

# Chapter 18

## Mineral and Timber Extraction

This chapter offers some basic guidelines for research projects relating to natural resources on Indian reserves and on traditional Indigenous territories in BC. Each Indigenous community has its own unique cultural relationship with the land. However, BC's history as a resource-based economy has had significant impacts on Indigenous territories. This chapter focuses on how to research mineral extraction and timber harvesting issues. These are large areas of investigation with a range of possible goals. Some of these goals could include obtaining compensation for past injustices; opposing the current exploitation of resources; organizing against future resource extraction projects; assessing environmental damages; pressuring governments and corporations to ensure that **Aboriginal Title** and Rights are respected; and developing alternatives for Indigenous control of resources. Whatever the goal of your project, it is likely that it will include gathering information from many different sources. For tips on organizing large research projects such as the ones described here, see Chapter 2: Research Methods.

### Historical Overview: Government Administration of Minerals and Timber<sup>1</sup>

#### Minerals and Mining

In the colonial period, Governor James Douglas proclaimed Crown ownership of all gold mines and minerals. He made this proclamation first on December 29, 1857 and again on February 14, 1859. Douglas also issued several proclamations imposing rules and regulations on mining activities. The colonial and provincial governments adjusted these rules and regulations as mining technology adapted to perform larger and different types of operations. Both governments also set out conditions for mining companies and their operations. The Gold Mining Ordinance of 1867 laid out the first provisions for mining company operations and the Mineral Ordinance of 1869 allowed coal to be purchased for the first time. Mining operations generally fell into three categories: precious metals (gold and silver), base metals and coal. Each operation required different sizes and types of land holdings. The government at the time would have issued either mining certificates or special licenses, mining **pre-emptions**, or Crown grants depending on the type of mineral and nature of the mining to take place.

After BC joined **Confederation** in 1871, the provincial and Canadian governments disputed which branch of government controlled precious metals in the Railway Belt. In

1889 the Judicial Committee of the Privy Council decided the Precious Metals Case, ruling that the provincial government held jurisdiction over the Railway Belt's precious metals. In 1890, Canada passed an **order in council** stating that all minerals in the Railway Belt except coal were to be administered by provincial regulations.

In 1901, BC Premier James Dunsmuir asked Canada for permission to administer base minerals under Indian reserves and to collect half of the royalties. Canada refused. The Premier also stated that the rights to gold and silver on Indian lands belonged to the Province. However, the federal government continued to administer minerals under Indian lands.

The dispute over legal and administrative authority continued until 1943 when Canada passed the *British Columbia Indian Reserves Mineral Resources Act*. The Act sets out the terms of an agreement between the federal and BC governments on the development and administration of mineral resources on Indian reserves as defined under the *Indian Act*. The *BC Indian Reserves Mineral Resources Act* states that precious metals under Indian reserves "belong beneficially to the Crown in the right of the Province of British Columbia."<sup>2</sup> It also states that since precious and base metals cannot be mined separately, the province should control the development of all minerals under Indian reserves, subject to provincial laws, and "upon being surrendered pursuant to the *Indian Act*"<sup>3</sup>. The Act defines "mineral" and excludes from the definition coal, petroleum, natural gas or elements that form part of the agricultural surface of the land. The Act has never been cancelled and is the only form of BC Indian mineral regulation apart from the *Indian Act*.<sup>4</sup>

## Timber

Northwest Indigenous economies have traditionally depended upon wood for many different purposes. After visiting many communities, The Joint Indian Reserve Commission (JIRC) recommended that the province grant logging privileges to Indian bands. The province ignored this recommendation. Instead, in certain situations the JIRC and the commissions that followed allotted small tracts of land as timber reserves for the use of Indians. The timber reserves gave Indigenous communities rights to cut and use the wood, but not to the land itself. Communities also were not permitted to cut and sell timber on their own reserves. Instead, they had to surrender it. The land would then go up for sale through public auction.

In the colonial period, settlers could purchase Crown grants to timber lands. The province introduced a timber licensing system beginning in 1888 lasting until 1907. BC passed its first *Forest Act* in 1912, which created a Forest Branch within the Department of Lands. Until 1948 the Act permitted access to timber through a system of short-term cutting licenses won by auction on certain areas of Crown land.

In 1945 the Sloan Royal Commission report recommended establishing a system of **tenure** (limited time) arrangements. The province adopted this recommendation into its 1947 *Forest Act*. Through this system, the provincial Crown leased forest land under various kinds of tenures or arrangements for logging timber on provincial Crown land.

Currently, there are two main types of tenure in BC, "volume-based" and "area-based." "Volume-based" tenures deal with licenses to harvest a specific amount (volume) of wood; "area-based" tenures deal with licenses to harvest wood on specific sections of land. Forest Licenses (volume-based) and Tree Farm Licenses (area-based) are the most common licenses granted in BC. For more information on tenures and licenses see Marchak, Aycock and Herbert's *Falldown: Forest Policy in British Columbia* (Vancouver: David Suzuki

Foundation and Ecotrust Canada, 1999). For a history of the BC tenure system and a discussion of provincial forestry policy on Indigenous communities, see Jessica Clogg “Tenure Background Paper” (Vancouver: West Coast Environmental Law, October 1999), which is available online at <http://www.wcel.org/wcelpub/1999/13015.html>.



Logging train,  
Merritt  
(BCA F-01103)

## Researching Mineral and Timber Use

The research information in this chapter is divided into two sections: researching resource extraction on reserve and in traditional Indigenous territory (off reserves).

### Resource Extraction on Reserves

If you are researching the history of resource extraction on your community’s reserve lands, begin by doing some basic reserve research. See Chapter 5: Basic Reserve Research for a list of materials that may indicate what resources may have been included with your community’s reserve allotments. Be sure to review the J/IRC and Royal Commission (McKenna-McBride) Minutes of Decision for any references to timber or other resources. Also check the Colonial Correspondence index entries for “Mining” and “Timber” for information on leases, ordinances, associated activities and references to individual mining companies.

Be sure to search the **instruments** related to your reserves. Instruments provide you with specific details about the taking of any reserve land. In particular, look for the existence of any **surrenders**. Mineral and timber rights on reserves are protected under government statutes and associated regulations. A band must legally surrender its rights before any resources are removed. The *Indian Act*, *British Columbia Indian Reserves Mineral Resources Act* and *Indian Timber Regulations* each set out specific procedures that must be followed for a surrender to be legally valid. Surrenders must be carried out in accordance with the *Indian Act* provisions as it stands at the time of the surrender. The actual procedures that were followed to obtain the surrender must meet the legal requirements in force at the time. If it appears that the surrender was not properly obtained, or that the government has breached its responsibilities, your community may have the right to challenge the legality of the surrender. If there is any question about the validity of a surrender, you may wish to have a lawyer review it. See Chapter 17: Surrenders for more detailed information about this type of research.

In addition to surrenders, note the existence of other instruments such as **band council resolutions** (BCRs), orders in council, or any licenses or permits that deal with natural resources on your reserves. When reviewing archived Indian Affairs records at Library and Archives Canada (Record Group 10 or **RG 10**) and active Indian Affairs records, pay special attention to any references to discussions with the community about proposed resource extraction activity or proposed surrenders. Note any instances of community opposition, environmental reports, land appraisals, discussions about compensation or other payments. Also note any disputes about the validity of signatures on any agreements.

Once you have completed your basic reserve research, you may want to look at the Indian Minerals Inventory maintained by Indian Affairs. It is available to view on CD at the Vancouver regional office. See Chapter 3: Resource Institutions for contact information.

There are a number of other sources to consult depending on the nature of your project. These sources are listed in the following section dealing with researching issues throughout your traditional territory.

## Resource Extraction in Traditional Indigenous Territory

Investigating the history of resource extraction in your traditional territory is a large-scale project that can be overwhelming because of the number of materials available to review. There are particular challenges you can expect to face. First, not all extraction activity has been documented. Second, some of the documents that do include valuable information may not exist any more. Third, the records that do exist may be in private hands and therefore inaccessible. Despite these challenges, it is possible to retrieve information. It is best to start close to home and talk to people in your community. This may help narrow down the issues you are dealing with and may help define the geographic areas you want to research.

This section discusses sources for government records. However, land use and occupancy data, anthropological research and oral history may be important aspects of your investigation. For information of conducting these types of research, please see Chapters 6, 8, and 10.

The information on resources and research issues has been divided into two sections: mining issues and timber issues. See Chapter 3: Resource Institutions for information on accessing materials and Chapter 4: Documents for additional information on specific documents.

### ***Mining issues***

- Hudson's Bay Company records may contain important information related to coal mining.
- BC Archives is an important source of information on historical mining leases, certificates, administrative records and maps. Check the blue binders located in the reference section. These are inventories of record groups at BC Archives, organized by subject. The blue binders labeled 6A and 6B deal with mines.
- The BC Ministry of Energy and Mines holds several types of information that may be useful to you. The Ministry has an extensive website with many links and contacts. A full list of contact numbers and addresses is

- available at <http://www.em.gov.bc.ca/WhoWeAre/contactlist.htm>.
- The BC Minister of Mines Annual Reports date from 1874 and provide administrative summaries of geological and industrial activities in the province, as well as sketch maps and resource tables. They are available to download in PDF format from the Ministry's website (noted above). They are also available on **microfilm** at the Union of BC Indian Chiefs Resource Centre, major public libraries and the Ministry library (located in Victoria). The Ministry library's phone number is: 250-952-0583.
  - Historical mineral and placer (mining) title information can be reviewed at the Mining Division's Gold Commissioner office. The Gold Commissioner offices also provide information on the status and location of existing mineral and placer titles in BC. You can also check the Gold Commissioner's correspondence for any evidence of disputes about mineral title registration. Information on coal can be obtained from the Victoria office and other information may be accessed through the appropriate regional office. The Ministry of Energy and Mines website's "Programs and Services" link lists the Gold Commissioner office locations and contact numbers.
  - The BC Ministry of Energy and Mines Geological Survey Branch maintains an inventory of mineral, coal and aggregate supplies and resources in BC. All maps and reports produced by the Geological Survey Branch are available for purchase through Crown Publications at <http://www.crownpub.bc.ca>. The Branch's maps and data on coal, mineral deposits and assessment reports are also available in digital format. Contact the Ministry for more information on accessing these materials.
  - The BC government maintains a mineral title system dealing with the transfer of mineral rights from the Province to private, **third party** interests. The Mineral Titles Branch administers the title recording system, which allows industry to acquire and maintain mining rights. For general inquiries contact the Titles Division at Ph: 250-952-0542. As a result of recent legislative amendments, mineral claims may now be viewed, acquired and maintained using an online digital GIS map of BC. See the Mineral Titles Online BC website <http://www.mtonline.gov.bc.ca>
  - The Ministry also hosts a Mineral Statistics website: <http://www.em.gov.bc.ca/Mining/MiningStats/default.htm>. The site provides archival maps of mineral sites available to download, as well as background reports.
  - Check the Registers and Maps Vaults at the BC Surveyor General Branch, Ministry of Sustainable Resource Management for information on mineral claims.
  - For information about mineral rights within the Peace River Block, Railway Belt and E & N Railway Land Grant, see W.A. Taylor, *Crown Land Grants: A History of the Esquimalt and Nanaimo Railway Land Grants, the Railway Belt, the Peace River Block* (Surveyor General Branch, Ministry of Environment, Lands and Parks, 1993 [Reprint]).



### **Timber issues**

- The BC Archives' blue reference binders labeled 14, 14A and 14B deal with forestry.
- The BC Ministry of Forests Annual Reports are available in PDF format on its website. The reports begin in 1911 and continue to the present day. You should also be able to find these reports in the government documents section of university and large public libraries, as well as the BC Archives.
- Under the *BC Forest and Range Practices Act*, all companies, groups and individuals with rights to log on Crown land (tenure holders) must prepare a Forest Stewardship Plan (formerly called Forest Development Plans). These plans should be released to any member of the public free of charge by submitting a request to the Ministry of Forests (MOF). Contact the MOF district office responsible for the area you are researching. Ask them for all tenures and plans that relate to your area of concern. Tree Farm Licenses and amendments are also available in PDF format on the MOF website.

### **Notes**

<sup>1</sup> This discussion is drawn from the following sources:

Robert Cail, *Land, Man and the Law: The Disposal of Crown Lands in B.C. 1817-1913*; Jessica Clogg "Tenure Background Paper", *West Coast Environmental Law*; Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*; and M. Patricia Marchak, Scott L. Aycock and Deborah M. Herbert, *Falldown: Forest Policy in British Columbia*, David Suzuki Foundation and Ecotrust Canada. See full citations in the "Resources" section.

<sup>2</sup> *BC Indian Reserves Mineral Resources Act 1943-1944*, c.19. Source: <http://www.laws.justice.gc.ca/en/B-8.4/text.html>.

<sup>3</sup> *British Columbia Indian Reserves Mineral Resources Act*, S.C. 1943-1944, c.19. Department of Justice. Available at: <http://laws.justice.gc.ca>.

<sup>4</sup> Since 1943, the issue of mineral ownership on BC Indian reserves has been addressed by Indian Affairs. In June 1967, Department of Indian Affairs legal consultant William Worrall produced a report entitled *Study and Recommendations for Development of the Mineral Resources on Indian Reserves in British Columbia*, (the "Worrall Report"). This report was followed by another two years later, written by the Head of the Indian Minerals Section of Indian Affairs, A.B. Irwin (the "Irwin Report"). Both of these reports are available at the UBCIC Resource Centre.

## Resources

- Abel, Kerry and Jean Friesen (Eds.). 1991. *Aboriginal Resource Use in Canada: Historical and Legal Aspects*. Winnipeg: University of Manitoba Press.
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- Vaughan, Patricia Elizabeth. 1978. Co-operation and Resistance: Indian-European Relations on the Mining Frontier in British Columbia, 1835-1858 (MA Thesis). Vancouver: University of British Columbia.

## Websites

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