

## UNION OF B.C. INDIAN CHIEFS

### WHAT ARE CUT-OFF LANDS?

Cut-off lands are those lands taken from Indian Reserves by the 1916 McKenna-McBride Royal Commission. This amounted to over 36,000 acres and included the abolition of entire reserves. These cut-off lands of the McKenna-McBride Royal Commission are only one way in which Indian Reserve land has been taken away.

The problem of land losses from Indian Reserves arose soon after the first reserves were set up in the 1860's. Since then, Indian Reserve land has been taken or lost in many ways. For example, the size of reserves has been whittled down by encroachment by whites, by government surveys, by Federal Orders-in-Council under the Indian Act, by Department of Indian Affairs' policy of surrender and sale, and by Provincial Order-in-Council No. 1036 (29 July 1938), to mention just a few ways.

The problem of land losses from reserves is not restricted to those cut-off lands taken by the McKenna-McBride Royal Commission. Any land taken from an Indian Reserve is a type of cut-off, even though the legal situation surrounding these other types of land losses is different from the McKenna-McBride Commission cut-off lands.

The issue of reserve land losses is different from the aboriginal land claim. The aboriginal claim deals with Indian ownership to all lands in B.C. and is based on Native Title prior to the coming of the whites. Lost reserve lands are those lands lost after the reserves were established. The lost reserve lands issue concerns all reductions in the size of reserves by whatever method.

Let us now look at the clearest example of land taken from Indian Reserves, the cut-off lands of the 1916 McKenna-McBride Royal Commission.

#### HISTORICAL BACKGROUND OF THE McKENNA-McBRIDE ROYAL COMMISSION

The McKenna-McBride Royal Commission was set up in 1912 to settle a dispute between the Federal and Provincial governments. This dispute had been going on since 1871 when B.C. joined the rest of Canada. (See report on "Terms of Union" for more information on this dispute.)

The first attempt to solve this dispute was in 1875. To fulfill the Terms of Union, the Indian Reserve Commission was set up. The Indian Reserve Commission (1875-1910), often called the Joint Commission, is different from the McKenna-McBride Commission (1912-1916). The job of the Indian Reserve Commission was to allot and survey Indian reserves. Over a period of 35 years it did this for a majority of the reserves in B.C.

The work of the Indian Reserve Commission did not stop the dispute between the two governments. Both governments claimed that they "owned" Indian reserve land. The Province claimed the right to disallow any reserve that the Indian Reserve Commission allotted. The Province protested the amount of land that the Indian Reserve Commission set aside as reserves.

Finally, in 1910 the continuing dispute over the size and location of Indian reserves stopped the work of the Indian Reserve Commission.

McKENNA-McBRIDE ROYAL COMMISSION 1912-1916

In 1912 the Federal and Provincial Governments made the McKenna-McBride Agreement. The full text of the Agreement is in the Laws and Treaties Section (Blue section). This Agreement set up the McKenna-McBride Royal Commission to look into problems of Indian reserves in B.C. Part of the job of the McKenna-McBride Commission was to review the Indian reserves set up by the Indian Reserve Commission.

J.A.J. McKenna was a Special Commissioner appointed by the Federal Government. J.A.J. McKenna was a long time employee of the Department of Indian Affairs. In 1899 he was one of the Treaty Commissioners for Treaty 8 in northern Alberta. He was also Assistant Indian Commissioner and Inspector for Manitoba, Alberta and Saskatchewan from 1901 to 1910. Richard McBride was the Premier of B.C. from 1903 to 1915.

No Indians were consulted about the McKenna-McBride Agreement or in setting up the Royal Commission. Section 1 of the McKenna-McBride Agreement provided for the appointment of two Commissioners by the Province and two Commissioner by the Federal government. The Provincial appointees were J.P. Shaw of Shuswap, B.C. and D.H. MacDowall of Victoria.

These four Commissioners named another who was Chairman of the Royal Commission. This Chairman was Nathaniel White, ex-Chief Justice of Saskatchewan. No Indians were named to this Commission.

Under Section 2 of the McKenna-McBride Agreement, the Province and the Federal governments agreed that no land was to be cut-off a reserve unless the Indians gave their consent. The McKenna-McBride Commission also had the power to allot additional reserve lands. It did this mostly on the north coast and in the northern interior of B.C.

Another section of the McKenna-McBride Agreement said that the Royal Commission had the power to take Indian reserve land for railroad rights-of-way or other public works. It did this by making Interim Reports which ordered the right-of-way taken from the reserve.

From 1913 to 1916 the McKenna-McBride Royal Commission travelled throughout B.C. hearing evidence from Chiefs, Band spokesmen, Indian Agents, white business groups and others. Cut-offs were made from 35 reserves totalling about 36,000 acres when the McKenna-McBride Commission Report was finally approved by the two governments. The number of Bands that have cut-off lands is 20.

Where exactly were these cut-off lands made by the McKenna-McBride Commission and how many acres were cut-off from each? The following is a list, alphabetically by Band:

<u>BAND:</u>	<u>RESERVE</u>	<u>ACREAGE</u>
Alexandria	Alexandria No. 1	260 acres cut-off leaving 289 acres.
2. Beecher Bay	Cryeke Point No. 3	2.5 acre reserve was cut off.
3. Beecher Bay	Wolf Island No.	11 acre reserve was cut-off.
4. Chemainus	Oyster Bay No. 12	95 acres were cut-off, leaving 201 acres.
5. Clinton	Clinton No. 1	225 acre reserve cut-off except for graveyard
6. Kincolith	Gitzault No. 24	202.5 acre reserve was cut-off.

<u>BAND</u>	<u>RESERVE</u>	<u>ACREAGE</u>
7. Kitwanga	Squinlixstat No. 3	19.59 acres were cut-off.
8. Lower Kootenay	Lower Kootenay No. 1	2,370 acres were cut-off, leaving 365 acres.
9. Metlakatla	Shoowahltans No. 4	16.82 acres were cut-off, leaving 1,18 acres.
10. Nahwitti	Hope Island No. 1	37.86 acres cut-off, leaving 8,514 acres.
11. Nazko	Blackwater No. 1	35 acre reserve was cut-off.
12. Nazko	Ulkah No. 3	157 acre reserve was cut-off.
13. Nazko	Umliisle No. 4	128 acre reserve was cut-off. This was not cut-off by the Royal Commission but by the Ditchburn-Clark Report which altered the 1916 Royal Commission Report.
14. Ohiaht	Numukamis No. 1	588 acres cut-off leaving about 1,100 acres.
15. Okanagan	Long Lake No. 5	128 acre reserve was cut-off.
16. Okanagan	Mission Creek No. 8	50 acres were cut-off leaving 5 acres.
17. Okanagan	Swan Lake No. 4	68 acre reserve was cut-off.
18. Okanagan	Tsinstikeptum No. 9	848.6 acres cut-off leaving 1,583 acres.
19. Osoyoos	Dog Lake No. 2	71 acre reserve was cut-off
20. Penticton	Penticton No. 1	14,060 acres cut-off leaving 33,767 acres.
21. Penticton	Timber Reserve No. 2	321 acre reserve was cut-off.

<u>BAND</u>	<u>RESERVE</u>	<u>ACREAGE</u>
22. Penticton	Timber Reserve No. 2A	194 acres were cut-off.
23. Port Simpson/Metlakatla (in Common)	Point Vetch No. 7	16 acre reserve was cut off.
24. Port Simpson/Metlakatla (in Common)	Tsimshian No. 2	10,468 acres cut-off, leaving 33,707 acres.
25. Port Simpson/Metlakatla (in Common)	Willaclough No. 6	29.07 acre reserve was cut-off.
26. Port Simpson	Finlayson Island No. 19	1179 acres were cut- off leaving 410 acres.
27. Quatsino	Telaise No. 1	48 acre reserve was cut-off.
28. Quatsino	Tsowenachs No. 2	55 acre reserve was cut-off.
29. Seton Lake	Seton Lake No. 3	22 acre reserve was cut-off.
30. Seton Lake	Seton Lake No. 4	27 acre reserve was cut-off.
31. Sheshaht	Tsahaheh No. 1	242 acres cut-off leaving about 790 acres.
32. Songhees	Deadman's Island No.2	0.5 acre reserve was cut-off.
33. Squamish	Capilano No. 5	130 acres cut-off, leaving 293 acres.
34. Ulkatcho	Ulkatcho No. 1	4065 Acres cut-off leaving 320. This was later amended to a 4003 acre cut-off leav- ing 382 acres. Because of this cut-off the Band mostly resettled at Anahim Lake.
35. Upper Similkameen	Iltcoola No. 7	42 acre reserve was cut- off.

These are the cut-off lands of the McKenna-McBride Commission when it was finally approved. These cut-offs were made without the consent of the Bands concerned and in most cases were directly against requests for more land. Under the terms of the McKenna-McBride Agreement, these cut-off lands were to be sold by the Province. Fifty percent of the proceeds were to go to the Federal Government for the benefit of the Indians.

The McKenna-McBride Commission also took evidence about timber, water rights, fishing rights, and hunting and trapping. It made recommendations on these problems as well as ordering cut-offs and allotting additional reserves.

When the McKenna-McBride Commission finished its work in 1916, there were protests from the Province of B.C. that too much additional land had been given to Indians. The Federal Government disallowed eleven cut-offs made in the Railway Belt because it claimed the McKenna-McBride Commission had no authority in the Railway Belt.

Before the Report of the McKenna-McBride Roayl Commission was finally approved by the two governments in 1923 and 1924, changes and amendments were made.

This was the work of W.E. Ditchburn, the Federal appointee and a Department of Indian Affairs official, and Col. J.W. Clark from the Rovincial Department of Lands and Works. Ditchburn and Clark added some more reserves and cancelled some of the cut-offs made by the McKenna-McBride Commission.

Mostly, Ditchburn and Clark disallowed new reserves that the McKenna-McBride Commission had set up. For example, the McKenna-McBride Commission approved two new reserves for

Alkali Lake Band, totalling 1,600 acres. Ditchburn and Clark cancelled these allotments and the parcels were never made Indian reserve land. The same thing happened to Columbia Lake Band in East Kootenay. Here, a 2,960 acre reserve set up by the McKenna-McBride Commission was disallowed and never made a reserve.

These are just two examples of some of the problems with the McKenna-McBride Commission besides the 35 cut-offs. The Land Claims Research Center is gathering information about these problems.

It is important to remember two things about the McKenna-McBride Commission and the general land claim.

- (1) The McKenna-McBride Commission cut-off lands are only one kind of loss of reserve land. There are many other ways Indian reserve land has been taken away.
- (2) The issue of land lost from Indian Reserves is different from the general land claim which deals with Indian ownership to all lands in B.C.

Two important points need to be stressed about the cut-off lands and the work of the McKenna-McBride Commission.

- (1) The Provincial Government is clearly responsible for the acts of the McKenna-McBride Commission. It was party to the McKenna-McBride Agreement. It appointed two of the Commissioners. The Provincial Department of Lands and Works cooperated with the McKenna-McBride Commission, and the Provincial Government passed Order-in-Council No. 911 (26 July 1923) which approved the McKenna-McBride Commission Report.



- (2) These cut-offs were made without the consent of the Bands concerned, contrary to the terms of the McKenna-McBride Agreement.