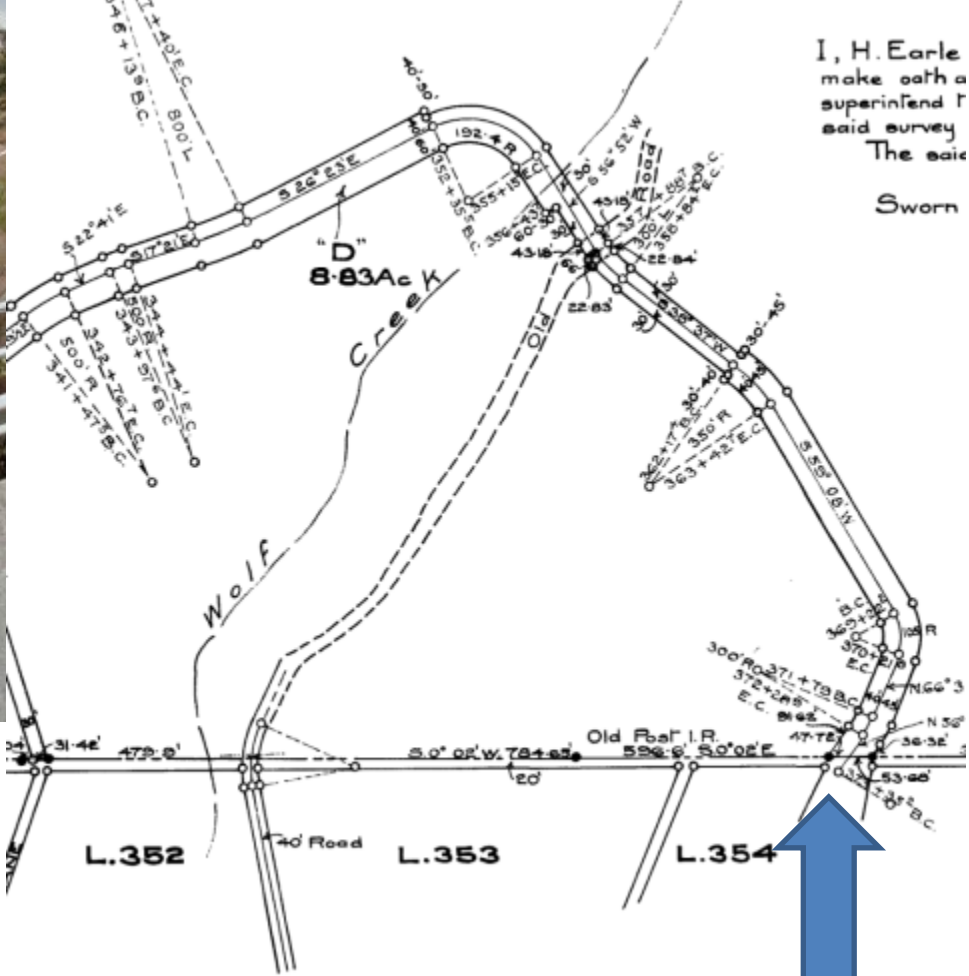
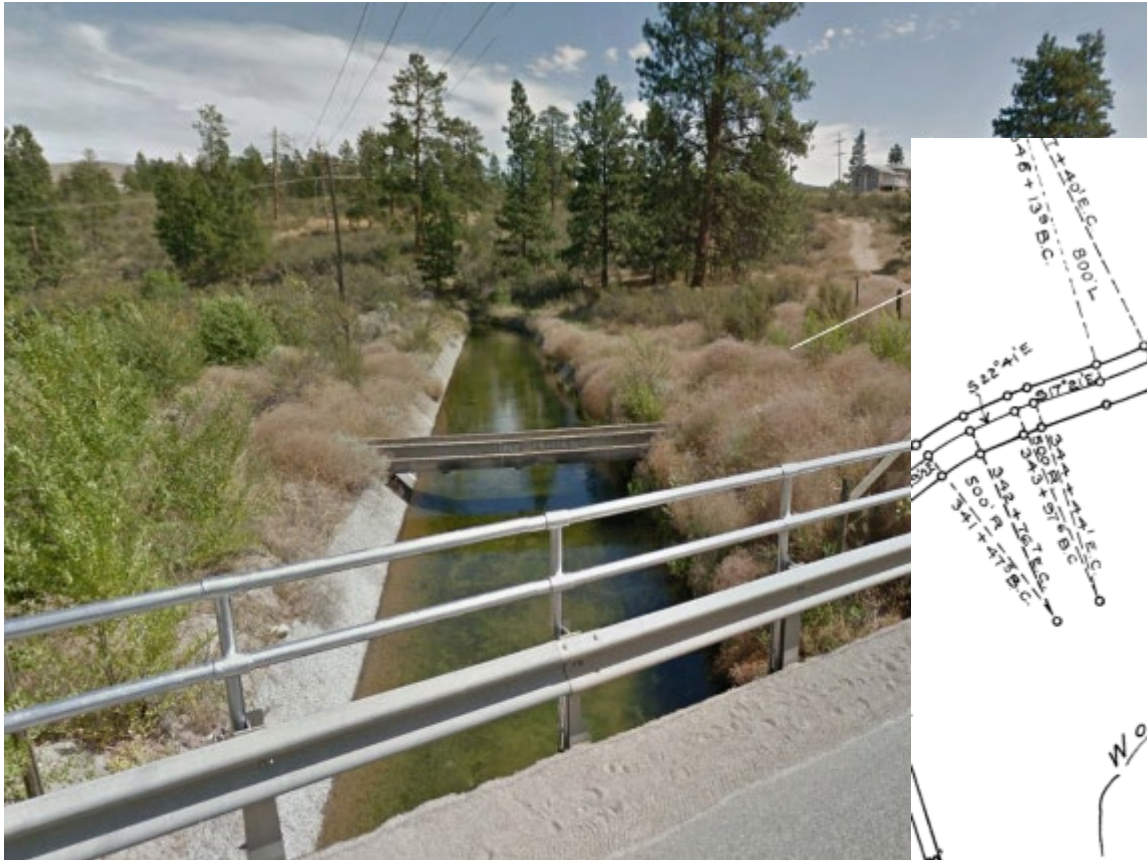
- Rooted in persuading Indigenous peoples that their rights were best protected by the Crown

(Haida Nation v BC, 2004)

Minimal impairment

- Crown can take land from Reserve as public duty
- 1925: Irrigation canal built (56 ac)
- 1957 OIC: “The whole of those rights of way”

BUT: Crown to take “only minimum interest required” to ensure “minimal impairment of use & enjoyment of Indian lands” (*Osoyoos v Oliver*, 2002)



I, H. Earle
 make oath a
 superintendent of
 said survey
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 Sworn

