

Miners' Meetings and Mining Boards:
The Development of Mining Law in Colonial British Columbia, 1858-1867

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Abstract

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Miners' meetings were a customary legal practice from California that was imported to British Columbia during the Fraser River gold rush (1858). To date, there has been limited recognition of this practice's influence on the development of British Columbia. The historical works that do exist on the subject argue that the practice was not established in the colony owing to the Colonial Government's allowance for Mining Boards, a representative institution, by *The Gold Fields Act, 1859*. To the contrary, this thesis looks at the different ways that miners' meetings and miners' customary law were expressed and adapted to conditions in British Columbia before and after the passing of *The Gold Fields Act, 1859*. It argues that miners' meetings persisted as a political practice despite the existence of Mining Boards and that miners' meetings and Mining Boards performed different functions in colonial society. Whereas in frontier regions miners' meetings were used to organize frontier society and establish mining regulations—performing legislative, judicial, or executive functions in different circumstances—and in more developed regions miners' meetings adapted and were used by mining communities to influence the decisions of the Government, Mining Boards were a representative institution that was mandated by election to fulfill a specific purpose. This thesis tracks the history of miners' meetings and Mining Boards from 1858 to 1867 — through such episodes as the Canyon War, McGowan's War, Cariboo Gold Rush, and Grouse Creek War — and examines how the mining community was in constant dialogue — in turn, cordial and tense — with the Colonial Government on the subject of the formal colonial mining laws.

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Introduction

In the spring of 1858, there was a gold rush to the Fraser River in the Pacific North West within Hudson's Bay Company (HBC) Territory. Tens of thousands of people travelled to the banks of the Fraser River from the United States, Canada, and elsewhere, hoping to strike it rich. Most came from California and many had participated in the Californian gold rush, almost a decade before. As a result, the character of the Californian gold rush and society had a significant influence on the way events unfolded in British Columbia.

Gold mining veterans from California brought their technical expertise to the Fraser River. They knew how to prospect and mine placer gold using pans, rockers, and long toms – wooden troughs used to separate waste rock from gold. They were familiar with the central role that access to and control of water played in mining. Upon arriving in HBC territory, they immediately set about diverting streams and creating ditch companies. They had seen the dramatic change that hydraulic mining brought to the industry in California. They knew the customs governing the separation of “bench” and river diggings. Some were likely familiar with more complex and capital intensive forms of mining such as quartz rock and drift or tunnel mining.

In addition to technical and practical expertise, miners from the south brought their own customary law with them to British Columbia, practices which had spontaneously developed in California as a way of organizing mining society. The main instrument of this customary law was the miners' meeting, a simple assembly of miners which made decisions based on majority vote. Miners' meetings were convened to create law and decide on local matters. These meetings took on a legislative character, when creating mining rules and regulations, a judicial character, when ruling on civil and criminal disputes, and an executive character, when miners used them to organize militias and attack groups perceived as threatening.

Based on the idea that the common man had the right to create law, miners' meetings were political by nature and, from the perspective of colonial administrators, they seemed to threaten British sovereignty on the mainland. The high proportion of American citizens and their capacity to organize militarily contributed to concerns amongst British officials that the mainland territory might be annexed to the United States. The political loyalty of the mining population was suspect, especially in light of the relatively recent loss of the Oregon Territory to the United States. But by the spring of 1859, concerns about potential annexation of the mainland were subsiding. British officials came to the view that the mining population was more interested in mining than annexing territory.¹

Miners' meetings are a political practice that is most firmly tied to the Californian gold rush. During that event, miners' meetings became the *de facto* method of regulating gold mining and governing mining camps.² When the Californian gold rush took place, there was no existing law on mineral lands and the newly created state had no sitting government to legislate. Beyond the military, there was no law enforcement. As 200,000 people flooded into the new state in search of gold, men abandoned the army. In the absence of government authority, miners began using

¹ Prior to 1846, the Oregon Territory was jointly held by the United States and Britain. The Oregon Boundary Treaty established the 49th parallel as the international boundary line. For the events which led to the signing of the treaty see F. W. Howay, W. N Sage, and H. F. Angus, *British Columbia and the United States: The North Pacific Slope from the Fur Trade to Aviation* (Toronto: The Ryerson Press, 1942), 120-137, Jean Barman, *The West Beyond the West: A History of British Columbia* (Toronto: University of Toronto Press, 1991), 32-52, and Margaret A. Ormsby, *British Columbia: A History* (Vancouver: The Macmillans in Canada, 1958), 51-89. For anxiety over a potential American annexation of the mainland see Ormsby, *British Columbia*, 145-146.

² In search of the origins of miners' rights and independent legal-political organization, the historian Charles Howard Shinn pointed to medieval Germany. Shinn then tracked this tradition through England and the United States. Charles Howard Shinn, *Mining Camps: A Study in American Frontier Government* (New York: Charles Scribner's Sons, 1885), 20-21, 25-36. Alternately, John Phillip Reid viewed the origin as North American, pointing out that those crossing the continent, during western expansion, recreated approximations of judicial practices as ways of dealing with crime in legally ambiguous territory. As he shows, settlers' judicial responses to crime were based on their recollections of how law had functioned in the eastern United States. John Phillip Reid, "Prosecuting the Elephant: Trials and Judicial Behavior on the Overland Trail," *BYU Law Review* Issue 2, Article 3 (1977): 327-350.

informal assemblies, miners' meetings, which made decisions based on majority rules direct democracy to create enough social order and the social stability for gold mining to take place.³

When this practice was imported to British Columbia, the Colonial Government, despite initial concerns, proved to be largely receptive to the mining community and open to being influenced by its legal practices on the subject of mining. In addition, the Government was sensitive and responsive to public sentiment in mining communities on all types of questions. During the early history of British Columbia, the mining community wielded a large degree of political influence.

The Government recognized the technical expertise of the mining community and formally granted broad authority over mining matters to Mining Boards, representative bodies that were subject to some conditions but which could create local mining law. This was a political arrangement that produced a working relationship between the two groups which contributed to the development of the mining law and the growth of the colony.

³ For a social contract theory which seeks to explain the rationale behind spontaneous local customary law during the Californian gold rush see John R Umbeck, *A Theory of Property Rights with Application to the California Gold Rush* (Ames: The Iowa State University Press, 1981). For military officials' inability to control the situation in California see Donald J. Pisani, "I am Resolved not to interfere but permit all to work freely': The Gold Rush and American Resource Law," *California History* 77, no. 4 (1998-99): 123-148. The literature on miners' meetings, camp justice, and vigilance committees in California is vast and goes beyond the scope of this thesis. The broad consensus in the literature is that miners' meetings and local customary legal practices had a significant influence on the development of mining law, social control, and social development in California. For an example in this tradition from early positivist historians see Shinn, *Mining Camps*, and Hubert Howe Bancroft, *The Works of Hubert Howe Bancroft. Volume XXXVI. Popular Tribunals. Vol. I & II* (San Francisco: The History Company, Publishers, 1887). For a social history perspective on the legacy of miners' law see Susan Lee Johnson, *Roaring Camp: The Social World of the Californian Gold Rush* (New York: W. W. Norton & Company, 2000). One of the reasons that the influence of Californian miners' customary practices has been so clearly established, and widely accepted in the case of California, is because, rather than developing a separate body of mineral law, the California State legislature recognized the legality of local customary law, as early as 1851. The US Congress recognized the "force of local-mining customs" in acts passed in 1866 and 1872. Californian miners' customary law was underwritten by both the State and Federal Governments, in the United States.

After the Californian gold rush (1849) there were two gold rushes to British Columbia: the Fraser River gold rush (1858) and Cariboo gold rush (1862). Despite the clear chronological and geographical continuity of these events, the influence of miners' customary law on the development of British Columbian society and its formal law has seldom been examined. Despite the broad recognition that miners' meetings were held in British Columbia and that miners' customary legal practices were brought north from California, the major consensus in the literature remains that miners' meetings and miners' customary legal practices didn't become "established" in British Columbia because the Colonial Government created structures, i.e. Mining Boards, which prevented these traditions from developing or having any significant influence.

Early historians of British Columbia viewed evidence of miners' meetings as a curiosity or as an example of "progress." Frederic William Howay wrote of miners' meetings being held on the Fraser River during the summer of 1858 when miners had sufficient "leisure" time to hold meetings and "set themselves to lawmaking". While having provided a full-length quote of the laws created by the miners, Howay dismissed the incident, attributing it to idleness.⁴

Writing of the same incident, Walter N. Sage identified the meeting as the "first instance of representative government" in the colony.⁵ In a later work, Sage referred to the incident again in greater detail, like Howay, providing a full-length quote of the miners' laws. Sage explained it as the American miners' reaction to the absence of "any settled government."⁶

Isabel Bescoby did not comment on the miners' meetings along the lower Fraser River during the summer of 1858 but she did identify the "Cariboo Mining Board" as an example of an

⁴ F. W. Howay, *British Columbia from the Earliest Times to the Present. Volume II* (Vancouver: The S. J. Clarke Publishing Company, 1914), 33-34.

⁵ Walter N. Sage, "The Gold Colony of British Columbia," *Canadian Historical Review* 2 (1921): 356.

⁶ Walter N. Sage, *Sir James Douglas and British Columbia* (Toronto: The University of Toronto Press, 1930), 223.

early representative institution: “[i]ts duty was to advise the government in all matters concerning miners.”⁷ But Bescoby suggested that the Board’s proposals were “not considered carefully by the authorities.”⁸

In a collaborative effort, Howay, Sage, and Angus focused specifically on the historical relationship between British Columbia and the United States. They wrote in detail on the miners’ laws created near Fort Yale during the 1858 mining season and compared them to the type of meetings that took place in California. The authors pointed out that the miners along the Fraser during 1858 were creating laws in contradiction with colonial proclamations and noted that Governor Douglas adapted colonial law, to be in line with miners’ customary practices.

Having identified gaps between mining practices and colonial law, the authors then asserted that any legal ambiguity came to an end in early 1859 when the allowance for Mining Boards, by the *Gold Fields Act, 1859*, spelled the end of any alternative legal practices. As they asserted: “the laws enunciated by the proper law-making authority were to govern and not those of any body of individuals. The effort to introduce the Californian practice had failed.”⁹

This assertion, that the Mining Board provided an outlet for American style politics which quashed the customary practice of miners’ meetings in British Columbia, became a persistent and influential thread in the literature. According to the authors, Mining Boards also contributed to the relatively peaceful nature of the settlement process in British Columbia. The presence of the Gold Commissioner, who had powers to quickly settle all complaints, and Mining Boards, which

⁷ Isabel Bescoby, “Some Social Aspects of the American Mining Advance into Cariboo and Kootenay,” (M.A. Thesis, University of British Columbia, 1935), 8-9.

⁸ Ibid.

⁹ Howay, Sage, and Angus, *British Columbia and the United States*, 157-159.

satisfied Californians inherent desire for self-government, resulted in the British Columbian mines being free from lawlessness.¹⁰

In a similar vein, Willard E. Ireland posed the question: why is the “mob violence” found in California not found in British Columbia? He suggested that the hazardous conditions on the Fraser discouraged many “hangers on”. Furthermore, Governor Douglas compromised and allowed the law to be influenced by miners’ practices in the summer of 1858. But, like Howay, Sage and Angus, Ireland wrote that Governor Douglas did not allow the law to be “overridden”. Recognizing the desire for representative institutions, Douglas created Mining Boards which operated under a Gold Commissioner and were “confined to improving conditions in the gold fields and not maintaining law and order.” Matthew Baillie Begbie further helped to ensure the establishment of British law and order. In this account, strong individuals slowed and stopped a movement, ensuring the establishment of British law. As a result, “all elements in the population came to have a healthy respect for British justice and realized that there was no necessity for the ‘six shooter,’ the bowie knife, the vigilantes, or the posse in British Columbia.”¹¹

R. W. Paul, while comparing the Californian, Australian, and British Columbian gold rushes, wrote that “Old Californians” established their own rules and regulations on the Fraser River and that Governor Douglas adapted to them with some conditions. Echoing Howay, Sage, and Angus, Paul wrote that the Governor permitted Mining Boards to regulate mining claims “provided the Gold Commissioners were allowed to have a hand in the matter henceforth and provided each set of local rules was submitted to the Governor for approval.” And while it was

¹⁰ Ibid, 159, 176-177.

¹¹ Willard E. Ireland, “British Columbia’s American Heritage,” *Report of the Annual Meeting of the Canadian Historical Association* 27, no. 1 (1948): 70-71.

recognized that miners governed themselves in some instances, criminal law was firmly the jurisdiction of the Government.¹²

But this argument poses a natural question that is difficult to answer: why would a well-armed group of miners with their own political and legal practices submit to a distant authority which they vastly outnumbered? In search of an explanation, Paul turned to one previously offered by Howay: law and order offered under the British Colony was more attractive to Californians than frontier lawlessness.¹³

On the subject of miners' meetings and Mining Boards, like historians before her, Margaret A. Ormsby wrote that Governor Douglas acknowledged local miners' laws on the lower Fraser during the summer of 1858. And while recognizing that Governor Douglas adapted to miners' law in a specific case, thereafter Mining Boards were to submit their suggestions to the Gold Commissioner for approval. Subject to the authority of Gold Commissioners, Mining Boards quickly replaced local miners' law.¹⁴

Comparing the Californian, Australian, New Zealand, and British Columbian gold rushes, Jan Nicholson observed that, in the United States, miners' meetings took on the responsibility of Government whereas, in the British context, they sought to influence the decisions of Government.¹⁵ Having drawn this distinction, in the case of British Columbia, Nicholson wrote that miners' meetings didn't become "established": "although there were some early miners' meetings in British Columbia... they did not become an established practice."¹⁶ Nicholson

¹² Rodman W. Paul, "'Old Californians' in British Gold Fields," *Huntington Library Quarterly* 17, no. 1 (1953): 169-170.

¹³ *Ibid*, 171.

¹⁴ Ormsby, *British Columbia*, 161.

¹⁵ Jan Nicholson, "Procedures and Perceptions of Authority: The Gold Rush Camps of Australia, Canada and the United States," *Public Administration: The Journal of the Australian Regional Groups of the Royal Institute of Public Administration* 32, no. 4 (December, 1973): 396-397.

¹⁶ *Ibid*, 402.

suggested that harsh climactic conditions, effective “Canadian” officials, and the threat of deportation combined to explain the absence of miners’ meetings in British Columbia.¹⁷

G. P. V. Akrigg and Helen Akrigg wrote of miners’ meetings in British Columbia that had previously gone undocumented in the secondary literature. They acknowledged that a miners’ meeting took place in mid-January 1859 when Supreme Court Judge Begbie and Colonel Moody visited Hill’s Bar and Fort Yale during events which later came to be known as McGowan’s War.¹⁸ Akrigg and Akrigg also wrote of an 1864 “law and order organization” assembled on Wild Horse Creek which included a nominated trial judge and sheriff. This organization was established after a man named Walker was killed. Shortly thereafter when Gold Commissioner Haynes arrived in the settlement all governing authority was ceded to him.¹⁹ While the authors identified new examples of miners’ meetings, like in previous accounts, miners’ meetings quickly gave way to colonial authority.

David R. Williams’ biography of Judge Matthew Baillie Begbie featured more about miners’ law and its relation to colonial law than any author previous to him. Williams wrote of a number of examples of miners’ law in British Columbia — Hill’s Bar (1858), Fort Yale (1858), Rock Creek (1859), and Wild Horse Creek (1864)²⁰ — and wisely pointed out that mining camp jury systems and camp justice were the response to a legal vacuum – not an attempt to usurp colonial authority.²¹ But despite having identified examples of miners’ meetings and customary law that would seem to throw into question the received wisdom that this tradition had not been established in British Columbia, Williams maintained the familiar consensus: miners’ law did not

¹⁷ Ibid.

¹⁸ George Philip Vernon Akrigg and Helen Brown Akrigg, *British Columbia Chronicle, 1847-1871: Gold and Colonists* (Vancouver: Discovery Press, 1977), 151-152.

¹⁹ Ibid, 311-312.

²⁰ David Ricardo Williams, *The Man for a New Country: Sir Matthew Baillie Begbie* (Sydney, B.C.: Gray’s Publishing Limited, 1977), 66-67.

²¹ Ibid, 87.

establish itself in British Columbia because the *Gold Fields Act, 1859* allowed for the creation of Mining Boards that could create bylaws and regulations which had to be approved by the Governor.²² Supporting this view, Williams quoted Begbie who reported miners to be compliant with the *Gold Fields Act, 1859*. An act that Begbie authored and promulgated.²³

In Williams' account, Begbie was master of the civil law until two mining cases led to his authority being challenged and then officially circumscribed: *Aurora v. Borealis* (1865-1866) and *Davis v. Aurora* (1866).²⁴ Williams' narrative included events that would appear to be examples of miners' meetings and which are difficult to square with the author's previous assertion that the tradition of miners' meetings did not establish itself in British Columbia.

Following *Davis v. Aurora* (1866), because of the uproar over Judge Begbie's civil rulings, the Cariboo Mining Community requested that the civil law be changed to limit appeals to questions of law. When this change was accepted by the Governor and later contributed to the Grouse Creek War, Mining Board member Cornelius Booth ironically requested that Begbie ignore the newly amended law and hear the appeal of the Canadian Company. Williams' narrative of the Grouse Creek War culminated in Justice Needham's arbitration in *Canadian Co. v. Grouse Creek Flume Co. Ltd.* (1867).²⁵

Not unlike Williams' account, for Barry M. Gough, justice was extended uniformly across the colony by Judge Begbie. Californians respected British law which was "clearly and directly expressed." Mining Boards were established by the Government to "regulate the activities of miners". Mining Boards allowed miners to change the mining regulations and they also provided

²² Ibid, 150.

²³ Ibid, 65-67, 150-151.

²⁴ Ibid, 68-79.

²⁵ Ibid.

a “vent for miners’ complaints” thereby helping the British in their administration of the population.²⁶

For Hamar Foster, the development of British forms of law and government in British Columbia was a conscious reaction against the republican experiment to the south. Mining Boards were a “workable compromise” that allowed colonial officials in British Columbia to avoid confrontation with the mining population, as seen in the Australian gold rush, as well as the abdication of governmental authority, as seen in the Californian gold rush.²⁷ He identified the “paradox” presented by “old Californians” submitting willingly to British law and order. And, in the absence of a clear explanation, Foster suggested that “most people preferred legal courts to vigilance committees.”²⁸

Like Foster, in a later work, Williams sought to explain the “peaceable settlement of British Columbia, free of civil strife”. For him, it was explained by the Colonial Government's legal accommodation of the Californian mining element. In other words, when Californians crossed the frontier they brought “various forms of self-government” with them. The colonial government recognized and accommodated this through the *Gold Fields Act, 1859* which allowed for the creation of Mining Boards. Like Gould, for Williams these Mining Boards “represented democracy in action and took some of the steam out of objection to colonial mining policies”.²⁹ More importantly, for the purposes of his argument, Williams pointed out that this accommodation allowed the Californian miners influence over the civil law but excluded them from influencing

²⁶ Barry M. Gough, “The Character of the British Columbia Frontier,” in *British Columbia: Historical Readings*, ed. W. Peter Ward and Robert A. J. McDonald (Vancouver: Douglas & McIntyre, 1981), 238.

²⁷ Hamar Foster, “Law Enforcement in Nineteenth-Century British Columbia: A Brief and Comparative Overview,” *BC Studies* no. 63 (Autumn, 1984): 11.

²⁸ *Ibid*, 11-12, 15.

²⁹ David Ricardo Williams, “The Administration of Criminal and Civil Justice in the Mining Camps and Frontier Communities of British Columbia,” in *Law and Justice in a New Land: Essays in Western Canadian Legal History*, ed. Louis A. Knafla (Toronto: The Carswell Company Limited, 1986), 215, 222-223.

the criminal law. It allowed for the criminal law to remain British.³⁰ This insight then became the explanation for the paradox touched on previously by Foster: settlement was peaceful because mining camp administration, i.e. mining camp administration of criminal law, was short lived in British Columbia.³¹

Unlike those before her, Tina Loo brought a post-structural approach to her history of colonial British Columbia but, when it came to the subject of miners' meetings and miners' law, she did not diverge from the consensus. Like the majority of authors, she acknowledged that the tradition of miners' meetings was brought north by miners from California but "[i]n British Columbia, miners' meetings were replaced by a single assistant gold Commissioner who rendered decisions summarily and was armed with powers of enforcement equal to those of the Supreme Court."³² For Loo, like those before her, this was because the Government created laws that were amenable to the mining population, i.e. *The Gold Fields Act, 1859* allowed for the creation of Mining Boards. These Boards were administered by Gold Commissioners and supposed to encourage business and the development of mining.³³

Like Williams, in her narrative of the Grouse Creek War, Loo wrote of events which could be interpreted as miners' meetings. It's difficult to square this with her earlier assertion that miners' meetings were "replaced" by Gold Commissioners. Also like Williams, in her narrative of the conflict, Loo pointed out that the Mining Board of Cariboo had urged for the change to the law which limited Supreme Court appeals to questions of law. In her analysis, Loo found an explanation for the conflict in different conceptions of the law: the Cariboo miners had an

³⁰ Ibid, 231.

³¹ Ibid.

³² Tina Loo, *Making Law, Order, and Authority in British Columbia, 1821-1871* (Toronto: University of Toronto Press, 1994), 61.

³³ Loo, *Making Law, Order, and Authority*, 61, 117.

understanding of the law based in “common sense” whereas government officials had a legal bureaucratic understanding and tried to apply law uniformly. An unwillingness to be sensitive to local understandings of the law on the part of government officials led to the conflict.³⁴

Other histories reiterated or conformed to the standard consensus. In their history of gold mining in British Columbia, Noel G. Duclos and Blanche Duclos wrote that miners’ meetings took place until the Government instituted the Mining Boards after which the practice stopped.³⁵ In his encyclopedic account of law in the British diaspora, Peter Karsten wrote that, when “hordes of invading miners” entered British Columbia and created their own mining regulations, Governor Douglas formalized the practice by creating Mining Boards which were overseen by Gold Commissioners.³⁶ Donald J. Hauka’s history of early British Columbia included miners’ meetings in his retelling of the Canyon War and McGowan’s War. Arguing that British Columbia narrowly remained a British possession, miners’ meetings, in Hauka’s narrative, were anti-British in their political expression.³⁷

The development of aboriginal history created an important shift in the historical literature which came to affect the way historians portrayed miners’ meetings.³⁸ In this tradition, Cole Harris

³⁴ Ibid, 122-133. John Phillip Reid disagrees with Loo’s explanation based on the idea that Cariboo miners held a distinct understanding of the law based in “common sense.” He writes that miners’ law could be as technical and “rule-determined” as the Common Law. John Phillip Reid, “The Layers of Western Legal History,” in *Law for the Elephant, Law for the Beaver: Essays in the Legal History of the North American West*, ed. John McLaren, Hamar Foster, and Chet Orloff (Regina, Saskatchewan: University of Regina, Canadian Plains Research Center, 1992) 61-62 n.74.

³⁵ Noel G. Duclos and Blanche Duclos, *Packers, Pans, and Paydirt: Prospecting in the Cariboo* (Quesnel, B.C.: Arthur Duclos, 1995), 43-44.

³⁶ Peter Karsten, *Between Law and Custom: “High” and “Low” Legal Cultures in the Lands of the British Diaspora – The United States, Canada, Australia, and New Zealand, 1600-1900* (New York: Cambridge University Press, 2002), 45-46.

³⁷ Donald J. Hauka, *McGowan’s War: The Birth of Modern British Columbia on the Fraser River Gold Fields* (Vancouver: New Star Books, 2003), 35, 46, 77, 85, 150, 176-179.

³⁸ British Columbian Aboriginal historiography is a vast field of study, a full examination of which goes beyond the scope of this thesis. Some important works in this tradition include: Wilson Duff, *The Indian History of British Columbia: The Impact of the White Man* (Victoria: Provincial Museum of British Columbia, 1964), Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890* (Vancouver: UBC Press, 1992), Rolf Knight, *Indians at Work: An Informal History of Native Labor in British Columbia 1858-1930* (Vancouver: New

retold the history of the gold rush along the Fraser River Canyon from the perspective of aboriginal people. Tens of thousands of miners arrived in the land in what was an unprecedented and cataclysmic event. They dominated land along the Fraser where the Nlha7kapmx people had lived. “[Miners] managed themselves and their own dealings with Natives, organizing meetings, electing officers on individual bars, and applying and administering their own rules, as they had done in California and in camps throughout the west.” Appearing much more autonomous than in previous accounts, miners didn’t take government representatives in the area seriously.³⁹

Also in this line, Dan Marshall wrote of events along the Fraser River during the spring and summer of 1858. For him, the Canyon War, a conflict between miners and aboriginals that took place in August of 1858, was an example of the same type of frontier warfare against aboriginals that had taken place in the United States.⁴⁰ In his account, British authority was absent along the Fraser River. Miners’ created their own rules as they saw fit – rules which flew in the face of Douglas’ proclamation and regulations.⁴¹ Like Harris, Marshall emphasized the Government’s limited influence over the mining population.⁴² Unlike those before him, Marshall identified the “prominent” influence of Californian practices in the large number of ditch and water companies formed along the river, many of which were limited joint-stock companies.⁴³ In his account of the Canyon War, miners’ meetings galvanized miners against the aboriginal population and sought to influence the actions of government.

Star Books, 1996), and John Sutton Lutz, *Makuk: A New History of Aboriginal-White Relations* (Vancouver: UBC Press, 2008).

³⁹ Cole Harris, *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change* (Vancouver: UBC Press, 1997), 110.

⁴⁰ Daniel Patrick Marshall, “Claiming the Land: Indians, Goldseekers, and the Rush to British Columbia,” (PhD diss., University of British Columbia, 2000), 218-242.

⁴¹ *Ibid*, 135-136.

⁴² *Ibid*, 138-139.

⁴³ *Ibid*, 136-137.

Taking a new approach to the subject, Christopher Herbert wrote that forms of local governance, including miners' meetings, were institutions meant to preserve "special rights and economic privileges for white men".⁴⁴ In a broad narrative that drew connections between practices of local governance from the Californian gold rush to British Columbia, Herbert pointed out that mining communities, while staging public meetings, often called for more active involvement of the Government as the result of conflict.⁴⁵ As he explained: "The American miners did not want less British authority but more, because a strong colonial government meant they could get on with the business of mining".⁴⁶

The consensus in the historiography is that miners' meetings did not become established in the colony because the *Gold Fields Act, 1859* satisfied miners' desire for local government. Because of this accommodation on the part of government, British authority was preserved, especially in the realm of the criminal law.

But despite this consensus a review of the history of miners' meetings and Mining Boards in British Columbia will show that mining communities persisted in their use of miners' meetings after the passing of *The Gold Fields Act, 1859* during the major gold rushes which marked the colonial period. Miners continued to use miners' meetings to different ends as long as it was practical and or politically useful. The arrival of Mining Boards did not spell the end of miners' meetings because they were not mutually exclusive political practices. An examination of events will show that, as a political practice, miners' meetings proved to be extremely flexible and fluid and that the same practice could be turned to different purposes and different circumstances.

⁴⁴ Christopher Herbert, "White Power, Yellow Gold: Colonialism and Identity in the California and British Columbia Gold Rushes, 1848-1871," (PhD diss., University of Washington, 2012), 35.

⁴⁵ Ibid, 191-192.

⁴⁶ Ibid, 192.

It has been often asked whether miners' meetings were "established" in British Columbia. This is a question that excludes – a question that draws a distinction between valid and non-valid political practices – valid and non-valid types of law. This question implies that only when a practice is "established" in formal law is it worthy of consideration – is it consequential. By posing the question in this way, we fall into the trap of distinguishing "real" formal law from "unreal" informal law. This rigid approach narrows the treatment of miners' meetings as a historical subject, making them noteworthy only when they produced something resembling formal law.

Only when we remove the question of whether miners' meetings were established do we see the many forms that they took in British Columbia – do we see how pervasive the practice was – do we see how the tradition of miners' law transformed in the specific political context of colonial British Columbia to create something new. Of course, there are the "classic" examples of miners' meetings – those which produced local mining rules and regulations, civil and criminal law. There are the meetings that resembled formal judicial practices at which civil and criminal questions were aired. There were also meetings convened to nominate local officials with specific powers, such as mining recorder, sheriff, or judge.

But there are also "unconventional" examples of meetings convened to deal with a pressing problem. There are examples of meetings held to voice community concerns and articulate the community's position on a specific issue in the form of a resolution. There are examples of meetings held specifically in order to get the attention of the Government, to influence government actions, and to change formal laws.

I take a broad definition of miners' meetings and propose that miners' meetings and miners' customary law should be understood as part of miners' culture. It was an aspect of their

culture that was sometimes expressed and sometimes not. Nevertheless, it remained a political and social strategy of organization that the mining community, at large, retained.

I approach the subject of the law from the perspective of legal pluralism. I take that law is a construction that cannot be distinguished from its social context. Law is not a universal system of values, applicable to all cultures – but instead it is culturally and historically specific.⁴⁷ While rejecting the argument that law provides a more rational and equitable system of justice and therefore justifies colonization and conquest, I seek to view the law in historical context in order to better understand how it contributed to the specific colonization process that unfolded in British Columbia.

This thesis is influenced by the work of Thomas Stone, legal ethnographer and historian, whose research was focused on social organization and miners' justice during the Klondike and Alaskan gold rushes. Stone's arguments—that miners' meetings in the Yukon adapted and changed in time, that the practices and sensibilities of miners' meetings influenced police administration in the Yukon, and that changes in mining techniques which necessitated a sedentary lifestyle coincided with and partially explain the mining community's acceptance of formal authority—have had an important influence on this thesis.⁴⁸

Miners who held meetings and created their own customary law in British Columbia presumed the right to self-govern in the absence of formal authority. They were often working on the frontier,

⁴⁷ Works in this pluralist tradition that have influenced this work include Jerold S. Auerbach, *Justice Without Law?* (New York: Oxford University Press, 1983) and Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1600* (Cambridge: Cambridge University Press, 2009).

⁴⁸ Thomas Stone, "The Mounties as Vigilantes: Perceptions of Community and the Transformation of Law in the Yukon, 1885-1897," *Law & Society Review* 14, no. 1 (Autumn, 1979): 83-114, Thomas Stone, "Flux and Authority in a Subarctic Society: The Yukon Miners in the Nineteenth Century," *Ethnohistory* 30, no. 4 (Autumn, 1983): 203-216, and Thomas Stone, *Miners' Justice: Migration, Law and Order on the Alaska-Yukon Frontier, 1873-1902* (New York: Peter Lang Publishing, Inc.), 1988.

far from settlements, and drew on legal traditions to create rules they could live by in order to achieve their goal. They made their own mining regulations, civil and criminal law, and created courts to rule over disputes. After mining communities came into dialogue with formal government authority, they used these same practices to lobby the Government and have their concerns addressed. They saw themselves as a partner in the material development of the country and demanded that government address their concerns.

The practice of miners' meetings continued throughout the colonial period marked by the major gold rushes, adapting to the new political conditions in British Columbia. Miners' meetings led to the creation of Mining Boards, a representative body of miners which advised the Government, but this development did not mark the end of miners' meetings in British Columbia. Mining Boards influenced the development of mining law in specific and sophisticated ways. And while Mining Boards changed the law, miners' meetings continued to voice community opinion, lobby the Government, and existed as a forum for discussion. The mining community's political strategies allowed it to enter into a dialogue with the Government, partnering in the development of a new political order. As the mining community lobbied on its own behalf, using both miners' meeting and Mining Boards, the industry grew and mining operations became increasingly capitalized. Legal structures were put in place that allowed for the creation of companies which could then be financed by shareholders. These companies were seen as necessary to successfully mine the deep diggings in northern British Columbia.

This political partnership between the Government and the mining community was the foundation of the colony's material and economic development which led to dramatic and devastating changes for the aboriginal population of British Columbia. The rapidity of the settler expansion, the Government's tenuous grasp on the territory, and the absence of any funds for land

purchases, quashing aboriginal title, resulted in the negation of aboriginal title to the land. The country was thrown open for settlement. Later, aboriginal reserves were created but these reserves were significantly reduced by later administrations, in many cases without consultation.⁴⁹

Reflecting the new political order created by the gold rush, the fur trade, upon which aboriginal communities had come to rely, was diminished in importance. The HBC's monopoly, seen as standing in the way of settlement and mining, was revoked in 1858. The HBC continued to do business in the colony and the fur trade continued but that trade was no longer the region's principal income generator. Aboriginal people adapted to the new order, in many ways successfully, but the future development of the colony was focused on mining and settlement.⁵⁰ Aboriginal people became the target of civilizing missions and the law. The criminalization of trading or gifting liquor to aboriginal people was one of the first proclamations passed into law by the Colonial Government – an initiative which had been pioneered by mining communities during the Fraser River gold rush.⁵¹

The first section of this thesis is concerned with the political practice of miners' meetings, and public meetings held by mining communities, as well as the influence of those activities on the Colonial Government, in the Fraser River gold rush period, from 1858 to 1859. The second part examines the way that miners' meetings led to the creation of Mining Boards and shows how *both* miners' meetings and Mining Boards influenced the development of colonial law from 1859

⁴⁹ For the decision to throw open the land for settlement without treaties quashing title see Stuart Banner, *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska* (Cambridge, Massachusetts: Harvard University Press, 2007), 195-230. For the creation of aboriginal reserves and their later reduction see Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver, UBC Press, 2002), 136-166, 169-215.

⁵⁰ For the impact of the settlement frontier on aboriginal people see Fisher, *Contact and Conflict*, 175-211. For examples of aboriginal people adapting to the new settlement economy see Knight, *Indians at Work*, and Lutz, *Makuk*.

⁵¹ Mining communities on the lower Fraser River in 1858 outlawed the trading of liquor to aboriginal people (see Chapter 1). The Colonial Government then created a similar law with the 1859 Proclamation titled *Penalty for Selling Liquor to the Natives* in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*.

to 1866. The last section tracks a breakdown in the relationship between the Government and elements within the mining community over the interpretation of the law between 1864 and 1867. In this event, miners' meetings were utilized as a political strategy when relations between the Government became confrontational. In addition, this event contributes to an understanding of the different roles performed by mines' meetings and Mining Boards.

Chapter 1

Miners' Meetings During the Fraser River Gold Rush

In the spring of 1858 a gold rush to the Fraser River took place. Tens of thousands of miners and gold seekers travelled by sea from California to Vancouver's Island. They flooded into the settlement of Fort Victoria, creating a tent-city shanty-town that overwhelmed what had been a small fur trading post. From this point they crossed the strait to the mainland. If they disembarked at the mouth of the Fraser River, there was little to greet them except for thick wilderness. Many stubbornly trekked on foot, following the river west and then north, panning for gold along the way. Others hired aboriginal people to ferry them up the river in canoes. Still others paid for passage by steamship. They might have stopped at one of the small fur trading forts, Fort Langley, Fort Hope, or Fort Yale. Or they could have stopped at one of the promising gravel bars and tried their luck.

Early that spring large placer gold deposits were found south of Fort Yale on what came to be known as Hill's Bar. The banks of the river and adjacent flats swelled with miners looking for the next big discovery. Like Fort Victoria, the former fur trading forts of Fort Yale and Fort Hope transformed into frontier towns, providing commercial services to the mining population. A commercial class developed – many of whom had taken their lessons from the California gold rush and who recognized greater opportunities in commercial ventures than in gold mining.

The 1858 gold rush quickly centered on Hill's Bar and Fort Yale and events that had taken place in California years before repeated themselves. Businesses were established. Those with capital speculated. Water companies tried to control access to water. Individuals and small groups prospected with rudimentary methods and equipment. And miners used miners' meetings and customary law to create order on the frontier. In the absence of British officials, miners ordered

gold mining society much as they had done in California. Mining rules and regulations were established by miners' meetings according to customary practices and following popular norms. Issues of concern were heard by miners' meetings and enforced by individuals and groups organized for that purpose.

A review of events along the lower Fraser River during 1858 and early 1859 will show that miners' meetings were a prominent method of organizing mining society during this period. The Colonial Government, not yet established on the mainland, was influenced to a considerable degree by miners' legal customs. As miners gathered along the banks of the lower Fraser, they came into immediate contact with aboriginal people of the Nlha7kpmx nation who were primarily hunters and fishermen.⁵² Tensions quickly rose between the mining population and these aboriginal people. At first, miners tried to assert authority over aboriginal people by creating laws to circumscribe their activities. When violence broke out, miners used the organizing principles of miners' meetings to assert dominance over aboriginal people as well as Chinese miners. Partially in response to the outbreak of violence, the Governor nominated officials to govern the mining population. But these officials were not widely accepted. Miners began to use miners' meetings to lobby against colonial officials and to challenge their authority. When a dispute over jurisdiction, between nominated officials, played into local factionalism, the Government intervened with a military force. The mining community took this as an opportunity to further lobby the Government by staging a miners' meeting for the visiting Judge and Colonel.

⁵² Also known as the Thompson River Indians. Their way of life was seasonal. During the winter they lived in small villages comprised of underground lodges with roofs made from wood, mats and dirt. In the spring they moved to the mountains to hunt and forage. In the summer, they constructed villages along the river where they harvested and cured salmon for winter. The fall meant a return to hunting. Social organization was "loose" and based around the family which wintered together. James Teit, *Traditions of the Thompson River Indians of British Columbia* (New York: Houghton, Mifflin, and Company, 1898).

Along the banks of the lower Fraser River, miners used miners' meetings and customary law to establish gold mining rules and regulations – much the same as they had done in California. But things evolved differently in British Columbia. As self-organizing mining communities came in contact with colonial representatives, they recognized colonial authority, at least nominally. Instead of using miners' meetings and traditions of camp justice to organize and govern mining communities, they used the methods of miners' meetings – popular assemblies – to criticize and make demands from the colonial government and its administrators. The political practice of miners' meetings adapted to conditions in British Columbia.

The first gold fields regulations for the mainland were written, prior to the Fraser River gold rush, in December of 1857 by James Douglas, Governor of Vancouver Island and Chief Factor of HBC operations in New Caledonia. The news of gold discoveries on the lower Fraser had made its way to California during the winter of 1857 and so Governor Douglas, anticipating a gold rush to the Fraser River district in the spring, drafted and proclaimed gold field law for New Caledonia. This early proclamation was an attempt to stop the establishment of American-style “vigilantism” or “lynch law” on the British claimed mainland, motivated by the fear that American miners and settlers might attempt to annex New Caledonia.⁵³

This move was not without precedent, Governor Douglas had proclaimed gold fields law for the Queen Charlotte Islands in 1853, in the midst of excitement over those islands' gold resources,⁵⁴ and this type of initiative had been seen as falling within the scope of his discretionary

⁵³ Ormsby, *British Columbia*, 146-147, Barman, *The West Beyond the West*, 62-64, and Williams, “The Administration of Criminal and Civil Justice,” 219. For alleged abuses of American nationals see John Nugent, *Vancouver's Island and British Columbia. Message from the President of the United States, Communicating The Report of the Special Agent of the United States recently sent to Vancouver's Island and British Columbia*, 35th Congress, 2d Session, House of Representatives, 1859.

⁵⁴ Barman, *The West Beyond the West*, 63. The Queen Charlotte Islands are today referred to as Haida Gwaii.

powers. Despite this precedent, the 1857 gold fields law was technically illegal. It was a bluff – it was a claim to the mainland’s gold resources that had no legal basis.

As Governor of the Colony of Vancouver Island and Chief Factor of the Hudson’s Bay Company’s operations in New Caledonia, James Douglas had no legal jurisdiction to proclaim law for New Caledonia. At the time of the proclamation, legal jurisdiction over New Caledonia was defined by the HBC Charter and the parliamentary statutes related to that charter, the *Canada Jurisdiction Act* (1803) and the *Regulation of the Fur Trade Act* (1821). In fact, legislative authority over New Caledonia fell within the scope of the British Parliament. The HBC had been tasked with enforcing British law over New Caledonia but it had little interest in enforcing that law in its extensive territories. The closest courts, in Upper and Lower Canada, had a limited reach.⁵⁵

New Caledonia was part of a large legal gray area, a place where informal practices prevailed. Despite this, and in light of the probability of a full scale gold rush to the Fraser River in the spring of 1858, Governor Douglas created a proclamation in which he declared that anybody mining for gold without authorization, in the “districts of Fraser River and of Thompson's River, commonly Known as the Quaatlan, Couteau, and Shuswap countries”, would be prosecuted civilly and criminally. Its effect was to claim legal ownership over the mainland’s gold resources for the British Crown. The regulations accompanying this proclamation required miners to buy a license if they wished to mine for gold. The price of a license was ten shillings a month and it could be

⁵⁵ Hamar Foster, “Long Distance Justice: The Criminal Jurisdiction of Canadian Courts West of the Canadas,” *The American Journal of Legal History* 31 (1990): 44. For more on HBC “club law” see Tina Loo, “‘Club Law’ and Order in British Columbia’s Fur Trade,” in *Making Law, Order, and Authority in British Columbia, 1821-1871*, 18-33 (Toronto: University of Toronto Press, 1994).

purchased in Fort Victoria. Claim sizes were not defined but would be regulated by the as yet to be nominated Commissioner.⁵⁶

The proclamation and regulations were a theoretical framework for an as yet to be defined system of laws. By the summer of 1858, after the gold rush was well underway and the lower Fraser River was teeming with miners, the regulations were further defined. These new regulations established rules around the miner's license itself. Miners were required to carry their license and produce a copy upon demand; it could not be sold or transferred from one person to another. Mining operations were not to interfere with the maintenance of roads or access to stores. Miners were required to observe Sunday as the Sabbath. Finally, the size of claims was defined: an individual claim was defined as 144 square feet; a party of two miners could have a claim measuring 288 square feet; three miners could have a claim measuring 432 square feet; and a party of four miners was permitted a claim of 576 square feet. Published in the *Victoria Gazette*, it was noted by a columnist that the claim sizes "will strike all Californians as exceedingly small".⁵⁷

Despite the existence of official mining regulations, on the lower Fraser, miners created their own. The *Daily Alta California* published the laws passed by a miners' meeting held on May 12th on Hill's Bar, Fraser River. Claim sizes were defined as twenty-five feet for each person but rather than twenty-five feet square, as conceived by the official regulations, this miners' law meant twenty-five feet along the river bank's high water line, or the line established by the height of water in the spring. Typically, with claims measured like this, the claim edges would then extend perpendicular from this "bank line", or back line, towards the river cutting across the gravel bar. The Hill's Bar regulations included a rule concerned about equality – restricting miners to one

⁵⁶ Enclosed Documents. Douglas to Labouchere, 29 December 1857, TNA, 2084, CO 305/8.

⁵⁷ "Miners' Licenses," *The Victoria Gazette*, 30 June, 1858. Also published in Kinahan Cornwallis, *The New El Dorado; or British Columbia* (London: Thomas Cautley Newby, Publisher, 1858), 401-402.

claim by preemption and one by purchase, meant to ensure that nobody dominated the region. Claims were “not considered workable” between May 20th and August 20th. This practice was referred to as holding over claims which removed any work requirement in place. The Hills Bar regulations set the work requirement as three days. That is as of August 20th, claims must be “represented”—or worked—within three days or they were otherwise free to be “jumped” – or taken over by other miners. In addition, there was a regulation declaring that any thieves would be expelled from Hills Bar and lose their claims and anybody “interfering with or molesting any Indian” would be punished as “the community shall see fit.”⁵⁸

Upriver, at Fort Yale, similar miners’ laws were created at a miners’ meeting. The laws began with a definition of the specific geographical area covered by the laws. Like the Hill’s Bar laws, mining claims were defined as twenty-five feet along the river and extending back to the bank’s high water mark. There was a rule concerned with equality, limiting miners from holding more than one claim. A one-day work requirement every five-days was established. The office of recorder was created to keep track of claim registration. The Recorder was required to keep records which would be available for public inspection and he would be paid fifty cents to record a claim. Claims were declared workable, five days from the creation of the laws.⁵⁹

Like the resolutions passed by the Hill’s Bar miners, these rules flew in the face of Governor Douglas’ 1857 Gold Fields Law. And, like the miners at Hill’s Bar, this community at Yale did not reference colonial law when creating their own mining law. Instead, they drew on norms established in California to regulate society on the lower Fraser. This community didn’t legitimate itself in an external authority. Instead, it assumed its own legitimacy and authority.

⁵⁸ “Mining Laws,” *Daily Alta California*, 8 July 8, 1858. Also published in Lewis J. Swindle, *The Fraser River Gold Rush of 1858: As Reported by the California Newspapers of 1858* (Victoria: Trafford Publishing, 2001) 92-93.

⁵⁹ Cornwallis, *The New El Dorado*, 402-403.

Miners did not arrive in an uninhabited landscape. The Pacific North West was well populated with different tribes of aboriginal people. Accounts of the early relations between miners and aboriginals on the river vary. Some accounts describe aboriginal people mining gold and working alongside white miners. Others point to the opportunity opened up by the arrival of newcomers by increasing trade and access to new goods. There is some evidence to suggest that relations between miners and aboriginals were relatively peaceful, for a time, after the initial gold rush to the region.

When violence eventually broke out between the two groups, miners responded with the same political method they had used to order mining society – miners’ meetings. James Moore was one of the first prospectors on Hill’s Bar and a member of the party that had originally discovered gold there. According to his memoirs, shortly after the discovery, a group of about 300 aboriginal people came down to Hill’s Bar and began camping and mining, nearby. This caused no problems until an American trading boat arrived, captained by a man named Taylor who had no provisions but liquor. Taylor began trading this liquor to the nearby aboriginal people for gold dust. According to Moore, the aboriginal people did not truly understand the value of gold and Taylor took advantage of this. A lot of drinking followed and the aboriginal party became increasingly rowdy, especially at night.

Concerned about this turn of events, the local miners held a meeting and decided to purchase all of Taylor’s cargo at a wholesale price – an offer he refused. The aboriginal people continued to be rowdy, keeping the miners up at night, so the following day the miners held another meeting. Determined to put an end to the “drunken brawl,” as Moore called it, they went down,

confiscated Taylor's liquor, and dumped it out on the river bank. Taylor was then ordered out of camp.⁶⁰

A similar story, dated to roughly the same time period and perhaps describing the same events, was reported by the special correspondent to the *San Francisco Bulletin*. The correspondent had made the trip up the river via Fort Langley and Fort Hope to Fort Yale, reporting on conditions along the way. At Hill's Bar he noted a large group of about 200 aboriginal people living and working near the miners. According to the correspondent, the miners were annoyed with the local aboriginals because they dug in their piles of tailings for dirt to wash. Regardless, the miners "put up with them" in an attempt to "promote good feelings". At some point, a trader came up the river with provisions and liquor which led to some excitement. A confrontation took place in the trader's tent when he pulled a revolver on some aboriginal people which led the latter to go get weapons. It looked like there would be a conflict but some "boatman from San Francisco" mining nearby intervened. They grabbed the trader's casks of liquor and destroyed them. The "white men" on the bar then called a miners' meeting where they passed laws against bringing liquor to the bar and against giving liquor to aboriginals. Anyone breaking these laws would be stripped of his possessions, including his mining claim, and sent down the river in a canoe without a paddle.⁶¹

From his desk in Victoria, concerned about conditions at the mines and unregulated traffic on the Fraser River, Governor Douglas took a few measures. He proclaimed it illegal for boats to enter the Fraser River without license from the Hudson's Bay Company and tasked the *HMS Satellite* with enforcing the proclamation.⁶² He also contracted an agreement with the United States

⁶⁰ James Moore, "Reminiscences," BCA, MS E/E/M781. See also James Moore, "The Discovery of Gold on Hill's Bar in 1858," *BC Historical Quarterly* 3, no. 3 (1939): 215-220, Hauka, McGowan's *War*, 24-36. For miners' law on Hill's Bar see Williams, *The Man for a New Country*, 66-67 and Sage, *Sir James Douglas and British Columbia*, 223.

⁶¹ *San Francisco Bulletin*, 25 May, 1858 in Swindle, *The Fraser River Gold Rush of 1858*, 86-87.

⁶² The justification was that unregulated trading vessels infringed on the Hudson Bay Company's rights. But this was not correct and, as a result, the proclamation was abolished.

Pacific Mail Steamship Company to provide regular transportation between Victoria and “the Falls”, a location 130 miles inland from the mouth of the Fraser River. According to this arrangement, Douglas stipulated that the steamship company could only bring licensed miners up the river.⁶³

After reporting these measures to Lord Stanley on May 19th Douglas made a trip up the river to visit the mines.⁶⁴ While visiting the mining district, he nominated three officials picked from the mining population. George Perrier was appointed Justice of the Peace at Hill’s Bar, Richard Hicks as Revenue Officer at Yale, and O. Travaillet as Revenue Officer at Lytton. During this tour, Douglas sanctioned the miners’ practice of measuring individual claims as twenty-five feet along the river and extending to the bank’s high water line, rather than attempting to impose the regulations he had published in the *Victoria Gazette*. By June 10th, Douglas was back in Victoria.⁶⁵

Despite Douglas’ visit and his appointment of officials, the mining and settlement community continued to create local law. According to the *Daily Victoria Gazette* a “public meeting of miners and residents” took place on July 27th because the local liquor trade which was “endangering the lives and property of the people of Fraser River”. Declaring the local liquor trade contrary to the law of the “English Government”, settlers created rules to control liquor, prohibiting its sale in certain areas, and granting themselves the right to punish offenders by

⁶³ Douglas to Stanley, 19 May 1858, TNA, 6667, CO 305/9.

⁶⁴ When Douglas left Victoria it was reported on in the *Sacramento Daily Union*. “From Victoria,” *Sacramento Daily Union*, 11 June 1858. The published letter is dated 22 May 1858.

⁶⁵ Douglas to Stanley, 10 June 1858, TNA, 7828, CO 60/1. Only Hicks was named in the 10 June 1858 letter. More details on his voyage to the mines, including the description of a conflict between aboriginals and settlers, were included in two letters sent shortly thereafter: Douglas to Stanley, 15 June 1858, TNA, 7830, CO 60/1 and Douglas to Stanley, 15 June 1858, TNA, 7829, CO 60/1. All the nominated officials and their titles were listed in a later letter in which he reports that he “established” claim sizes as 25 feet measured along the river. Douglas to Stanley, 26 July 1858, TNA, 9253, CO 305/9.

destroying liquor and exacting corporal punishment. A standing committee was created to enforce this law “until the Government sees fit to carry out its own laws”. The last resolution created by this body of miners and residents specifically targeted aboriginal people. It stated that those dealing with aboriginals in arms or ammunition would be subject to corporal punishment.⁶⁶

The same event was reported by the *Sacramento Daily Union* but in this version the miners were attacked by aboriginal people and the liquor trade threatened a war of extermination.

On 26th July, great commotion took place at Fort Yale. It was reported that all the Indians at New York Bar were all drunk, and had driven the few whites on the bar into one tent, where the latter were determined to make a stand, and if worse came to the worst, for all to die fighting like men. There were two dead bodies found in the river, presumed to have been murdered by the red devils. This news created much excitement, and a public meeting was had of the miners. All these Indian troubles were said to have come of selling them liquor, by unprincipled white men which, if not prohibited, would lead to a horrible war—one that must end in the end to the extermination of the red skins.⁶⁷

The liquor trade continued to be a source of conflict. Shortly after the creation of local laws to control that trade, a group was found trading liquor to aboriginals at Fort Yale. Mr. Walker of the Hudson’s Bay Company, with the support of local mines and settlers, confronted the traffickers and began to destroy the liquor in their possession. While doing so, he was attacked. A fight followed and Walker bit off the attacker’s nose. To Walker’s supporters, this seemed like a just outcome.⁶⁸

Problems of enforcement continued. Near Fort Yale, a group of white miners, working near the lower end of the canyon, witnessed a “Chinese boat” land and begin selling arms and liquor to

⁶⁶ When these miners’ laws were created, there was no formal law limiting the sale of liquor in the area. The settlers’ reference to “the law of the English Government” was a reference to an imagined law. “Letter from Fort Yale,” *Daily Victoria Gazette*, 4 August 1858.

⁶⁷ “Further From the North,” *Sacramento Daily Union*, 11 August 1858. See also Swindle, *The Fraser River Gold Rush of 1858*, 210-211. See also Sage, *Sir James Douglas and British Columbia*, 234. These resolutions were drawn up prior to the colonial proclamation prohibiting the sale or gifting of spirituous liquors to aboriginal people, one of the first proclamations created by Governor Douglas following the establishment of the colony. “Penalty for Selling Liquor to the Natives,” 6 September 1858 in British Columbia. *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*. [British Columbia: s.n., 1866?].

⁶⁸ “Selling Liquor to the Indians,” in Swindle, *The Fraser River Gold Rush of 1858*, 223-224.

some aboriginal people. The white miners made an effort to drive off the traders, who sailed away, but, wanting to engage in trade, the aboriginal people followed the Chinese traders in canoes and coaxed them back to shore while threatening the white miners not to interfere.⁶⁹

Acting on the intelligence gathered during his June trip to the mines, Douglas again set himself to law making. New regulations were published in the *Daily Victoria Gazette* on August 5th. These new regulations provided a legal framework for companies that wished to develop quartz mines. It retroactively limited the rights granted by mining licenses, under the 1857 proclamation, to alluvial gold, differentiating placer mining from quartz rock mining. Conditions for the mining of quartz gold were then defined. Claim sizes ran half a mile along the vein and extended fifty yards on either side of that vein. They could be held for three years – to be renewed at the discretion of the Government. Claim holders had rights to timber and adjacent water. Any improvements remained the property of the claim holders, even after extinguishment of the claim. Key conditions included the submission of a capital bond of ten thousand dollars and the employment of twenty workers within six months of opening the claim.⁷⁰

The portions of the December 1857 regulations pertaining to alluvial gold were then amended to conform with miners' practices. Individual claim sizes were increased from the former twelve feet square to twenty-five feet frontage along a creek or ravine. Claims not bordering creeks or ravines were to be measured twenty-five feet square. Like the miners' laws, a work requirement was set. Miners had to work the claim within ten days after registering it. Miners found working claims without having paid the license fee were required to pay double the cost of the fee.⁷¹

⁶⁹ Ibid.

⁷⁰ Like the previous Proclamation and Regulations, this August 1858 Proclamation was technically illegal because Douglas had no jurisdiction to proclaim law for the mainland. "New Mining Regulations on Fraser River," *Daily Victoria Gazette*, 5 August 1858.

⁷¹ "New Mining Regulations on Fraser River," *Daily Victoria Gazette*, August 5, 1858.

With a handful of newly nominated officials on the mainland who had no formal legal training, Douglas defined the role of the Assistant Gold Commissioner. Guidelines were sent to the newly nominated representatives and a copy was sent to Lytton for approval.⁷² The Colonial Office approved of Douglas' measures but, aware of the delicacy of the situation created by a large number of foreign nationals in territory claimed by the Crown, cautioned him from compelling miners to take out licenses by force.⁷³

At this point relations between miners and local aboriginals, the Nlha7kapmx nation, descended into violence, a conflict that is now referred to as the Canyon War. During this event, violent conflict prompted miners to use miners' meetings to organize themselves into military companies. These companies then made excursions north of Yale to engage aboriginal people in battle.

Fisher included the Canyon War as one episode in a longer history of aboriginal-settler conflict.⁷⁴ Harris underlined the importance of the river to aboriginal ways of life and placed the origin of the conflict in aboriginal people's displacement from the river.⁷⁵ Marshall identified the Canyon War as an extension of the type of "Indian fighting" and frontier warfare which took place in the United States. According to him, the extent of the conflict was downplayed by Governor Douglas.⁷⁶ For Herbert, the war was about the white settlement community's assertion of dominance over aboriginal people and Chinese miners.⁷⁷

⁷² Enclosed Document. "Instructions to Assistant Gold Commissioners," dated 1 July 1858 in Douglas to Lytton, 30 August 1858, TNA, 10344, CO 60/1.

⁷³ Lytton to Douglas, 1 July 1858, TNA, CO 410/1. In his reply, Douglas acknowledges that he should not compel miners to take out licenses. Douglas to Lytton, 9 September 1858, TNA, 12177, CO 60/1.

⁷⁴ Fisher, *Contact and Conflict*, 99-100, 147.

⁷⁵ Harris, *The Resettlement of British Columbia*, 109-114. Akrigg and Akrigg also identified the source of the conflict as aboriginal displacement from the river. Akrigg and Akrigg, *British Columbia Chronicle 1847-1871*, 127-130.

⁷⁶ Marshall, "Claiming the Land," 199-200, 241-244.

⁷⁷ Herbert, "White Power, Yellow Gold," 188.

In addition to these interpretations, the Canyon War provides clear examples of the pervasive influence of miners' meetings on frontier society during the Fraser River gold rush. Miners used miners' meetings during the Canyon War as a method of organizing themselves against aboriginal and Chinese people – groups they perceived as threatening. The war demonstrates the flexibility of the political practice and clearly shows how white miners used it to advance their own interests. Finally, it's an example of miners using miners' meetings in an executive capacity. Much in the same way that a formal government executive would declare war, miners decided by popular meeting to declare war against aboriginal people. They then used that same method to organize the campaign and decide on strategy. Asserting their own sovereignty in symbolic ways, they then created peace treaties with aboriginal people and circumscribed the rights of Chinese miners. Asserting their own right to regulate the population and to create war and peace.

Thomas Stone has identified the way that miners' meetings were used to share responsibility when a community took law into its own hands with the knowledge that its actions were being watched by the outside world. By using miners' meetings, responsibility was diffused amongst all members of the group, limiting the possibility of later punishment; they were a “defense against future liability.”⁷⁸ The persistent use of miners' meetings during the Canyon War is an example of this phenomenon. By using the meetings for decision making purposes, the responsibility for the war was lodged in the group and therefore the Government had limited ability to hold any individual responsible.

The break down in relations between the mining population and local aboriginals took place near the end of the summer. It was reported in the *Victoria Gazette* that large numbers of

⁷⁸ Stone, “Mounties as Vigilantes,” 94-95.

aboriginal people, roughly 2000, had encamped north of Fort Yale. According to Mr. Smith, an expressman reporting to the paper, aboriginal people were blocking miners from ascending the river above the canyon. There was a report that a party of Frenchmen, travelling north of the canyon, became engaged in a conflict, resulting in the death of two Frenchmen and two aboriginal people. An Irish man had also reportedly been attacked and robbed near the aboriginal encampment, north of the canyon.⁷⁹

According to the latest reports, a battle had taken place near this encampment. The aboriginals were defeated, driven away, and their camp destroyed. Ten aboriginals and two whites had been killed. At Fort Yale, men were gathered into two companies of 150 men each. These companies were travelling north to the scene of the conflict.⁸⁰

Shortly thereafter, another man, going by the name of Captain Snyder, wrote a letter to the *Victoria Gazette* with a slightly different account. According to Snyder, the recent increase in incidents of violent conflict between miners and aboriginal people led 300 miners to call a meeting at Fort Yale on August 16th. There had been reports that 150 miners at nearby Boston Bar had been attacked by an unknown number of aboriginal people and that a battle lasting roughly three hours had taken place. Seven aboriginal people had been killed and one white man had been wounded. The white mining population suspected a nearby group of Chinese miners was supporting the aboriginals.⁸¹

The next day another meeting of miners took place but this time it was much larger. According to Snyder, 2500 miners were assembled at Fort Yale and 300 to 500 men were

⁷⁹ “From Fraser River: Indian Difficulties,” *The Victoria Gazette*, 20 August 1858. An expressman was responsible for transporting gold or currency securely between locations. The name expressman came from the “express car” of a train which was traditionally used to store valuables.

⁸⁰ “From Fraser River: Indian Difficulties,” *The Victoria Gazette*, 20 August 1858.

⁸¹ “The Indian Difficulties: Letter From Captain Snyder,” *The Victoria Gazette*, 24 August 1858.

mobilized. They were preparing to leave the following day to engage the aboriginals in battle. Snyder, a leader of one of these companies, wrote with frustration because the local Hudson's Bay Company employee at Fort Yale, Mr. Allard, refused to lead a company of men. Allard also reportedly refused to provide muskets to the miners. Snyder charged the "English Government" with not having taken sufficient measures to protect the mining population from aboriginals, while asserting the miners' right to protect themselves.⁸²

Further downstream, the recent outbreak of violence between settlers and aboriginals prompted a meeting of the "miners and residents" of Fort Hope on August 21st. Those assembled at this meeting, presided over by Mr. S. W. Daggett., acting as Chair, and Mr. J. W. Mackenzie, acting as Secretary, expressed concern about the recent violence. Some expressed the view that the violence had been caused by the local aboriginals' hostility towards the settler population. Hostility which was caused by the Government's and the press's sympathetic attitude towards and protection of the aboriginal population. This situation was made worse by that population's possession of weapons. While the mining population had demonstrated self-restraint in the face of violent provocations, the aboriginals continued to push the limits. The recent outbreak of violence was the inevitable result.⁸³

Despite this justification, the miners and residents of Fort Hope were concerned that the situation was out of control. They called the Government's attention to horrible reports of the "indiscriminate slaughter" of aboriginal communities—men women, and children. They called on Governor Douglas to take action and restore peace to the territory.⁸⁴

⁸² Ibid.

⁸³ "Meeting of Miners and Residents at Fort Hope," *The Victoria Gazette*, 24 August 1858.

⁸⁴ Ibid.

This concern about the slaughter of aboriginal people and request for the Government to establish peace and order was quickly overshadowed by reports of the slaughter of white men. These reports came from a German and an American who escaped to Fort Yale, two survivors of a battle which had taken place above the Canyon. According to these two survivors, three companies of men, under Captains Graham, Snyder, and Yates, left Fort Yale on August 18th. After having travelled eighteen miles, Graham's company made camp. Snyder's and Yates' companies continued on. They arrived at an aboriginal encampment and made a peace treaty with the roughly two-hundred aboriginals they found there. They then left an explanatory letter for Graham with the aboriginal's Chief and continued on their march.

The following day, Graham's company arrived at the aboriginal encampment. Graham received the letter, explaining the peace agreement, and his company then made camp nearby. In the middle of the night, to its surprise, Graham's company was attacked. The German escaped from his tent and crawled over dead bodies to the safety of some nearby bushes. From this hiding place, he witnessed the butchering of thirty-eight white men. The American woke up to shouts. He then got up to find an aboriginal pointing a gun at his chest. There was a struggle, the gun went off, and the American was wounded in the chest and arm.⁸⁵

When the survivors reached Fort Yale the miners there became extremely agitated with the news and demanded that Mr. Allan, at the HBC Fort, provide them with a case of twenty muskets, which he did. Armed with the muskets, the men then positioned themselves above the fort, on the approaching trails, anticipating a wave of violent aboriginals.⁸⁶

⁸⁵ "Arrival of the Otter: Massacre of Forty-Five Miners by Indians: Meeting of Residents and Miners at Fort Hope," *The Victoria Gazette*, 25 August 1858.

⁸⁶ "Letter From Fort Yale," *The Victoria Gazette*, 1 September 1858.

The next morning twelve bodies were pulled from the water above Fort Yale, some of the bodies were identified as former residents of Yale and well known miners from the United States. An inventory of arms and ammunition was taken. Further downriver, these reports excited the residents of Fort Hope who held another meeting and tasked a committee with the defense of the community. Arms and ammunition from Hope were sent north to Yale. Another committee was created by the residents of Hope to travel to Fort Langley with a message from Mr. Walker, the HBC company agent, instructing the HBC agent at Langley to send arms and ammunition upriver. This committee then continued on to Victoria to report the news to the Governor.⁸⁷

Not long after all these measures were taken, it was learned that the reports of the slaughter were not true. A more accurate report of what had taken place above Fort Yale came from a man named Cook who brought the news to Victoria. According to Cook, only half of the “survivors” story was true. Graham’s, Snyder’s, and Yates’ companies had travelled north on August 18th and Graham’s company had stayed behind while Snyder’s and Yates’ companies marched north. As had been reported, Snyder’s and Yates’ companies made peace at the aboriginal encampment. When Graham’s company arrived the next day, and learned of the peace, they camped nearby.

But this is where two stories diverged. Instead of the aboriginals attacking Graham’s company in the middle of the night, Cook reported that a number of aboriginals returned in the middle of the night from a hunting expedition. These hunters knew nothing of the peace agreement so when they saw the white men’s camp near their own they opened fire, killing Captain Graham and his first lieutenant. The aboriginals who knew of the peace agreement intervened and stopped the attack but not before the two “survivors” ran away. Despite the “survivor’s” reports, Graham’s

⁸⁷ “Arrival of the Otter: Massacre of Forty-Five Miners by Indians: Meeting of Residents and Miners at Fort Hope,” *The Victoria Gazette*, 25 August 1858.

company, minus Graham and his first lieutenant, was very much intact and planned on continuing the march up river.⁸⁸

Later, a different account came from Snyder, after his company returned to Fort Yale. According to him, the violence between miners and aboriginals prompted the creation of a military company on August 16th. A vote was held and he was elected captain.⁸⁹ His company left the next morning and, after having traveled a few miles, Snyder stopped the men, took roll call, and proposed they make peace agreements with the aboriginal people they find. If this were not possible, they would impose peace by force. He made it clear that his leading the company was conditional on the men's acceptance of this strategy. A vote was held and the strategy was accepted so the company continued to march north.⁹⁰

Not finding any aboriginals, Captain Snyder and the leader of another company, Captain Centras, went with an interpreter down to the river, where they came across an aboriginal with whom they could communicate. The interpreter explained Snyder and Centras' intentions and, as a result, they were brought to a place where they found seventy aboriginals. At this place, a peace agreement was made. Snyder and Centras were then prompted by envoys from a local Chief to travel to a second camp of about sixty to seventy aboriginals where they made another peace agreement.⁹¹

The other companies, led by Captain Graham and Captain Galloway, met Captain Snyder and Captain Centras at this second camp where they discussed their strategy. Graham and Galloway wanted to pursue a policy of "extinction", killing all aboriginal men, women, and

⁸⁸ "Important News From Fraser River: The Story of the Massacre of the Forty-Three White Men Untrue," *The Victoria Gazette*, 26 August 1858.

⁸⁹ Captain Snyder to Governor Douglas, 28 August 1858, BCA, GR 1372, F1617.

⁹⁰ Ibid. See also "Account of Captain Snyder's Expedition," *The Victoria Gazette*, 1 September 1858.

⁹¹ Captain Snyder to Governor Douglas, 28 August 1858, BCA, GR 1372, F1617. Also see "Account of Captain Snyder's Expedition," *The Victoria Gazette*, 1 September 1858.

children, but Snyder could not support this. “My heart revolted at the idea of killing a helpless woman or an innocent child... [it] was to [sic] horrible to think of.” At an impasse, Graham and Galloway attempted to undermine Snyder by suggesting he propose his strategy before the entire crowd of 600 to 700 assembled miners. Snyder accepted the challenge, addressed the crowd, and made his case for the perusal of a policy of peace by peaceful methods, if possible, and, if not possible, to pursue peace by force. Following his address, a vote was taken which came out almost unanimously in favor of his plan. Snyder was given nine cheers by the crowd, and, the following morning, thirty-one men joined his company.⁹²

Snyder and his company then travelled upriver on August 18th. They again met with Graham’s company which had decided to exterminate the aboriginal population but, in pursuing this policy, had scared most of the aboriginals up into the surrounding hills. Snyder tried again to win Graham over but failed to do so. Instead, Graham agreed to set up camp with his company, in order to give Snyder an opportunity to meet with the aboriginals in the higher country and negotiate a peace. As a signal, they agreed that if Snyder was successful in making peace, he would send a white flag down to Graham.

The next day, Snyder’s company travelled to a place known as “China Bar” where he spoke with the Chinese miners working there, miners who had been suspected of supplying hostile aboriginals with ammunition. Snyder then convened with a group of forty aboriginals, who had been identified as the more troublesome group, as well as Chiefs from across the river and above the canyon. During these meetings, the aboriginals told Snyder they were upset because they had been treated poorly by white men and that their women had been insulted. They were upset but the

⁹² Captain Snyder to Governor Douglas, 28 August 1858, BCA, GR 1372, F1617. Also see “Account of Captain Snyder’s Expedition,” *The Victoria Gazette*, 1 September 1858.

large military company of miners persuaded them to make a peace agreement. With a peace agreement in place, Snyder sent a white flag down to Graham's company.

Snyder and Centras' companies then assembled, making about 160 men, and discussed the policy to be adopted towards the Chinese miners, who were still regarded with some suspicion. It was decided that this group of Chinese people was guilty of having supplied hostile aboriginals with ammunition to attack white miners. The two companies then resolved by popular vote that these Chinese miners must leave the gravel bar where they were working and travel downriver for a period of four weeks, until peace was reestablished. Their mining claims would be held for them. White men would not be allowed to take up work on this land or "jump" these claims.⁹³

Five men were sent to Graham's company with a white flag but Graham did not receive the news well. In frustration, he took the flag, threw it to the ground, and stomped on it. Later, in the middle of the night, shots were heard and it was discovered that Captain Graham and his first lieutenant had been killed. Upon hearing the shots, two men ran to Yale where they reported that a massacre had taken place. As an explanation for the shooting, Snyder suggested that some aboriginals had witnessed Graham's symbolic rejection of the peace and resolved to kill him.⁹⁴

After the death of Graham and his first lieutenant, Snyder's company met with different groups of aboriginals with whom he established peace agreements. By August 24th his company was extremely short on supplies and as a result was forced to march out of the country. Nearly starved, they arrived at Fort Yale on August 25th where Snyder debriefed and discharged the men. Five aboriginal Chiefs travelled with Snyder to Fort Yale in order to witness the scope of the white settlement on the river.⁹⁵

⁹³ Captain Snyder to Governor Douglas, 28 August 1858, BCA, GR 1372, F1617. Also see "Account of Captain Snyder's Expedition," *The Victoria Gazette*, 1 September 1858.

⁹⁴ Ibid.

⁹⁵ Ibid.

Later memoirs of the conflict were less detailed. Billy Ballou, a well-known transporter who had worked on the river during the Fraser River gold rush, remembered the killing of white and Chinese miners by aboriginals and that victims had been dismembered and thrown in the river. According to Ballou's retelling, the miners were so upset that they organized themselves into military companies and drove the aboriginal people north until they lost track of them.⁹⁶ William Yates, an interpreter, remembered that miners were unhappy about aboriginal attacks. A miners' meeting was held and a company was formed. It was decided that envoys would be sent to aboriginal chiefs with white flags, to signal that the miners were friendly. As an interpreter, Yates participated but, according to his memory, the party with whom he travelled didn't make a very concerted effort. They travelled a short distance from Yale to a place called Chapman's Bar before turning around. As the company made its way north, miners fell from the ranks to mine along the river.⁹⁷

In the midst of the Canyon War, when news of the "massacre" of miners made its way downriver, Douglas organized a military force of thirty-five men and travelled to the mainland in order to reestablish "peace and good order among the motley population of foreigners."⁹⁸ When he arrived at Fort Hope he learned that the "war" had already ended. Not wasting his trip, he addressed the miners at Fort Hope directly on the development of the country. In his speech he pledged the Government's support of the mining population. He explained that the country was not officially "open for settlement" but that it would be opened eventually. The matter was before the British Parliament and would soon be law. But to facilitate immediate settlement he took it on

⁹⁶ William T. Ballou, "Reminiscences," BCA, E/B/B21.2, 12-13.

⁹⁷ William Yates, "Reminiscences," BCA, E/E/Y2, 15. This is perhaps the same "Yates" referred to in the "survivors" and Cook's accounts.

⁹⁸ Douglas to Stanley, 27 August 1858, TNA, 10343, CO 60/1.

his own responsibility to have Commissioner Hicks lay out a town site at Yale and allowed for Hicks to allot grants of farmland, up to twenty acres. Hicks was also given the power to authorize the construction of sawmills, ferries, and to open roads.⁹⁹

Following the Canyon War, Governor Douglas only redoubled his support of the mining population. There was no official investigation and nobody in the mining community was held responsible for openly declaring war on people that were, at least nominally, British subjects. Marshall has suggested that Governor Douglas was purposely silent about this event in his official dispatches to the Colonial Office because third parties such as the Aborigines Protection Society had access to his communications and could have used the incident to discredit the British Government.¹⁰⁰ Furthermore, Governor Douglas could have chosen not to conduct an investigation because he had limited recourse against the well-armed and fairly well organized mining population. It would have been difficult to find any one individual responsible because responsibility for the war had been lodged in the wider community of miners.

Governor Douglas returned to Vancouver Island and Commissioner Hicks reported to him regularly. Hicks' early reports suggested that administration of the miners proceeded relatively smoothly during the early fall – the biggest sources of conflict was disputes over claims and some grumbling dissatisfaction about mining license fees.¹⁰¹ But by late October, Hicks became wrapped up in a dispute over a claim. According to his report, two parties were engaged in a dispute over the dividing line between a gravel bar and a bench claim. Attempting to adjudicate,

⁹⁹ “Address of His Excellency the Governor to the Inhabitants at Fort Yale, September 12th, 1858,” in *Early History of the Fraser River Mines*, ed. Frederick W. Howay, 1-3 (Victoria: The King's Printer, 1926).

¹⁰⁰ Marshall, “Claiming the Land,” 241-244. Marshall also suggests that the Canyon War led to the mining population embracing British administration, securing British sovereignty of the mainland.

¹⁰¹ “Letters from Fort Yale,” *The Daily Victoria Gazette*, 28 September 1858. Hicks to Douglas, 14 October 1858, BCA, GR 1372, F767.

Hicks consulted with Mr. Allard of the HBC and two “of the oldest Indians on the river” in order to determine the river’s high water mark.¹⁰² Based on their advice, Hicks defined the high water mark but one of the disputing parties was upset with the decision. That party insulted the aboriginal consultant and, according to Hicks, sought to undermine the Government’s authority and set up a system of government like that which had existed in California.¹⁰³

Upset with Hicks, the aggrieved party organized a miners’ meeting the next day in a local saloon. Mr. George Furness was elected Chairman and Mr. George Cade acted as Secretary. A formal statement was produced, copies of which were given to the *Victoria Gazette* and Governor Douglas. The prepared statement accused Hicks and the residents of Fort Yale of attempting to remove miners from their claims. The assembled miners resolved to not recognize Mr. Hicks’s authority and, instead, appealed to that of Governor Douglas. They resolved to abide by the laws that had created and which Governor Douglas had approved of during his most recent visit to the mainland.¹⁰⁴ In their view, Hicks was corrupt. Referring specifically to the recent claim dispute and his definition of the high water mark, they accused Hicks of being an interested party and of having personally benefitted from the decision. They requested that Governor Douglas remove Hicks from office and asserted their right to enforce the law and protect their rights by punishing offenders.¹⁰⁵

¹⁰² As previously discussed, the river’s high water mark was a traditional dividing line between gravel bar claims, along the river, and dry diggings or bench claims, on the “table land.”

¹⁰³ Hicks to Douglas, 26 October 1858, BCA, GR 1372, F767.

¹⁰⁴ Here they are most likely referring to how Governor Douglas’ sanctioned the claim sizes and method of measuring claims that the miners had established by miners’ meeting.

¹⁰⁵ “Miners’ Meeting at Hill’s Bar,” *The Victoria Gazette*, 6 November 1858. Shortly after the publication of the Hill’s Bar miners’ resolutions in the *Victoria Gazette* Douglas wrote to the Colonial Office in which he mentions that a miners’ meeting had taken place. Although, he doesn’t attribute it to the conduct of Hicks but to the “limiting of claims to the river bar.” Douglas to Lytton, 9 November 1858, TNA, 549, CO 60/1. As referred to in the resolutions of the miners, Douglas had sanctioned the claims sizes allowed by the Hill’s Bar mining laws. Commissioner Sanders later complained to Commissioner Brew that the miners’ “special code of rules” on Hill’s Bar was causing him problems. Sanders to Brew, 30 April 1859, in *The Early History of the Fraser River Mines*, ed. Howay, 117-119.

In response to this public accusation, Hicks wrote to Governor Douglas declaring that he was not using his office for his private benefit. According to Hicks, the “notorious” Ned McGowan was the source of the problem. He had been inciting the miners on Hill’s Bar to revolt and defy the Government. Hicks accused McGowan of being willing to act as a political leader against the British if only enough miners would stand behind him.¹⁰⁶

In another letter, Hicks expressed fear that “the Americans” were attempting to have him replaced with one of their own. McGowan was again identified as the problem and, along with the Hill’s Bar miners, was “determined to resist all authority.” Captain Snyder was also identified as an enemy. Hicks referred to him as a “hypocrite” who spoke ill of the Government while pretending to be an ally. To combat this growing threat, Hicks asked for a military force to maintain law and order. His men were “completely harassed day and night” by this gang of usurpers.¹⁰⁷

Having seen the *Victoria Gazette*’s November 6th coverage of the Hill’s Bar miners’ meeting, Hicks sent another letter to the Governor. He wrote that the miners’ meeting was a “fabrication from beginning to end.” It was all the work of Ned McGowan.¹⁰⁸ Later, defending himself against the accusation that he had defined the high water line in his own favor, he called on Officer Hickson as a witness to his good conduct.¹⁰⁹

In early November Douglas hired a man named Peter Brunton Whannell to act as Justice of the Peace for Fort Yale.¹¹⁰ Having learnt of this, Hicks wrote to Douglas expressing gratitude,

¹⁰⁶ Hicks to Douglas, 28 October 1858, BCA, GR 1372, F767.

¹⁰⁷ Hicks to Douglas, 1 November 1858, BCA, GR 1372, F767.

¹⁰⁸ Hicks to Douglas, 12 November 1858, BCA, GR 1372, F767. See also Howay, *The Early History of the Fraser River Mines*, 14, n. 42.

¹⁰⁹ Hicks to Douglas, 17 November 1858, BCA, GR 1372, F767. See also Howay, *The Early History of the Fraser River Mines*, 15, n. 45.

¹¹⁰ P. B. Whannell has his own interesting back story. Originally, he was a participant in the Australian gold rush. Working as a warehouse clerk, he started a family in Australia which he abandoned for a young woman with whom he began an affair. He and his new partner travelled to British Columbia where he passed himself off as an army Officer to Governor Douglas. Based on this false impression, Douglas nominated him as Justice of the Peace.

thanking him and commenting that “he will certainly relieve me of much labor.” Whannell arrived at Yale on November 17th.¹¹¹

At least some amongst the mining population were pleased at the appointment of Whannell.

A letter to the *Gazette* dated December 8th, expressed satisfaction at his arrival:

Capt. Whannell, the Justice of the Peace lately appointed for Fort Yale, has entered on the duties of his office, and the relief was great, amongst all hands, to find that he was possessed of a knowledge of his duties, and he has already shown a decidedly soldierly manner in the carrying out of his duty, which is quite a relief to us in Fort Yale, who have been long on the lookout for some one [sic] to make his appearance who *does* know what he is about. Much bad feeling has been created heretofore by the eccentric actions of an *hombre*, who, from not the most exalted position in California, was suddenly elevated to the post of Commissioner here.¹¹²

But while some were initially pleased with Whannell’s appointment, others were concerned about his behavior. Whannell wore a full cavalry uniform, including a sword, while holding court. It was said that he brandished this sword in the street on one occasion and swung it at passersby. A similar incident was said to have taken place at a party, sending guests running. Reports like this resulted in him being characterized as eccentric.¹¹³

In mid-November, shortly after Whannell’s appointment, an entourage including Governor Douglas and Judge Matthew Baillie Begbie travelled to Fort Langley, on the mainland, to formally proclaim the creation of the mainland colony. A small ceremony was held in a modest log cabin on November 19th. The Governor of Vancouver Island swore in Begbie as the Chief Justice of the new Colony of British Columbia and the new Chief Justice, in turn, swore in the Governor of

¹¹¹ Hicks to Douglas, 1 November 1858 and 17 November 1858, BCA, GR 1372, F767.

¹¹² “Letter from Fort Yale,” *The Victoria Gazette*, 23 December 1858. The “hombre” referred to is Hicks. Italics in original.

¹¹³ J. Gordon Smith, “Colonial Biographies,” BCA, MS 383, Box 1, File 14. See also Hauka, *McGowan War*, 118-126.

Vancouver Island as the Governor of the Colony of British Columbia.¹¹⁴ This brief ceremony completed the legal creation of the Colony of British Columbia.¹¹⁵

By late November Governor Douglas brought the allegations against Hicks to his attention. Hicks had been accused of drinking and being drunk in a public gambling house, inappropriate behavior for a public officer. Furthermore, there were accusation that Hicks was involved in bribery and corruption. Hicks vehemently denied the allegations and, in his defense, accused specific groups of miners of conspiring against him in order to “declare this an Independent Colony.”¹¹⁶

Despite Hicks’ character having been thrown into question, the residents of Fort Yale signed a petition which was presented to Hicks for delivery to Governor Douglas. The residents complained about the miners’ license fee. In their view, if the licensing system were strictly enforced, it would drive people from the country.¹¹⁷

During the winter, a man was shot dead in Fort Yale and Justice Whannell mishandled the incident. An assault that followed shortly thereafter was mishandled by both Justice Whannell and Justice Perrier. Rather than cooperating with each other the two Justices competed against each other for jurisdiction over the handling of the assault. Elements within the mining community played into this factionalism. This incident has since come to be known as McGowan’s War.

¹¹⁴ Matthew Baillie Begbie had been sent to British Columbia specifically for the purpose of acting as Chief Justice. Previous to this appointment, he had worked as a Chancery Court Barrister in London. Williams, *The Man for a New*, 16-27.

¹¹⁵ In late August, the British Parliament had passed a law creating the mainland Colony. Great Britain, *An act to provide for the government of British Columbia: 2 August 1858* (London: Printed by G.E. Eyre and W. Spottiswoode, 1858).

¹¹⁶ Hicks to Douglas, 24 November 1858, BCA, GR 1372, F767.

¹¹⁷ “Petition from the miners of Fort Yale to Mr. Hicks to be presented to Gov. Douglas dated Fort Yale December 3rd 1858,” BCA, GR 1372, F1342, Petitions.

McGowan's War has become an essential episode in British Columbia's colonial narrative. Originally for Howay, Ned McGowan was to blame. He was a criminal and subversive force that was suppressed by duly constituted authority in the form of Colonel Moody, Judge Begbie, and the Royal Engineers.¹¹⁸ But Howay later found Justice Perrier and Justice Whannell, as well as Ned McGowan, as having contributed to the "opera-bouffe" war.¹¹⁹ Similarly, Miller wrote an account of the conflict in which the American miners were testing the limits of the British authorities who then imposed British law by military force.¹²⁰ For Williams, the conflict was caused by "foolish" Justices of the Peace and factionalism within the mining community.¹²¹ In Akrigg and Akrigg's account, McGowan had been attempting to intimidate and gain power over the local Justices of the Peace which prompted the military intervention. They opened the possibility that the intervention could have led to a violent conflict.¹²² Similarly, Hauka portrayed this event as a tipping point which could have led to the annexation of British Columbia by the United States.¹²³ Loo read McGowan's War as an allegory for the type of order settlers wanted to create in British Columbia: a strong interventionist state that used the law to overcome the country's challenging geography and the localism it engendered.¹²⁴

In addition to these interpretations, McGowan's War provides a clear example of the mining community using miners' meetings to influence and petition the Government. As Nicholson has observed: while miners' meetings took on the function of Government in California, in the British colonies they were used to influence the Government.¹²⁵ When Judge Begbie and

¹¹⁸ Howay, *British Columbia*, 61-65.

¹¹⁹ Howay, *The Early History of the Fraser River Mines*, vii-xvii.

¹²⁰ E. F. Miller, *McGowan's War* (Don Mills, Ont.: Burns & MacEachern, 1968).

¹²¹ Williams, *The Man for a New Country*, 91-96.

¹²² Akrigg and Akrigg, *British Columbia Chronicle*, 145-153.

¹²³ Hauka relies heavily on McGowan's own narrative account in his retelling. Hauka, *McGowan's War*, 134-145.

¹²⁴ Loo, *Making Law, Order, and Authority*, 54-57.

¹²⁵ Nicholson, "Procedures and Perceptions of Authority," 396-397.

Colonel Moody arrived at Fort Yale with a force of Royal Engineers, the message was clear: they had come to secure British authority over the settlement. But, not to be intimidated, elements within the mining community responded by organizing their own “force” and inviting Judge Begbie and Colonel Moody to a miners’ meeting at which they were presented with the miners’ version of events and at which Justice Whannell was harangued for his misconduct. Following Moody’s investigation, Begbie’s report to Governor Douglas included recommendations that diverged little from the perspective of the miners’ committee.

During a Christmas celebration on December 24th, in a Fort Yale saloon, there was a dispute that led to Billy Foster shooting and killing Bernard Rice. Foster then fled the town. Unable to capture Foster, Justice Whannell arrested and imprisoned the saloon owner, John Anderson, and his employee, Allmeyer. Whannell then set bail for them at \$10,000 and \$1,500, respectively. Anderson put up his saloon as a bond but Allmeyer had nothing to post bail so he remained in the prison. Whannell then hired special constables and closed Yale’s drinking establishments. He posted a \$100 reward for Foster.

Shortly thereafter, tensions were heightened when two men named Farrell and Burns from Hill’s Bar attacked Yale’s town barber, Isaac Dixon, an African American man.¹²⁶ Dixon filed a complaint with Whannell who took the unorthodox decision to hold him in the Yale prison for his own protection. He then sent two constables to Hill’s Bar to arrest Farrell and Burns. Arriving at Hill’s Bar, the two constables presented their warrants to Justice Perrier who decided to enforce the warrants himself. Perrier gave the warrants for Farrell and Burns’ arrest to his own constable, Henry Hickson.

¹²⁶ Hauka, *McGowan’s War*, 136-139, writes that this assault took place at a Christmas dance but in “The Hill’s Bar Difficulties,” *The Victoria Gazette*, 15 January 1859, Hickson cites the assault as having taken place in Dixon’s barber shop.

Constable Hickson managed to apprehend Farrell and Burns who were then brought before Justice Perrier. In consultation with Ned McGowan, Perrier let them out on bail. Wanting to investigate the matter further, Perrier sent Hickson to Yale to get Dixon's testimony. By this time, Dixon had been let out of the Yale prison and when Hickson arrived, by chance, he happened upon Dixon in the street. He asked Dixon to return with him to Hill's Bar to testify before Justice Perrier but before doing so Dixon wanted to verify the course of action with Justice Whannell. So Constable Hickson and Isaac Dixon went to speak with Justice Whannell, finding him in the Yale Court House. When the plan was explained to Whannell, he refused to allow Dixon to leave and instead demanded that the two accused men, Farrell and Burns, be sent to Yale. He ordered Hickson to go and collect Farrell and Burns but Hickson was not Whannell's constable so he refused. Frustrated, Whannell charged Hickson with contempt of court and imprisoned him as well as Dixon in the Yale prison along with Allmeyer who was still there for having witnessed the shooting of Rice.

Informed of the arrest of his constable, Justice Perrier swore in Ned McGowan and ten others as special constables and commissioned them with arresting Justice Whannell for contempt of court. McGowan and his group went to Yale, entered the courthouse, and arrested Justice Whannell. They freed Constable Hickson, Isaac Dixon, and Allmeyer from the Yale prison. They then brought Justice Whannell before Justice Perrier at Hill's Bar where he was charged with "contempt of court" and sentenced to a fine of \$50 plus costs. His pride wounded, Whannell returned to Yale where he wrote to Captain Grant of the Royal Engineers, at Fort Langley, requesting military aid. He also wrote to Governor Douglas, at Victoria, painting a dramatic

picture: “[t]his town and district are in a state bordering on anarchy; my own and the lives of the citizens, are in immanent peril. – I beg your Excellency will afford us prompt aid.”¹²⁷

Having received this alarming letter, Governor Douglas immediately organized the military forces at his disposal. A force of sailors and marines was mustered from the *Satellite* and was sent to Fort Langley. At the same time, Colonel Moody, Judge Begbie, and a detachment of twenty-two Royal Engineers left Fort Langley on the *Enterprise* for Fort Hope.

After arriving at Fort Hope, Colonel Moody chose to go up to Fort Yale with Judge Begbie unaccompanied by the Royal Engineers, reasoning they would be less likely to provoke resistance, if they arrived without an armed force. They made their way up the river stopping to discuss mining prospects with miners they met along the way which allowed for word to spread back to Yale that the two officials were approaching without a military force.

This tactic worked. There was no resistance when Colonel Moody and Judge Begbie arrived at Fort Yale. On Sunday January 16th, Moody conducted the religious service in the Courthouse after which he informed Justice Perrier that he had been removed from his position. Instructions were then clandestinely sent to the Royal Engineers to establish camp at Fort Yale by the following morning. At the same time, the sailors and marines at Fort Langley were instructed to move to Fort Hope. During the cover of night, the Royal Engineers arrived at Fort Yale and set up camp. Moody then began his investigation. The next day, he and Begbie were invited to a miners’ meeting.¹²⁸

¹²⁷ Whannell to Douglas, 31 December 1858, BCA, GR 1372, F1854.

¹²⁸ This account of the “McGowan War” is primarily based on that of Hauka, *McGowan’s War*, 134-145 and Akrigg and Akrigg, *British Columbia Chronicle, 1847-1871*, 146-153, as well as on newspaper accounts. A detailed account is also found in Begbie to Douglas, 3 February 1859, BCA, GR 1372, F142a. For the assault on Isaac Dixon and subsequent events see “The Hill’s Bar Difficulties,” *The Victoria Gazette*, 15 January 1859. For Whannell’s desperate letter to Douglas see Whannell to Douglas, 31 December 1858, BCA, GR 1372, F1854.

In a crowded hall in Yale, the miners formed a committee and produced a prepared statement which they presented to Colonel Moody and Judge Begbie. They expressed their loyalty to Governor Douglas' Government and their belief that he was acting with honest and good intentions. They expressed their desire to follow the law and aid in the execution of the law. And they expressed their regret on having heard false reports that their community had taken up arms against the Government. The miners clearly condemned Justice Whannell describing him as completely unfit for his position and requesting that he be removed from his office. They expressed their strong support for Commissioner Hicks.¹²⁹

In Begbie's account of the meeting, the majority of those in attendance were from Hill's Bar. He favorably noted the expressions of loyalty towards the Government and the Committee's expressed desire to aid in the administration of the law. He interpreted the meeting as an attack against Whannell and was surprised by the miners' support for Hicks. He speculated that, if there had been armed resistance, he estimated that two hundred loyal men could potentially have been raised from the mining population on the lower parts of the river.¹³⁰

In the month that followed, Moody finished his investigation. Begbie provided a report to Governor Douglas. Like the miners' committee, he recommended that Justice Whannell be dismissed. Unlike the committee, he recommended that Commissioner Hicks also be dismissed and suggested that criminal proceedings should be brought against him. After reviewing what took place, Ned McGowan's arrest of Justice Whannell was, in a strict sense, considered a legal action because it had been done while McGowan was sworn in as Justice Perrier's special constable. In

¹²⁹ "Report of a Meeting Respecting J.P. Whannell, Meeting at Yale, 18 Jan. 1859," BCA, GR 1372, F1343.

¹³⁰ Begbie to Douglas, Fort Yale, 18 January 1859, BCA, GR 1372, File 142a.

Begbie's view, the whole affair demonstrated the need to develop the Colony's law on the subjects of jurisdictions, the powers of officials, and the criminal law.¹³¹

Hicks was dismissed and there was an official inquiry into his conduct by the recently nominated Police Commissioner Chartres Brew.¹³² Brew became aware of allegations that Hicks had used his public office to obtain a half-interest in a saw-mill operation. Hicks had then allegedly refused to grant licenses that would allow others from developing saw-mills. Similarly, Hicks was also alleged to have used his office to obtain a partial interest in a business that was granted the only liquor license in town. He then allegedly refused to grant liquor licenses to others, creating a monopoly. In addition, it was also reported that Hicks had failed to take action when alerted that an officer had attempted to extort \$500 from an imprisoned man facing a murder charge. Finally, there were reports of Hicks being drunk and disorderly in public.¹³³

When miners came to British Columbia from California they brought their mining expertise and their legal customs with them. Miners used miners' meetings along the lower Fraser River much as they had done in California. They created their own mining regulations and attempted to police the actions of their fellow miners. The Colonial Government, in turn, was influenced by the law created by miners' meetings and the common practices of miners. In reflection of this, Governor Douglas changed the claim sizes outlined by his formal regulations after having visited the mines

¹³¹ Begbie to Douglas, 3 February 1859, BCA, GR 1372, F142a.

¹³² Hicks was removed from his post as of 20 February 1859. Brew to Moody, 20 February 1859, BCA, GR 1372, F186.

¹³³ Letters detailing specific charges about Hicks' professional and private behavior can be found in Howay, *The Early History of the Fraser River Mines*, 73-76. No charges were made against Hicks. He was dismissed from his position. The former Mrs. Hicks later reported to Bishop George Hills that Richard Hicks had made \$5000 by misappropriating public money while in office. "A Roadside Hut," entry for 25 June 1860 in *No Better Land: The 1860 Diaries of the Anglican Colonial Bishop George Hills*, ed. Roberta L. Bagshaw, 158 (Victoria: Sono Nis Press, 1996).

and after having seen the miners' practices. By signaling that he was willing to recognize and work with the mining community, Governor Douglas decreased the chances of outright resistance.

During the Canyon War, when violent conflict broke out between miners and aboriginal people, miners used miners' meetings as an organizing method. As has been identified by Herbert, white miners used their political practices as a way of asserting dominance over aboriginal and Chinese people.¹³⁴ During this event, self-organizing groups of miners assumed powers normally reserved for sovereign states: the power to make peace and war. Companies were formed and military excursions were made against aboriginal people who were, at least nominally, British subjects. Miners knew their actions were potentially illegal and being reported on. They knew the colonial Government would likely not approve of their actions and so they preemptively constructed arguments to defend themselves. It is therefore likely that miners' meetings were used by companies of miners, purposely, as a way of dispersing the responsibility for legally questionable behavior amongst the community at large. In this way, miners attempted to protect themselves against any potential liability.¹³⁵

Following the Canyon War, Governor Douglas attempted to establish Government administration over the mining community. He nominated officials from the mining population but their conduct quickly fell under scrutiny. Some miners took a dislike to Commissioner Hicks and used miners' meetings to protest his administration. They consistently accused Hicks of corruption and incompetence and lobbied the Government to have him removed from office. When McGowan's War unfolded as the result of a conflict between inexperienced officials—a conflict that was exacerbated by the mining community—the military intervened. In reaction, a miners' meeting was staged to lobby against Justice Whannell, blame him for the incident, and have him

¹³⁴ Herbert, "White Power, Yellow Gold," 35.

¹³⁵ This function of miners' meetings has been identified by Stone, "Mounties as Vigilantes," 94-95.

removed from office. Miners' meetings were a flexible political practice that adapted to circumstances in British Columbia. Rather than taking on the responsibility of government, miners used the practice to influence the Colonial Government.¹³⁶

During the Fraser River gold rush, the mining population consistently turned to its own practices of self-regulation, self-government, and self-protection all while making considerable efforts to influence the Colonial Governor. The mining community remained consistently politically active throughout this time period. In recognition of the influence wielded by this community, one of the first major pieces of legislation produced by the Government, *The Gold Fields Act, 1859*, was as much about gold mining as it was about political power and jurisdiction. This document drew a line, recognizing and allowing for the mining community's influence over the gold mining law while limiting its influence over civil and criminal matters. The act allowed for the mining community to shape the mining law through an elected committee, the Mining Board. The creation of this institution opened the door for direct dialogue between the mining community and the Government on the subject of the mining laws.

¹³⁶ Jan Nicholson has noted that in California miners' meetings took on the responsibility of governing whereas in the British Colonies miners' meetings were more often used to influence the Government. Nicholson, "Procedures and Perceptions of Authority," 396-397.

Chapter 2

From Miners' Meetings to Mining Boards

The gold rush to the lower Fraser had been a disappointment. Many miners left the country immediately afterwards. But others who remained followed the Fraser River north, reasoning that the source of the fine gold must be upstream. By June of 1859 news of gold discoveries was reported in the southern newspapers. Gold in paying quantities had reportedly been found on the Quesnel River, above the junction with the Fraser near the Hudson's Bay Company's Fort Alexandria. Another river, about 100 miles above the junction between the Fraser River and the Quesnel River was also reportedly very rich in gold.¹³⁷ While exciting news, the *Weekly Victoria Gazette* cautioned readers to wait for more reliable information before making the trip to the upper country.¹³⁸

There was very little reliable information about "the upper country", around Fort Alexandria, where no government authorities had yet been stationed. One of the first official reports came from Gold Commissioner Elwyn, stationed over a hundred miles to the south in Cayoosh District, who had heard from travelers passing south that white miners up country were obstructing Chinese from working on the Quesnel River.¹³⁹

News remained scarce until September when a man named Underhill provided a more detailed account to the *Victoria Gazette*. He had been in the upper country during the late-spring and estimated there were about 2500 men working in the area. The river was only workable during the months of April and May, after which the water became too high. In his view, the area's

¹³⁷ "The Discoveries above Fort Alexander," *The Victoria Gazette*, 16 July 1859. The newspapers mistakenly refer to the HBC Fort Alexandria as Fort Alexander.

¹³⁸ "The Fort Alexander Diggings," *The Weekly Victoria Gazette*, 27 August 1859.

¹³⁹ Elwyn to Colonial Secretary, 23 July 1859, BCA, GR 1372, F524.

prospects were exceptionally good. Many miners were making two ounces of gold per day. All of the diggings discovered up to that point were “wet diggings” or placer deposits in gravel beds. No dry diggings had been found which sustained the belief that the source of downstream deposits had not yet been discovered.¹⁴⁰

Upon his own initiative, Elwyn made the journey from Cayoosh District to the upper country in the late-season and reported his findings to the Colonial Secretary. He left Cayoosh with Captain Franklyn on Aug. 31st, arriving at Fort Alexandria on Sept. 7th. From reports given by the miners he met along the Quesnel River, he believed that river to be very rich in gold. While miners were doing well, he felt that many would soon be travelling south to work on the lower Fraser during the winter. He spoke with some who had travelled further north, within twenty-five miles of Fort George, and who had found gold in paying quantities between that place and Fort Alexandria. He further reported that provisions were scarce up country and that lack of provisions would drive some south.¹⁴¹

During the fall of 1859, the press continued to report on the upper country. Returning miners reported that men working in the upper country live in “tents and brush houses.” There was little demand for quicksilver, meaning that the gold up north was coarse which seemed to suggest that Fort Alexander might be near the source of the downstream placer deposits. The number of miners in the region was difficult to estimate but a quarter million pounds of provisions had recently been packed to the upper country which spoke to the gathering of a sizable population.¹⁴²

¹⁴⁰ “The Quesnel River Diggings,” *The Victoria Gazette*, 6 September 1859.

¹⁴¹ Elwyn to Colonial Secretary, 20 September 1859, BCA, GR 1372, F524. At the bottom of Elwyn’s report is a draft reply stating that the report had been sent to the Governor but reminding him that, while the report is interesting, officers must not abandon their posts to go on expeditions without permission, except under exceptional circumstances.

¹⁴² “Letter from Yale,” *The Victoria Gazette*, 15 October 1859.

A little settlement was born on Keithley Creek. *The British Colonist* reported that “[g]ambling halls are in full blast at the Forks of Quesnelle, and on Keithley’s and Harvey’s Creeks.”¹⁴³ Miners were settling in for the winter but there was little in the way of government representation. In the upper country, they governed themselves.

In Colonial British Columbia, the Government and its representatives had limited to no practical influence over the application of the law on the prospecting frontier – where miners explored for new discoveries. Gold Commissioners tended to be nominated to districts *after* gold rushes took place and *after* the basic elements of social organization had already been established. Prior to the arrival of Gold Commissioners, Constables, and other officials, miners governed themselves on the prospecting frontier according to customary practices of social organization, the basis of which was the miners’ meeting.

When gold rushes took place, such as they did in Rock Creek, Cariboo, and Wild Horse Creek, population concentrated in small areas and rudimentary laws were relied on according to customary practices. But even after a gold rush had taken place and small settlements had developed it still took the Government more than a season in some cases, as in the case of the Cariboo, to react and station an official to the new mining district. Even after an official had been stationed, customary practices continued to prevail, sometimes flying in the face of the formal law. In other words, despite the formalization and elaboration of the gold mining law, there were still specific examples of customary law being used on the frontier, i.e. despite the existence of an official formal law on gold mining, it wasn’t necessarily applied.

¹⁴³ Ormsby, *British Columbia*, 182 and “Arrival of the Otter: Encouraging Mining News,” *The British Colonist*, 26 October 1860.

The Government proved intent on establishing a universal system of formal gold mining law. In the summer of 1859 *The Gold Fields Act* was passed into law. It was quickly followed by new Rules and Regulations for gold mining. But despite this new and more comprehensive law, miners still felt it wanting. It was not adapted to new types of gold diggings like the tunnel diggings found in the Cariboo. So as they had done during the Fraser River gold rush of 1858 miners used miners' meetings and passed resolutions to get the attention of the Government in order to adapt the laws. And, the Government proved receptive to the mining population's suggestions, when it came to revising the law. Miners' meetings held to petition the Government to change the mining law led to the establishment of the first Mining Boards.

Historians of British Columbia have paid little if any attention at all to the role of Mining Boards in colonial society. Oddly, while this is the case, the existence of Mining Boards, allowed for by *The Gold Fields Act, 1859*, has long been pointed to as the explanation for the absence of miners' meetings and customary mining law in Colonial British Columbia.¹⁴⁴ But a close review of the history of miners' meetings and Mining Boards in the time period following the Fraser River gold rush throws this explanation into question. In fact, miners' meetings and customary mining practices continued to persist in Colonial British Columbia long after the passing of *The Gold Fields Act, 1859* which allowed for the creation of Mining Boards. Miners' meetings persisted most frequently on the prospecting frontier but they also continued to be used as a political practice in more developed regions, i.e. regions with Gold Commissioners and formal government representatives; adapting to changing political conditions, in these new circumstances, miners' meetings were used as a political strategy to influence the decisions of Government.

¹⁴⁴ For a discussion of the historiography on the subject of miners' meetings and Mining Boards see the Introduction.

Mining Boards were later established but were created for very specific purposes that did not necessarily overlap with the functions previously performed by miners' meetings. The changes suggested by the 1863 Mining Board were with a view to the technical and capital exploitation the Cariboo diggings. The Board sought to remove barriers to capital and create legal systems through which it could be invested. It sought to allow for legal partnerships that would facilitate more capital intensive and technical mining operations. The 1864 Mining Board was concerned with the rationalization of the existing gold fields law. The work of these two Mining Boards' coincided with the Government's agenda and they entered into a dialogue with the goal of advancing the material and economic development of the colony.

During the summer of 1859, a Reform League was created in New Westminster, the new capital of the colony. This league was principally concerned with the development of a liberal land policy and made recommendations to the Government to that end but it also touched on other matters. The league reported that many miners were dissatisfied with the current system of taxation, i.e. the mining license fee, and suggested that miners be consulted on the creation of a better system. In addition, in the league's opinion all the mining laws relating to "Claims" and "Ditches" should be revised completely. The committee encouraged the people of "Hope, Yale, Douglas, and other Mining Towns" to express their views on these matters by passing resolutions at public meetings.¹⁴⁵

The existing formal mining laws were far from comprehensive. They had been comprised of a Proclamation and Regulations issued by Governor Douglas prior to the legal establishment of

¹⁴⁵ "Petition, Liberal Land System" 20 July 1859, BCA, GR 1372, F1343, Petitions. See also "Important Meeting at the Capital of British Columbia," *The British Colonist*, 15 July 1859, "Reform League," *The British Colonist*, 27 July 1859, and "Report of the Committee," *The British Colonist*, 27 July 1859.

the colony but, at the time of their creation, Douglas had no jurisdiction to create those laws. In February 1859 the first properly “legal” mining law was passed, establishing the miners’ license fee, but no formal mining law existed beyond this.¹⁴⁶ In order to clear the slate, the *Licenses Act, 1859* repealed all existing mining laws, and a comprehensive revision of the mining laws was prepared based on the New Zealand mining laws, with some modifications.¹⁴⁷ *The Gold Field’s Act, 1859*, issued under the public seal by Governor Douglas on August 31st, was an act concerned with jurisdiction – defining the powers, rights, and responsibilities of the Government, Free Miners, Registered Miners, Gold Commissioners, and Mining Boards.

According to the act, to become a Free Miner, a person had to purchase a Free Miner’s certificate from a Gold Commissioner, Assistant Gold Commissioner, or Justice of the Peace. The certificate was good for one calendar year.¹⁴⁸ To become a Registered Free Miner, a Free Miner had to take possession of a claim and register that claim with the Gold Commissioner by making a payment of four shillings and providing details including the claim name and number. Claim registration was good for one year.¹⁴⁹ The Free Miner was required to produce his certificate upon request.¹⁵⁰

By purchasing the certificate, the Free Miner had the right to enter the “waste land” of the Crown and mine. He had the right to register claims and thereby become a Registered Free Miner

¹⁴⁶ *Duties payable by Miners, Traders, &c.*, 8 February 1859, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]* was the first legal proclamation related to mining issued by the Government. As discussed in Chapter One, prior to this, Proclamations and Regulations had been declared but without any legal basis.

¹⁴⁷ For the act that repealed all previous mining law see the *Licenses Act, 1859*, 31 August 1859, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*. For Begbie’s comment that *The Gold Fields Act, 1859* was based on the New Zealand law see Begbie to Douglas, 30 April 1860, BCA, GR 1372, F142c.

¹⁴⁸ *The Gold Field’s Act, 1859*, Clauses III and IV, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*.

¹⁴⁹ *Ibid.*, Clause VI.

¹⁵⁰ *Ibid.*, Clause IV.

who had the exclusive right to the soil and gold within the limits of his claim.¹⁵¹ He had the right to appeal certain criminal and civil decisions, made by the Gold Commissioner, to the Assize or Appeal court.¹⁵²

According to the act, Gold Commissioners were appointed by the Governor.¹⁵³ Gold Commissioners were responsible for producing miner's certificates,¹⁵⁴ collecting fees, and keeping records of claims.¹⁵⁵ They were also required to produce and make publically available lists of all Free Miners and Registered Free Miners on an annual basis.¹⁵⁶ They were responsible for settling suits related to Gold Mining but also could preside over regular civil and criminal disputes in their jurisdiction. They reported to the Supreme Court Judge as well as the Colonial Secretary and oversaw the local Mining Board.

Gold Commissioners had jurisdiction over all disputes irrespective of value, except in cases of partnerships with value of greater than £200. They could dissolve partnerships with a total value less than £200.¹⁵⁷ In cases under their jurisdiction, they were the sole judge of law and fact.¹⁵⁸ They could bind over witnesses to attend hearings or give evidence.¹⁵⁹ They could compel attendance of individuals at hearings or production of related documents.¹⁶⁰ They had summary powers of decision and could collect costs of court.¹⁶¹

¹⁵¹ Ibid., Clauses V, VI, and VII.

¹⁵² Ibid., Clauses XVIII, XIX, and XX.

¹⁵³ Ibid., Clause II.

¹⁵⁴ Ibid., Clause III.

¹⁵⁵ Ibid., Clause VI.

¹⁵⁶ Ibid., Clause IX.

¹⁵⁷ Ibid., Clause XXV.

¹⁵⁸ Ibid., Clause XXII.

¹⁵⁹ Ibid., Clause XVII.

¹⁶⁰ Ibid., Clause XXIII.

¹⁶¹ Ibid., Clause XXVI.

In addition to the powers extended to them in their capacity as Gold Commissioners, these officials had the same powers as Justices of the Peace.¹⁶² They had jurisdiction over criminal and civil disputes with value less than £20.¹⁶³ And, if directed by a higher court, they could pass judgment in cases less than £50.¹⁶⁴

To create a Mining Board, one hundred and one Registered Free Miners in one district had to submit a petition to the Gold Commissioner.¹⁶⁵ Any Board was made up of six to twelve members, decided by election. In a district with one hundred and fifty voters there would be six Board members and for each additional fifty voters one Board member would be added to a maximum of twelve. Voters had to be Registered Free Miners and votes had to be given in person by word of mouth. The Gold Commissioner decided the day of the election and collected the votes.¹⁶⁶

Once the Board was elected, the Gold Commissioner had broad oversight over its proceedings. A minimum of three members were required for any decisions which could be passed by bare majority, if the Gold Commissioner agreed with the motion, or by two thirds of the members, if the Gold Commissioner disagreed.¹⁶⁷ All votes were to be made in person and by word of mouth. The Gold Commissioner oversaw all business of the Mining Board from the frequency of meetings to the holding of elections, the location of meetings, and the disqualification of members.¹⁶⁸

¹⁶² Ibid., Clause XV.

¹⁶³ Ibid., Clause XVIII, XIX, XX.

¹⁶⁴ Ibid., Clause XXI.

¹⁶⁵ Ibid., Clause XXIX.

¹⁶⁶ Ibid., Clause XXX.

¹⁶⁷ Ibid., Clause XXXI. Ibid., Clause XXXV.

¹⁶⁸ Ibid., Clause XXXVI.

Mining Boards had the power to make, repeal, or adjust regulations, rules, and bylaws related to mining but any changes had to be approved by the Governor before having any force.¹⁶⁹ The Governor reserved the right to dissolve the Board. Once dissolved, all bylaws, regulations, etc. passed by the Mining Board remained in place unless specifically altered or repealed by the Governor. Once dissolved, all powers to make and repeal bylaws reverted to the Governor.¹⁷⁰

The Gold Fields Act, 1859 was quickly followed by the *Rules and Regulations under Gold Fields Act, 1859* which defined the practical aspects of the mining law. The Regulations began with the different types and sizes of claims. The “back line” of bar claims was defined by the high water mark – the height of the river when flooded. They measured twenty-five feet across. Their edges extended perpendicular from the back line down and into the center of the river. Dry diggings were defined as land over which flood water never extends. They were measured in rectangular sections of twenty-five by thirty feet. Ravines were defined as “water courses” that are usually wet or dry. They were measured twenty-five feet along the bank of the ravine and extended to the opposite bank. Quartz claims were measured one hundred feet along the vein or seam of ore. The miner could follow the seam on or below the surface but could not extend one hundred feet from the vein in a lateral direction. Privileges were allowed for discoverers of new mines.¹⁷¹ A claim was considered abandoned, if not worked for seventy-two hours. Before taking possession, any interested parties had to make application to the Gold Commissioner.¹⁷²

Regulations were also laid out for exclusive ditch and water privileges – for example, if a company or joint interest wanted to redirect water and then charge miners a fee for its use. Any

¹⁶⁹ Ibid., Clause XII. Ibid., Clause XXXIV.

¹⁷⁰ Ibid., Clause XXXVII.

¹⁷¹ *Rules and Regulations under Gold Fields Act, 1859*, September 7, 1859, Clauses I, II, III, and IV, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*.

¹⁷² Ibid., Clauses XII.

application for exclusive water rights had to be made to the Gold Commissioner in writing describing the works planned for construction and the nature of the operation. The location of the ditch, including the ditch head, had to be declared.¹⁷³ The amount of water to be redirected, where it would be distributed, as well as the intended charge for its use had to be defined. Those granted the privilege had to pay a monthly fee and construct the proposed works in a specified time period. They could not waste water and were required to supply water to all applicants fairly.¹⁷⁴ Any one intending to construct a ditch or watercourse through another person's claim was required to notify the claim holder in writing prior to beginning work. If no agreement could be reached, the matter had to be brought before the Gold Commissioner.¹⁷⁵

The remainder of the act was concerned with regulations for leases. Applications had to be made to the Gold Commissioner including a map of the land to be leased. Typically, leases were to be granted for no longer than ten years. Leases of dry diggings could be no larger than ten acres. Leases of unworked quartz veins could be up to half a mile long and worked quartz veins could be up to a mile and a half long. Generally, leases were not to be granted for land that was available to be worked by individual free miners and leases could not be granted for land that was already registered to free miners, without their consent. To apply for a lease, the applicant had to pay twenty-five pounds and mark the edges of the lease with posts extending four feet above the ground.¹⁷⁶

While much more comprehensive than any previous mining laws in British Columbia, these new mining laws did not satisfy all miners. Shortly after their passage, Gold Commissioner Elwyn, stationed in the Cayoosh Mining District, reported to the Acting Colonial Secretary that

¹⁷³ The ditch head is the location where water first enters or is taken into the ditch.

¹⁷⁴ *Ibid.*, Clauses VII to XI.

¹⁷⁵ *Ibid.*, Clause XIII and XIV.

¹⁷⁶ *Ibid.*, Clauses XX to XXVI.

local miners were not satisfied with the claim sizes allowed by the new mining laws. They complained that in the Cayoosh District claims measuring twenty-five feet square were not remunerative because the diggings were too shallow, i.e. the bedrock was close to the surface of the ground which meant that there was not much workable soil within a twenty-five square foot claim. They argued that there was so little soil within one claim that it was not worth building a cabin to live in or sawing wood for sluice boxes to clean the dirt.

Elwyn reported that this situation was causing some to disregard the law: “I fear that the size of claims will tend to render the law in-operative; many even prefer to work fifty feet on the chance of not being disturbed, to taking out a certificate and being reduced to twenty-five. Every person, without exception, to whom I have shown the “Rules and Regulations for the working of Gold Mines” has grumbled at the size of claims on Bar and Dry diggings.”¹⁷⁷

Months later, the newly created *Rules and Regulations under Gold Fields Act* responded directly to this problem. The regulations stated that in cases where “the pay dirt is thin”, claims are in small demand, or when the Commissioner determines it reasonable, miners may register two claims. The Gold Commissioner was also given authority to use his discretion when determining claim sizes.¹⁷⁸

During the fall of 1859 gold was discovered on the prospecting frontier in south eastern British Columbia just north of the border with the United States and the settlement of Colville Depot, Washington. A gold rush took place and, in the absence of any formal authority, miners created their own laws by passing resolutions at public meetings. Similar to the upper country,

¹⁷⁷ Elwyn to Young, 1 November 1859. BCA, GR 1372, F524.

¹⁷⁸ *Rules and Regulations under Gold Fields Act*, January 6, 1860, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*.

there were reports that Chinese people were excluded from digging for gold in the area. The settlement was supplied from the United States.¹⁷⁹

Having received reports of disorder at Rock Creek, Governor Douglas included the settlement in part of a larger tour of the mining districts during the summer of 1860. As he reported to Newcastle at the Colonial Office, he met with William George Cox, the Revenue Officer for the southern frontier, before arriving at Rock Creek. The town was made up of fifteen houses and approximately five hundred miners were living and working in the area. Upon his arrival Douglas addressed the assembled population, speaking about the mining regulations and “especially directing their attention to that Section of the Act which provides for the establishment of Mining Boards, with powers to frame Bye-Laws adapted to the circumstances of each District; or in other words, investing the Miners themselves with full powers to amend their own laws.” Also during his speech, Douglas underlined the liberal nature of the Government’s pre-emption laws, making it clear that it was the Government’s intention to encourage and support settlement. Cox was nominated as Justice of the Peace and Assistant Gold Commissioner for the District.¹⁸⁰

But despite Commissioner Cox’s presence, miners’ meetings persisted as a method of settling disputes. In fact, Cox used the practice himself, holding “meeting of miners & traders” in order to arrange for the application of water rights in a public fashion, a method which seemed to satisfy all interested parties.¹⁸¹ In October of that same year, it was reported in the *British Colonist*

¹⁷⁹ Conditions at Rock Creek were recorded by Charles Wilson, Secretary of the British Boundary Commission, who was a member of a party surveying the 49th parallel. Entry for 30 August 1859 in *Mapping the Frontier: Charles Wilson’s Diary of the Survey of the 49th Parallel, 1858-1862, while Secretary of the British Boundary Commission*, ed. George F. C. Stanley, 108, n. 6., 126 (Toronto: Macmillan of Canada, 1970). The Rock Creek diggings were discovered in October, 1859. Douglas to Newcastle, 25 October 1860, TNA, 85, CO 60/8. See also Akrigg and Akrigg, *British Columbia Chronicle, 1847-1871*, 164, 194-195.

¹⁸⁰ Douglas to Newcastle, 25 October 1860, TNA, 85, CO 60/8. See also Akrigg and Akrigg, *British Columbia Chronicle, 1847-1871*, 164, 194-195, 197, 198, 313.

¹⁸¹ Cox to Young, 7 October 1860, BCA, GR 1372, F374.

that a miners' meeting was held in the District to resolve a dispute between two claim owners when one sought to construct a water channel through the other's claim to transport tailings, i.e. waste rock from mining.¹⁸² Even much later, the practice of miners' meetings persisted in the district. A Customs Agent named William Young recorded that, owing to the absence of any official in the region, miners held a meeting for the purpose of recording claims. Money was collected to be handed over to a government officer at some future date.¹⁸³

During the summer of 1860, the upper country around Quesnel River was still out of practical administrative reach of the Government. When a man at Fort Alexandria named Learry shot another named Simmons, mortally wounding him, the people residing near the Fort took matters into their own hands. They captured and secured Learry and sent an eye-witness south to Commissioner Elwyn in the Cayoosh District for assistance. Upon hearing the news, Elwyn sent a Constable north with a warrant. He then reported to the Colonial Secretary that he had received numerous reports of lawlessness in the upper country. He had also received reports that most people in the area were Americans and they are creating laws in their own interests.¹⁸⁴

By August, Governor Douglas had appointed Philip Henry Nind as Assistant Gold Commissioner for the upper country. He was tasked with establishing a police station at Alexandria, "for the maintenance of peace and order",¹⁸⁵ but, instead, Nind and his Constable, William Pinchbeck, established their headquarters far to the south of Alexandria at Williams Lake because it lay at the intersection of pack trails from the Douglas Road and the Fraser Canyon.¹⁸⁶

¹⁸² The proposed channel, referred to as a "tailrace", was for moving tailings or waste rock from mining. "News from the River," *The British Colonist*, 16 October 1860.

¹⁸³ Young to Haynes, 12 December 1863, BCA, GR 1372, F740.

¹⁸⁴ Elwyn to Colonial Secretary, 2 July 1860, BCA, GR 1372, F524. The constable was not able to catch the man accused of the assault. The residents of Fort Alexandria had released the accused, not knowing how to proceed. Elwyn to Colonial Secretary, 28 July 1860, BCA, GR 1372, F524.

¹⁸⁵ Douglas to Newcastle, 16 August 1860, TNA, 9596, CO 60/8.

¹⁸⁶ Nind to Colonial Secretary, 17 October 1860, BCA, GR 216, Vol 9.



Figure 1 Map showing carriage roads as well as large distance between Victoria and Quesnel. British Columbia, showing carriage roads completed, in progress, and proposed. 1862. (Detail).
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On September 20th, Nind and Pinchbeck left Williams Lake to tour the gold mines. They travelled along the Alexandria Trail to Mud Lake and then turned eastwards. The last part of the trail from Mud Lake to the Quesnel Forks was very bad; “the country assumes a wild and unpromising aspect comprises thick forests of stunted pines impervious to the sun and filled with stagnant swamps, miles of burnt timber, the trunks of some trees still upright, but the greater part covering the ground in complicated confusion.” Finally, after making their way down a “precipitous hill,” they arrived in Quesnel Forks where they found seventeen inhabited houses and three or four tents on a triangular flat formed by the junction of two branches of the Quesnel River. They then left for Keithley Creek on the 25th, following the “north” arm of the Quesnel River along “a trail of the worst description.”¹⁸⁷

Keithley’s Creek was described as a “good sized” stream between high timbered banks. The volume of water fluctuated dramatically, sometimes doubling in a few hours due to freshets which damaged miners’ works. The Creek emptied into the Cariboo Lake. Nind was impressed with the miners’ constructions. They had made “waterwheels, pumps, flumes, and other machinery... lying in the natural bed of the stream”. Wing dams directed and confined the water. They had built tunnels running perpendicular into the hillsides, some of which had been successful and others which had been abandoned. Others had diverted streams to wash entire hillsides of gravel. There were about thirty to forty men on the creek. A few stores had been built.¹⁸⁸

Nind and Pinchbeck then headed downstream to the south fork of the Quesnelle River. On Rose’s Bar and French Bar he met miners and issued them mining certificates. Passing the mouth of Quesnelle Lake, he viewed a large “Indian fishing encampment that seemed from the quantity

¹⁸⁷ Nind to Colonial Secretary, 9 November 1860, BCA, GR 216, Vol. 9.

¹⁸⁸ Ibid.

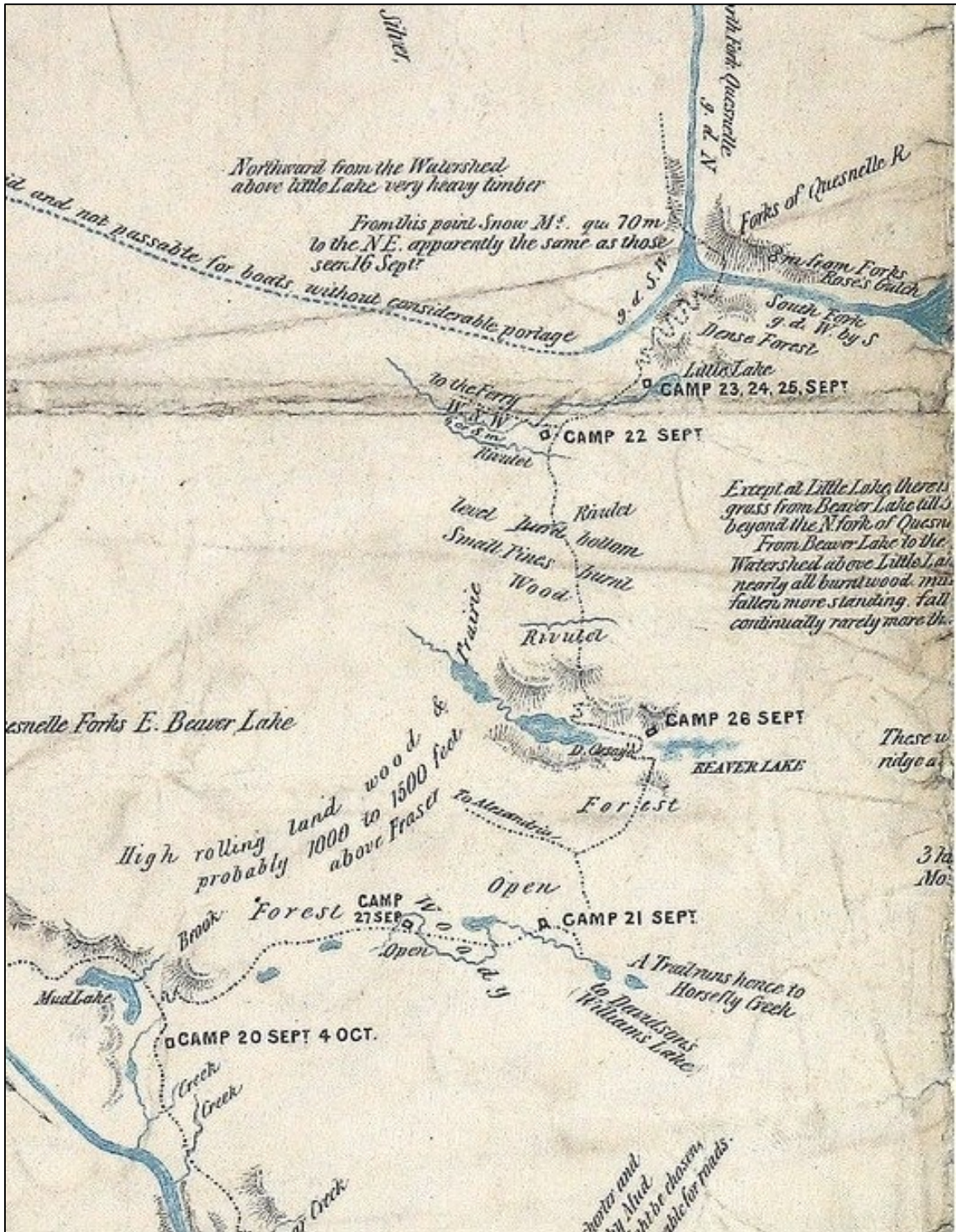


Figure 2 Map showing region between Mud Lake and the Forks of Quesnelle. Gold Regions of the Fraser River and Cariboo Country, British Columbia, from reconnaissance by the Honourable Judge Begbie, 1861. Fraser River District. (Detail).
 Reproduced with Permission from the National Archives of the UK.

of skins and dried meat to be a kind of depot.” He then made his way to the south side of the Quesnelle River to Horse Fly Creek, before returning to Williams Lake.¹⁸⁹

Back in Williams Lake, Nind wrote to the Colonial Secretary about the administration of the mining laws because the Colonial Secretary had received many inquiries about the legal tenure of claims in the colony. Enclosing copies of *The Gold Fields Act* as well as “Mining Laws and Regulations”,¹⁹⁰ Nind pointed out that recording a claim did not make it valid if a certificate or other obligation was not respected. In his travels he had found that miners commonly did not understand that they were required to take out a Free Miner’s certificate and Register a claim in order to be a legal claim owner. He also pointed out that many claims in the Quesnelle and Cariboo area are larger than the legal size and that he had taken no action to interfere with this. Instead, he wrote that he would prefer the Government sanction the registration of large claims.¹⁹¹

That same winter, north of Cariboo Lake and Keithley Creek, a gold rush to Antler Creek took place. Miners rushed to Antler and fought over the ground, many making claims to the same ground. As a result, an appeal was made for Nind to intervene and he set out from Williams Lake for Antler accompanied by a Constable and two aboriginal people. He arrived at Keithley Creek in early March and then travelled on to Antler where he found one log cabin inhabited by the initial discoverers, Rose and McDonald. The rest of the miners were living in holes which they had dug out of the snow that was “between six and seven feet deep.”

There were many disputes. He stayed for six days to settle them and, according to his report, didn’t meet with any resistance to his authority. He explained this as stemming from the miners’ calculating self-interest: nobody wanted to be involved in a conflict with the law and

¹⁸⁹ Ibid.

¹⁹⁰ It’s not clear whether Nind enclosed *Rules and Regulations under Gold Fields Act, 1859*, the *Rules and Regulations under Gold Fields Act, 1859* or both. In his letter he refers to them as “Mining Laws and Regulations.”

¹⁹¹ Nind to Colonial Secretary, 5 February 1861, BCA GR 216, Vol 9.

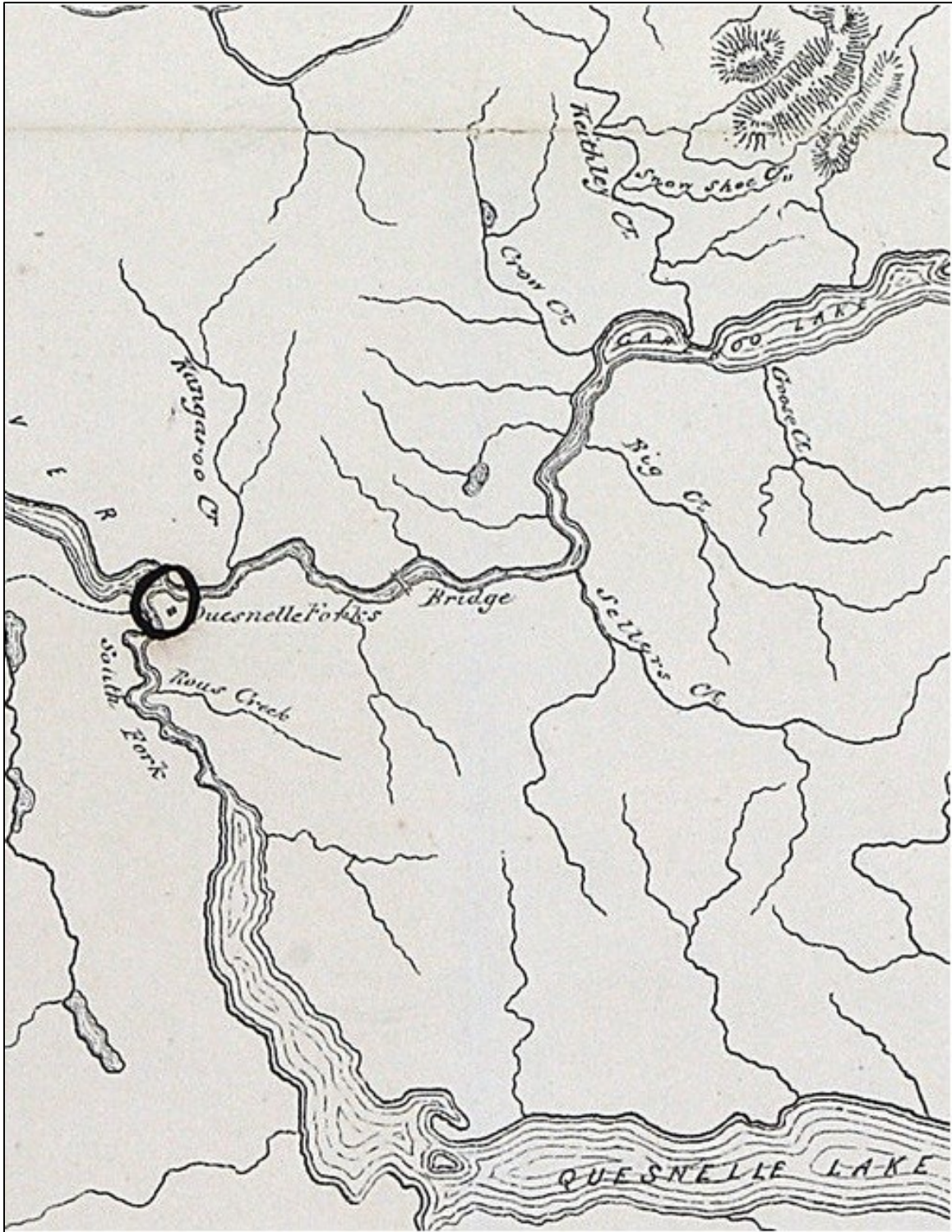


Figure 3 Map showing Quesnelle Forks and Keithley Creek. Sketch of Cariboo Mines by Mr. F Black Jan. 1862. (Detail).
Reproduced with Permission from the National Archives of the UK.

potentially lose their chance at earning a fortune. He estimated there was room for one thousand miners on Antler.

According to Nind, a previously unidentified type of mine had been found in the region: “a new description of mines has been discovered which promises a more lasting employment of labour than has hitherto existed”. He was referring to tunnel mines and suggested that a Mining Board should be formed because mining practices were different in the Cariboo; the mining laws would have to be revised. In his view, local miners were best suited to adapt the law since they were most intimately acquainted with mining and the upper country. Justifying this view, he reasoned that while individual miners and cliques were known to be prone to monopoly and corruption, the mining community, when discussing a matter that affects its common interest, is “just and impartial in matters of fact and clear headed in abstract questions”.¹⁹²

While the Antler discovery generated a lot of excitement, an even larger discovery was made that season on nearby Williams Creek. To the north and west of Antler Creek, Williams Creek flows north from the Cariboo Mountains before dropping through a canyon and gradually descending along a valley before turning to the west and ending in a small lake. During the spring, a group of miners were working above the canyon where they made a large gold discovery. With this success in mind, Billy Barker and company went directly below the canyon and dug a shaft straight down to the bedrock. Once they got down deep enough, this group took out a thousand dollars of gold in forty-eight hours. This enormous discovery generated a large amount of interest in Williams Creek outside of the Colony.¹⁹³

¹⁹² Nind to Colonial Secretary, 27 March 1861, BCA, GR 1372, F1254-F1255. See also copy in Nind’s letter book Nind to Colonial Secretary, BCA, 27 March 1861, GR 216, Vol. 9.

¹⁹³ Skelton, *They Call it the Cariboo*, 55-60. Ormsby, *British Columbia*, 184-187. The names of those involved in the discovery of the creek and its gold deposits varies but typically includes William “Dutch Bill” Deitz, Vital LaForce, Michael Burns, Ned Stout, and Michael Costin Brown. Skelton, *They Call it the Cariboo*, 55. Dutch Bill was a Prussian who had mined in California. *Ibid.*, 53.

During the early months of 1862, Victoria was full of wintering Cariboo miners waiting for spring. As had been pointed out by Nind, concerns were raised about the mining laws and their applicability to the country. In light of the discoveries on Williams Creek, a large rush to the north was anticipated the next spring and many thought the mining laws didn't protect their interests. Of particular concern was the fact that the mining law made no account for the type of deep diggings common in Cariboo. The miners wanted tunnel laws.

A call was made for miners to attend a meeting and express their views. A promoter argued that the laws are out of touch with conditions on the ground: "the laws that were made for the Lower Fraser of 1859 are altogether inapplicable to the Cariboo of 1862."¹⁹⁴ The meeting was held in Moore's Hall on February 13th and there was frustration aired about the Government's inability to enforce its own laws. One miner complained that, during the previous season, Gold Commissioners allowed illegal gambling to go on openly and crime to go unpunished. Not only was their enforcement of the law haphazard but Commissioners did not have a sufficient knowledge of gold mining to enforce the law.¹⁹⁵

Further dissatisfaction stemmed from Victoria acting as the legislative center for Cariboo. It was argued that the great distance between the two places was impractical and that Government officials did not have the necessary experience to write mining law. It was resolved that legislation

¹⁹⁴ "The Mining Laws," *The Daily Press*, 10 February 1862. On behalf of the community of Victoria, some expressed concern about the large amount of unemployed Cariboo miners residing in Victoria. Because the local economy could not employ the miners during the winter, they lived off their mining income. There was fear that, when the spring came, they would not have enough resources to leave Victoria and return to Cariboo to mine. "An Unpromising Dilemma," *The Daily Press*, 11 February 1862.

¹⁹⁵ "The Mining Laws of British Columbia," *The Daily Press*, 14 February 1862.

for Cariboo should be written in Cariboo by those who knew about mining, in order to protect the interests of those who were invested in the country.¹⁹⁶

The key concern raised at this meeting and repeatedly emphasized was the reportedly unanimous opinion that the *Gold Fields Act* was inappropriate for the Cariboo because the law made no mention of tunnel or drift mines.¹⁹⁷ It was proposed that, once tunnel laws were created, miners could stay and work all winter in Cariboo, underground, rather than wintering in Victoria.¹⁹⁸ The assembled miners then approved five resolutions which summarized their criticism of the Government and, invoking the Mining Board clauses in the *Gold Fields Act*, they made clear their intention to legislate for Cariboo miners in collaboration with the Gold Commissioner.¹⁹⁹

An editorial in the *Daily Press* was supportive of the miners calling for the establishment of a Mining Board.²⁰⁰ One columnist echoed the major criticism stemming from the meeting: that *The Gold Fields Act* made no allowance for hill or tunnel mines.²⁰¹ Another suggested that while miners were wintering in Victoria, those who wintered in Cariboo were busy mining underneath, or “coyoting,” their neighbors’ claims – a practice that was not, technically, illegal.²⁰²

¹⁹⁶ “Miners’ Meeting,” *The Daily Press*, 14 February 1862. “The Cariboo Miners’ Meeting,” *The British Colonist*, February 14 1862.

¹⁹⁷ “The Mining Laws of British Columbia,” *The Daily Press*, 14 February 1862.

¹⁹⁸ Many miners were unhappy wintering in Victoria because of the lack of employment. “The Cariboo Miners’ Meeting,” *The British Colonist*, 14 February 1862. “Miners’ Meeting,” *The Daily Press*, 14 February 1862.

¹⁹⁹ “The Cariboo Miners’ Meeting,” *The British Colonist*, 14 February 1862. “Miners’ Meeting,” *The Daily Press*, 14 February 1862. Some apparently related undated and untitled petitions, which possibly date to this time period, can be found in the BCA, GR 1372, F1358. One makes a request for a change to the mining laws which would allow for the working of claims during the winter. It also requested that the Government allow for the mortgaging of claims. Another, on behalf of the free miners of the Cariboo, was sent to protest those that would attempt to control access to water for profit. It requests that the mining laws be changed so as to protect Free Miner’s access to water.

²⁰⁰ “The Mining Laws of British Columbia,” *The Daily Press*, 14 February 1862.

²⁰¹ “The Cariboo Meeting – From Major Downie,” *The British Colonist*, 15 February 1862.

²⁰² “Coyoting in Cariboo,” *The British Columbian*, 20 February 1862. Coyoting was a term used by miners to describe a despised practice: using a tunnel to mine underneath neighboring claim.

As expected, a large scale gold rush to Cariboo took place in the spring of 1862. It was estimated that approximately four thousand people traveled north to the Cariboo region that spring. It was thought that an additional one thousand people travelled up the old Hudson's Bay Company brigade trail that passed through the Okanagan valley.²⁰³ It was difficult traveling, made more difficult by the fact that most carried their own equipment, including picks, pans, shovels, axes, clothing, food, and anything else they needed. If they could afford it, some packed their goods north with horses and mules.²⁰⁴

Since the population that made the journey was fairly literate, there is a significant amount of travel literature documenting the journey to Cariboo. Many described the difficult trails and the rough settlements in the upper country as does William Mark:

A terrible days travelling we had through swamps and quagmires, over fallen trees, ledges of rocks, bog holes, of such a nature, that every step you took you didn't know but it would be your last; you might sink to rise no more. We crossed several gulfs filled with snow, from fifteen to twenty feet deep, and the road was literally covered with dead animals. Thus we struggled on, and finally reached Antler Creek... a rough looking place, log huts, canvass tents, all over the place, ditches, pits, mounds of earth, flumes, trenches and sluice boxes, pumps, &c., in fact, you hardly knew where to go.²⁰⁵

Two Gold Commissioners were assigned to administer the large population of miners that arrived in the upper country that season – Thomas Elwyn for Cariboo East and Peter O'Reilly for Cariboo West.²⁰⁶ Elwyn arrived in June, reporting that enormous quantities of gold were being taken out of Williams Creek by 500 to 600 men comprising six companies. Despite this large body of workers, there were no provisions for sale on the creek. The majority of men were on Lightning

²⁰³ Ormsby, *British Columbia*, 186. Skelton, *They Call it the Cariboo*, 58.

²⁰⁴ Skelton, *They Call it the Cariboo*, 42-43.

²⁰⁵ William Mark, *Cariboo: A True and Correct Narrative*, (Stockton: W. M. Wright, 1863). For a typical example also see W. Champness, *To Cariboo and Back* (The Leisure Hour, 1862).

²⁰⁶ Philip H. Nind took a medical leave of absence in December 1861.

Creek where almost every claim is disputed, he reported.²⁰⁷ Peter O'Reilly also arrived in June and was busy issuing mining certificates upon arrival. He estimated the population of the two districts at about 4000 to 5000 men.²⁰⁸

Shortly after his arrival, the Colonial Secretary requested that Elwyn impose limits on claim sizes as defined by the Rules and Regulations. Like Nind before him, Elwyn responded that he could not do so because it would be unjust for those who had already staked claims and because the Government lacked the ability to enforce the mining law.²⁰⁹ Later that month Elwyn wrote that he thought Williams Creek would become the center of the mining district and he enclosed a brief sketch of the creek.²¹⁰

Other than Elwyn's indication that the Government lacked the ability to enforce claim sizes, officials did not report any difficulty administering the mining laws during the 1862 season. By September, O'Reilly was reporting that many miners were leaving the country because the season was closing.²¹¹ By December, Elwyn reported that about 350 men were wintering in the Cariboo and that the majority of claims on Williams Creek were being worked by tunnel or drift mine.²¹²

Early in the new year, officials set to work on drafting mining laws for tunnels, responding to the Cariboo miners' concerns expressed during the winter of 1861-1862. By February 21st,

²⁰⁷ Elwyn to Colonial Secretary, 15 June 1862, enclosed in Douglas to Newcastle, 16 July 1862, TNA, 8653, CO 60/13.

²⁰⁸ O'Reilly to Colonial Secretary, 28 June 28, 1862, enclosed in Douglas to Newcastle, 16 July 1862, TNA, 8653, CO 60/13.

²⁰⁹ Elwyn to Colonial Secretary, 3 August 1862, BCA, GR 1372, F525. Also see Marie Elliott, *Gold and Grand Dreams* (Victoria: Horsdal & Schubart Publishers Ltd., 2000), 8.

²¹⁰ Elwyn to Colonial Secretary, 22 August 1862, enclosed in Douglas to Newcastle, 27 October 1862, TNA, 12259, CO 60/13.

²¹¹ O'Reilly to Colonial Secretary, Van Winkle, 25 September 1862, enclosed in Douglas to Newcastle, 27 October 1862, TNA, 12259, CO 60/13.

²¹² Elwyn to Colonial Secretary, 15 December 1862, enclosed in Douglas to Newcastle, 3 February 1863, TNA, 3138, CO 60/15.

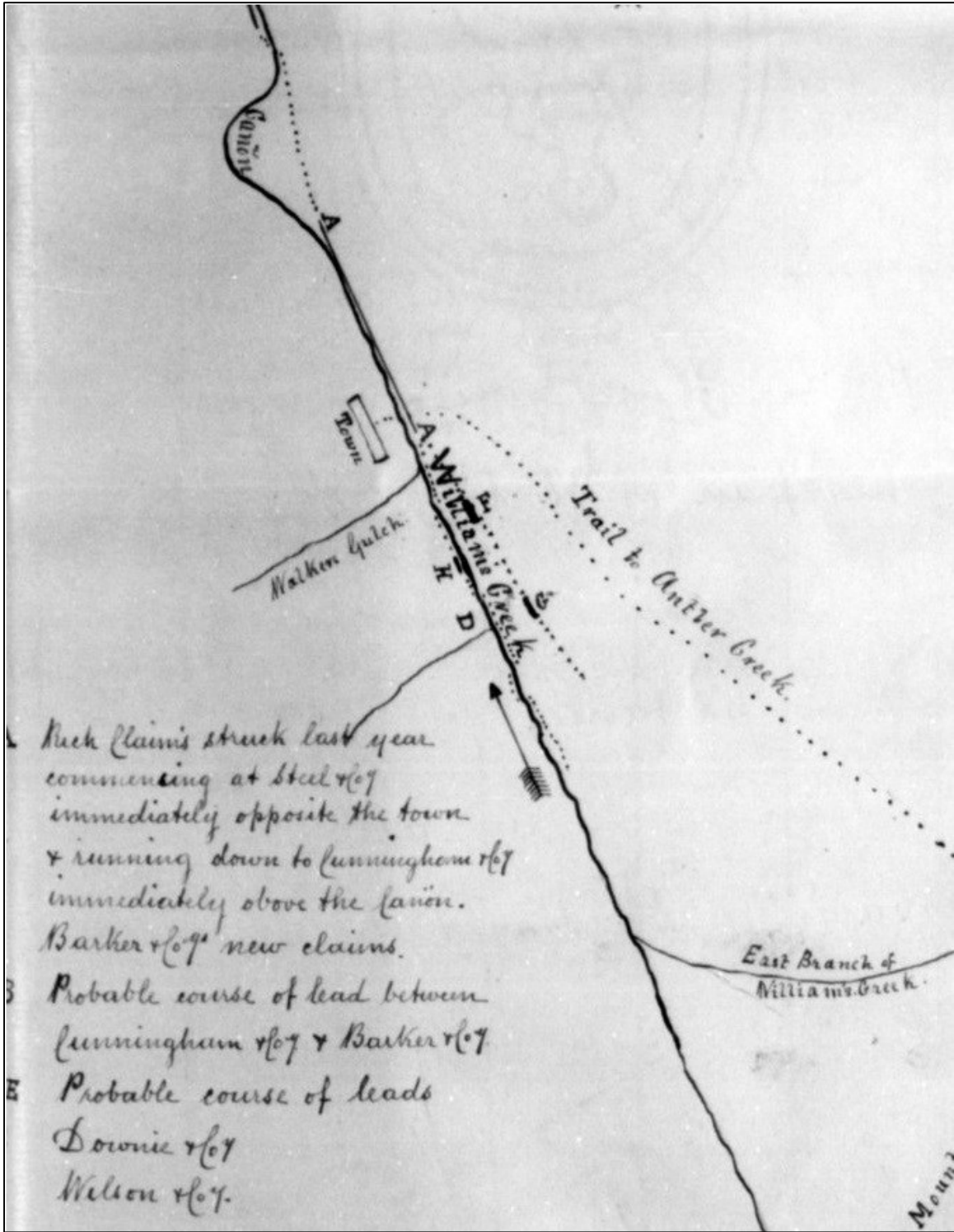


Figure 4 Sketch of Williams Creek by Thomas Elwyn, 22 August 1862. (Detail). Reproduced with permission from The National Archives of the UK.

Attorney General Crease was submitting for the signature of Governor Douglas a draft of the new Rules and Regulations for gold mining.²¹³ The formal regulations were issued under the public seal shortly thereafter. Section two of the regulations established the laws on tunnel diggings which allowed for tunnel prospecting (or digging) to take place prior to the marking of the claim as well as for the claim to be marked based on the location of the discovery – not on where the entrance of the tunnel was situated. The division of tunnel claims in specific and unclear circumstances was also tackled by the regulations, such as if two parties infringed on each other’s ground from opposite sides of a hill.²¹⁴

Drafts of another act were then sent to the Colonial Secretary which was followed by the passing of the new and revised *Gold Fields Act, 1863*. This act increased the fee for registering claims. Claim sizes were enlarged. It also made specifications about boundaries between tunnel claims. Special circumstances were taken into account such as when one tunnel claim might come into contact with another – or when conflicts between neighboring parties might arise. Responsibilities were clarified in terms of what was required by miners when marking out their claim boundaries.²¹⁵

Right after its passing, apparently eager for it to be distributed, Crease wrote to the Colonial Secretary to inquire as to when the new Gold Fields Act would be published. Colonel Moody had the type set for “some time”, he explained.²¹⁶ A month later, O’Reilly, writing from Hope, was already receiving feedback about the new laws. Writing to the Attorney General, O’Reilly

²¹³ Attorney General to Colonial Secretary, 21 February 1863, BCA, GR 1372, F61.

²¹⁴ *Rules and Regulations under Gold Fields Act, 1863*, 24 February 1863, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*.

²¹⁵ The draft for this act was enclosed in Attorney General to Colonial Secretary, 28 February 1863, BCA, GR 1372, F61. The formal act was titled the *Gold Fields Act, 1863*, 25 March 1863, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*.

²¹⁶ Attorney General to Colonial Secretary, 28 March 1863, BCA, GR 1372, F62.

noted that the anticipated mortgage clause had been omitted from the proclaimed laws and asked for some explanation. Expressing some concern, he reasoned that if the mortgage clause were not passed, the increase in the charge for registering claims might not be well received.²¹⁷

About a month later, O'Reilly reported from Richfield on the laws and their administration. He wrote that some good houses had been constructed along the creek and proposed that a town be laid out. He estimated there were about 2500 men on the creek at the time and most were laborers. There was no difficulty getting employment for \$10 a day. The entire creek was staked off for about nine miles, sometimes "four to five abreast, and it is now an incessant scene of activity and bustle." He reported that the new mining rules were "almost universally approved of by the miners," especially the sections relating to hill claims and tunneling. So far there had been no objection to the increase in fees to register claims.²¹⁸

That spring, *The Mining District Act, 1863* was passed. The Act granted the Governor the power to create mining districts in which there were no limits barring miners from prospecting on preempted land. The Government was also given the power to construct public works on preempted land without owing any compensation to the owner for damages.²¹⁹

Wishing to make more changes to the mining laws, Cariboo miners set about petitioning for a Mining Board, during the summer of 1863. They submitted a formal petition for the creation of a Mining Board to Commissioner O'Reilly who, in turn, forwarded it to the Colonial Secretary. Including the names of 101 free miners, the letter explained that, in the view of the mining

²¹⁷ Miners had requested during the Victoria Miners meeting in February of 1862 that miners be legally allowed to mortgage their claims. O'Reilly to Crease, 9 April 1863, BCA, GR 1372, F1281-F1285.

²¹⁸ O'Reilly to Young, 11 May 1863, BCA, GR 1372, F1281-F1285.

²¹⁹ *The Mining District Act, 1863*, 27 May 1863, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*. See also a draft of the notice for the Cariboo Mining District in Attorney General to Colonial Secretary, 12 June 1863, BCA, GR 1372, F62. See also in a letter to the Governor, Crease suggests an amendment to the act. In his view, the word "miner" had been omitted from the Act in a key place, obstructing to some degree the purpose of the Act. He, however, seems doubtful that this omission will have a large bearing on the practical application of the law. Attorney General, 10 August 1863, BCA, GR 1372, F62.

community, changes to the Gold Fields Act are necessary. As they wrote: “[we believe that] many changes are necessary to be made in the Gold Fields Acts, particularly in such acts as relate to the size of claims, the manner of working them, also in regard to working the side hills by hydraulics”. In addition, they wished to change the rules governing bedrock flumes, tailings, water, and debris as well as the way that “claims may be registered, worked, held, and forfeited”.²²⁰

The Richfield Grand Jury’s annual report echoed the demand for changes to the mining laws and other questions touching gold mining. They proposed remodeling the Gold Escort, changing the system of recording claims, and allowing for the holding of two claims by purchase. They also recommend the creation of a Mining Board and changes to the law for creek claims.²²¹

O’Reilly wrote again to Colonial Secretary Young later that summer, explaining somewhat further the desire for a Mining Board in Cariboo East. According to O’Reilly, the miners were generally satisfied with the mining laws but, those laws could be improved, in order to accelerate the development of the district.²²²

A correspondent writing to the *Colonist* from Richfield, prior to the election, declared that “[w]e want practical legislation, not theoretical... A defective state of the law, with regard to the mining interests of this colony, has this season impeded its progress. Fortunately this is remedied, and with the election of a good mining board we may expect to see the capitalist invited to take advantage of the many opportunities for further enriching himself, which this country, above all others, offers.”²²³

The creation of the Cariboo East Mining Board was approved of by Governor Douglas. Forty-two people presented themselves as candidates. An election took place on September 8th and

²²⁰ O’Reilly to Young, 11 July 1863, BCA, GR 1372, F1281-F1285.

²²¹ “Cariboo,” *The British Colonist*, 20 July 1863.

²²² O’Reilly to Young, 25 August 1863, BCA, GR 1372, F1281-F1285.

²²³ “Later from Cariboo: Williams Creek,” *The British Colonist*, 17 September 1863.

723 people voted. Ten members were elected to the Board. O'Reilly reported to Young that "great interest was taken in the result by all the miners, but everything passed off with the utmost good feeling."²²⁴

Following the election, the Mining Board began to meet regularly to conduct business. It passed a wide variety of resolutions on a number of different subjects. On September 14th it met and proposed that a fee of 4 shillings and 6 pence be levied by miners registering claims for the construction of a hospital in the district. It was also resolved that claims be laid over between September 20th and May 15th.²²⁵

On September 16th the Board met and it was resolved that the Rules and Regulations passed on February 24th, 1863 be amended. A sentence was to be added to Section 2 stating that "deads [sic] and leavings" — such as "forking from sluices, waste dirt and large rocks, but not detailing" — may not be permitted to block the natural course of the stream. It also adjusted its previous recommendation and resolved that claims be laid over between September 20th and June 1st.²²⁶

On September 17th, a resolution was passed to expand the rights and liabilities of married ladies and minors, granting them the right to own claims – but no minor under the age of 16 could be allowed to own a claim. A draft act for the creation of a Registrar and a Registrar's Office was proposed. According to that act, the Registrar would be under the supervision of the Gold Commissioner and hold a separate office. He would be responsible for all clerical duties related to mining, selling of licenses, and registering claims. The duties outlined in section IX of the Gold Fields Act 1859 would fall on the Registrar. An unrelated resolution stipulated that any person or

²²⁴ O'Reilly to Young, 10 September 1863, BCA, GR 1372, F1281-F1285. Those elected to the Mining Board were: Sweeney, Kurtz, Duff, Cunningham, Black, Morehead, Heseltine, Black, Orr, and Grier.

²²⁵ "Mining Board Resolutions 1863," 14 September 1863, BCA, GR 673, Box 2, File 2.

²²⁶ "Mining Board Resolutions 1863," 16 September 1863, BCA, GR 673, Box 2, File 2. The May 15th to June 1st dates were later accepted. See O'Reilly to Young, 16 September 1863, BCA, GR 1372, F1281-F1285.

company wishing to construct a Bed Rock Flume was required to post a public notice of application five days before making a formal application.²²⁷

On September 21st, the Board proposed an act on mining copartnerships (or companies) which included the rights and responsibilities of those companies. In addition, it recommended that those with claims twenty miles away from the Government Office be given more time to register their claims. It recommended that the Gold Commissioner have the power to compel claim owners to keep their claims in a safe and secure condition. It recommended that the Gold Commissioner personally go and examine any ground in dispute between two parties.²²⁸

On September 22nd & September 28th, the Board requested that the Governor pass a Proclamation for a General Act of Incorporation that would make clear the rights, liabilities, and privileges of corporations. In a proposed act, titled *An act regulating the number of claims to be held by preemption*, the Board recommended that each free miner be allowed to hold one claim by preemption and multiple claims by “preemption, purchase, or transfer”.²²⁹

On September 29th, it recommended amendments to *The Gold Fields Act, 1859* that would make the Board more autonomous. According to the changes, the Mining Board would meet when the Board decided, not when the Gold Commissioner decided. Quorum would be one half of membership. Elections would be held regularly on the first Monday of August, annually. Voting procedures in meetings would be governed by the majority of the Board members, not the Gold Commissioner.²³⁰

²²⁷ “Mining Board Resolutions 1863,” 17 September 1863, BCA, GR 673, Box 2, File 2.

²²⁸ “Mining Board Resolutions 1863,” 21 September 1863, BCA, GR 673, Box 2, File 2. The draft resolutions passed on this day were not sent to the Colonial Secretary till December 7th. O'Reilly to Young, 7 December 1863, BCA, GR 1372, F1281-F1285.

²²⁹ “Mining Board Resolutions 1863,” 22 and 28 September 1863, BCA, GR 673, Box 2, File 2.

²³⁰ “Mining Board Resolutions 1863,” 29 September 1863, BCA, GR 673, Box 2, File 2.

The Board also made recommendations for changes to the Rules and Regulations of February 24th 1863. Presumably to protect injured parties, it recommended that the Gold Commissioner be empowered to levy costs in addition to penalties in situations when an individual did not comply with the *Gold Fields Act* by amending Section 6 of the Regulations to add the words “and costs” after the word “penalties” in the first line of the second clause. It also recommended that the Gold Commissioner be granted the authority to employ a surveyor in cases of disputes between claims.²³¹

In addition, on this day, the Board drafted a proposal, in the form of an act, which would grant John Walton Bayley permission to construct a bed rock flume on Antler Creek. It proposed that Mr. Bayley be granted the exclusive right and privilege to construct a flume and be granted unlimited access to water. It made clear that Mr. Bayley should not be permitted to infringe on the rights of free miners who could join their works to the flume, with some conditions. The responsibilities of maintenance were outlined. Individuals had the right to tail sluices into the flume. Once completed, the Board’s proposed draft act granted nine other individuals the right to construct flumes of one half mile in length on Antler Creek, under the same conditions.²³²

The *Colonist* commented on the election of the Board and its mandate to remove restrictions for capital along Williams Creek: “[t]here is a strong feeling amongst many of the miners on Williams Creek in favor of allowing a free miner to hold any number of claims he may please by purchase, provided he works all claims which he holds; and we know that this feeling is participated in by many if not all members of the board.” And then elaborating on this idea: “[w]ith respect to holding more than two claims it is a regulation which has an opposite effect upon placer or shallow diggings, and deep shafts and drifts such as are the present mines on Williams Creek,

²³¹ “Mining Board Resolutions 1863,” 29 September 1863, BCA, GR 673, Box 2, File 2.

²³² “Mining Board Resolutions 1863,” 29 September 1863, BCA, GR 673, Box 2, File 2.

it is very desirable that the rights of poor miners should be protected, and in as much as the restriction operated against monopoly in claims, we believe that it works well in all poor man's diggings... But where mining operations cannot be successfully carried on except at great expense; it is certainly most desirable that capitalists should not be restricted in their space."²³³

On September 30th the Board met and a resolution on covering shafts was passed for safety reasons. And then a draft act on hill and bank claims was recommended for the purpose of hydraulic mining. That act began with a section that established the baseline for a hill claim that followed a stream. Claims were to be marked out in 100 foot intervals and stretch away from the stream. The claims would reach back to the center of the hill without limit. Miners of hill claims were given the right to pass tailings and debris over claims directly along the stream. Miners had the right to use any natural water streams, even if it were inside another individual's claim, and were liable for any damage caused to drains and culverts.²³⁴

Building on its proposal for a bed rock flume on Antler Creek, the Board recommended a more general act for the construction of Bed Rock Flumes, titled an *Act to Authorize and Encourage the Construction of Bed Rock Flumes*. According to the act, bed rock flume companies were to be granted the right of access and right to build along water courses, on condition those companies constructed fifty feet of flume the first year and one hundred feet of flume each subsequent year. Companies were given the right to construct bed rock flumes through free miner's claims. Free miners were granted the right to deposit their tailings (or waste rock) in a company's flume, on condition that all gold collected as a result would be the property of the company. Flume companies were to be granted the exclusive right to work abandoned ground. They could enter free miners' claims but before doing so they had to inform the free miner in writing, explaining

²³³ "The Mining Board," *The British Colonist*, 29 September 1863.

²³⁴ "Mining Board Resolutions 1863," 30 September 1863, BCA, GR 673, Box 2, File 2.

where the flume would be constructed. Free miners could build their own flumes and connect to a company's flume, on condition that the construction material is strong and that the construction is of good quality. If a company's flume ran through a free miner's claim, that miner would have the right to become a partner in the company. Bed rock flume companies, and interest in those companies, would be considered property and could be sold, transferred, and mortgaged. Bed rock flume companies were required to register their claims and pay a registration fee.²³⁵

The *Colonist* followed the Board's activities closely. On October 1st it reported that Dr. Black had been elected chairman of the Board, a resolution had been passed which allowed for the holding of more than two claims by purchase, and that claims were held over from September 20th to June 1st.²³⁶

On October 2nd an application was made by James McLaughlin to lease the Meadows below Williams Creek. The Mining Board resolved that the lease be granted with some conditions: that a 12 horse power steam engine be in place by the following June, that a specified number of workers for the site be defined by the Gold Commissioner, and that the boundary be marked with ten-foot-high posts at one hundred foot intervals. During this session the Board also resolved that the Government provide it with a space to keep its papers as well as a Secretary, on salary, to be paid by the Government.²³⁷

Shortly thereafter, on October 8th, the matter of the Meadows lease came up again. An application for lease of the Meadows by the Artesian Swamp Mining Company as well as a petition signed by James McLaughlin and thirteen others was submitted. Similar to its previous

²³⁵ "Mining Board Resolutions 1863," 30 September 1863, BCA, GR 673, Box 2, File 2.

²³⁶ "Later from Cariboo and British Columbia," *The British Colonist*, 1 October 1863.

²³⁷ "Mining Board Resolutions 1863," 2 October 1863, BCA, GR 673, Box 2, File 2. For the Artesian Swamp Mining Company's lease application to the Governor and related petition see documents enclosed in O'Reilly to Colonial Secretary, 6 November 1863, BCA, GR 1372, F1281-1285.

recommendation, it was resolved by the Board that the Artesian Swamp Mining Company's lease application be accepted on condition: that the ground be staked off with posts ten feet high at one hundred foot intervals, that a 12 horse power steam engine be acquired and placed on the ground by June 1, 1864, and that the Gold Commissioner define a number of men to be employed.²³⁸

At the end of the season, the *Colonist* reported on the work of the Board: "The Mining Board have had several meetings. Amongst other matters they have given their attention to bed-rock flumes and hydraulic regulations. Leave has been granted to one company to construct a bed-rock flume on Antler Creek."²³⁹

Governor Douglas seems to have been pleased with the initiative and input of the Cariboo East Mining Board. He wrote in a dispatch to London how the Cariboo East "Mining Board ... has entered upon its duties with great spirit, and alacrity, holding daily sessions for the Despatch [sic] of business, and I anticipate much advantage from the labours [sic] of this useful body."²⁴⁰

Community support for flume projects was expressed early in the new year. "Miner" wrote to the *Colonist* arguing for a bed rock flume strategy. According to him, it had been proposed that a Bed Rock flume begin at Willow River and extend towards Williams Creek. But, he argued, if this course were pursued it could take years before the flume reached Williams Creek. According to him, what the community needed was to construct the flume in sections beginning at the Creek.

²³⁸ Mining Board resolutions dated October 8th enclosed in O'Reilly to Colonial Secretary, 6 November 1863, BCA, GR 1372, F1281-1285. O'Reilly also refers to a set of resolutions passed on October 5th in his letter dated December 7th. O'Reilly to Young, 7 December 1863, BCA, GR 1372, F1281-F1285.

²³⁹ "Cariboo: Mining Board," *The British Colonist*, 15 October 1863. When Cheadle and Lord Milton made their voyage to Cariboo they were entertained by Mr. Bell, of the Committee of Seven, and Mr. Black, of the Mining Board, among others, with whom they argued about the mining laws. Entry for 27 October 1863 in *Cheadle's Journal of Trip Across Canada, 1862-1863*, Walter B. Cheadle, 237-238 (Victoria: Touchwood Editions, 2010).

²⁴⁰ Douglas to Newcastle, 13 November 1863, TNA, 12536, CO 60/16. As early as January 5th, the Attorney General was sending draft leases for the Antler Creek Bed Rock Flume Company and the Williams Creek Bed Rock Drain Company to the Colonial Secretary. Cover letters are found in the Attorney General's correspondence but the draft acts are not enclosed. Attorney General to Colonial Secretary, 5 January 1864, BCA, GR 1372, F63.

This would ensure that it would be useful in the short term. As it stood, mines below the canyon were difficult to work because of the high water table, making it impossible to mine below a certain point without causing cave ins. But if the community constructed a bed rock flume mines along Williams Creek could be profitable worked. He expressed hope that the Governor would approve the recommendation of the Mining Board. “With a bed rock flume there will be flourishing times, without one, the upper part of Williams Creek will soon be depopulated.”²⁴¹

Responding to “Miner”, the editor of the *Colonist* wrote that the only drawback to the bed rock flume scheme is the expense. The cost would be beyond any individual or company. All miners on Williams Creek would have to join in on the project. Recognizing the argument laid out by “Miner”, the editor saw the completion of the drain in sections as unwise because if private interests begin the work and then all miners were required to join in later to complete it the private interests would have lost their time, labor, and money. Regardless, the editor acknowledged the expertise of the Board and suggested that the council push their recommendations through “even to the exclusion of others which are not of such practical importance”²⁴²

The newly elected council did just that, passing ordinances based on recommendations made by the Mining Board as early as February.²⁴³ The first piece of legislation passed was *The Mining Drains Act, 1864*. This Act outlined the way by which drains could be legally created. It clarified the rights and responsibilities of those constructing drains as well as declaring the rights and responsibilities of the Crown and its agents. It did not go into the practical construction of

²⁴¹ “The Bed Rock Flume Question,” *The British Colonist*, 7 January 1864.

²⁴² “Editorial,” *The British Colonist*, 8 January 1864.

²⁴³ The partially elected legislative council for the colony was made up of thirteen members: five elected members, four Crown officers, and four magistrates. The colony was divided into five electoral districts. The first sitting of council was on 22 January 1864 at New Westminster. Ormsby, *British Columbia*, 191-194.

drains.²⁴⁴ As Crease explained “the main object of the act is to enable companies and individual miners engaged in the systematic drainage of “Creeks” and other mining grounds to proceed with their work by conferring upon them powers of entry for that purpose.”²⁴⁵

Shortly thereafter, Crease wrote with a draft for another piece of legislation. Recommending it for the Governor’s assent, Crease explained that the effect of the draft act is to carry out several of the recommendations of the Cariboo Mining Board.²⁴⁶ The act was passed into law on February 24th and named the *Gold Field’s Act, 1864*. This act was principally comprised of the Mining Board’s recommendations made the previous fall.

For all practical purposes, the *Gold Fields Act, 1864* was authored by the Cariboo Mining Board. Many of its resolutions made their way verbatim into this formal act. On September 30th, the Board had passed a resolution granting powers to the Gold Commissioner to compel miners to cover their shafts securely. This was included in the new act as Clause 5 which stated that “the Gold Commissioner is hereby empowered to order all mining works to be carried out in such a manner as he shall think necessary for the safety of the public.”

On that same day, the Board had also proposed an act on hill and bank claims for the purposes of hydraulic mining. Much of these recommendations made their way into the new act. Section 1 of the proposed act, establishing baseline, became Clause 6 of the new act with the addition that the Commissioner had the right to refuse to record a hill or tunnel claim in cases when any part of that claim came into two hundred feet of a gulch or tributary. Section 2 of the proposed act, allowing for no limit to the depth of the claim was not adopted. Section 3 of the proposed act, declaring claim owners the right of way for debris and tailings was not adopted because, as

²⁴⁴ *The Mining Drains Act, 1864*, 1 February 1864 in *Ordinances passed by the Legislative Council of British Columbia, during the session from February to December, 1864*.

²⁴⁵ Attorney General to Colonial Secretary, 1 February 1864, BCA, GR 1372, F63.

²⁴⁶ Attorney General to Colonial Secretary, 16 February 1864, BCA, GR 1372, F63.

annotated in the original draft, it was almost identical to rule XIX of the *Rules and Regulations under Gold Fields Act, 1859* and was therefore not necessary. Similarly, the proposed Section 4, which would have allowed claim owners right of access to natural water courses, was not adopted because it had been already provided for by rule XIX. Finally, Section 5 of the proposed act which held individuals liable for damages to drains or culverts was made possible by Clause 8 of the new act which, by repealing Clause XVII of *The Gold Fields Act, 1859*, made it possible for the Gold Commissioner to assess damages in the event of a civil dispute.

One of the major proposals outlined by the Mining Board was the set of laws on the subject of bed rock flumes. Much of the Board's proposed act for encouraging the construction of bed rock flumes made its way into the *Gold Fields Act, 1864*. Almost verbatim, Sections 1 through 16 of the proposed act were formalized as Clauses 10 through 25 in the new act. As Crease explained to the Governor: "[the act] regulated bed rock flumes for the systematic... and extended drainage of mining ground."²⁴⁷ The Mining Board's resolution passed on September 17th requiring the flume applicant to post a public notice five days before making a formal application was incorporated in the new act as Clause 26.

The resolution passed by the Mining Board on September 16th that disallowed "deads [sic] and leavings" from blocking streams was incorporated into the new act as Clause 27. The September 17th resolution allowing married ladies and minors over the age of sixteen to own mining claims was partially accepted as Clause 28. Married ladies were not included in the amendment while minors under the age of sixteen were allowed to own claims, as partners. As Crease explained: "[a]s the only point in which the ordinance departs from the Common Law of

²⁴⁷ Attorney General to Colonial Secretary, 16 February 1864, BCA, GR 1372, F63.

the land, is in conferring upon minors of 16 the rights of adult miners; and this has now become necessary from the number of minors now engaged in mining pursuits in the Colony.”²⁴⁸

Much of the act proposed by the Mining Board on copartnerships on September 21st was incorporated into the *Gold Field's Act, 1864*. In fact, almost all the proposed sections were incorporated into the new formal law, addressing the standard length of partnerships, how companies could make decisions, the taking out of loans, the non-payment of loans, and the sale of assets. Crease commented: “Clauses 29 to 35 provide for the regulation of mining copartnerships, where no deed of partnership exists; allowing mining partners to contract, sue and be sued, in a simple manner, with a sufficient approach to corporate powers, it is conceived, for all purposes at present required.”²⁴⁹

On September 21st, the Board had also recommended that those holding claims by preemption be permitted three days to register their claims; for those holding claims twenty miles away from a registration office an extra day should be permitted and, for each additional ten miles, an additional day. This recommendation made it into the new act, in a more lenient form, as Clause 43: those within ten miles of a registration office were given three days to register; for each additional ten miles, an extra day was added.

The Board had recommended the legal holding of multiple claims in a draft act passed on September 22nd and September 28th. The Legislative Council incorporated this recommendation as Clause 44 of the new act which allowed for a miner to hold two claims by preemption – one quartz claim and one other claim. The clause then allowed the miner to hold “any number or amount of claims or interests therein” by purchase. Any adult miner, whether the claim had been preempted or purchased was granted the right to “mortgage, transmit, or dispose of any number of

²⁴⁸ Ibid.

²⁴⁹ Ibid.

claims”. Referring to this change, Crease wrote: “[i]t will allow mining claims to be sold mortgaged and dealt with as a limited and conditional... interest.”²⁵⁰

On September 29th, the Mining Board had proposed amendments to *The Gold Fields Act, 1859* that would change the administrative functioning of the Mining Board. These proposed amendments were accepted in the new act. Clause XXXI of the *Gold Fields Act, 1859* was amended to allow for the Mining Board to decide when meetings would be held – no longer was the Gold Commissioner required to call a meeting. Clause XXXIII of the *Gold Fields Act, 1859* was repealed entirely and new laws were created in its place. Following the recommendations of the Board, the Gold Commissioner was given the power to fill vacancies in the Board. Clause XXXV was amended to allow the Mining Board to act without the Gold Commissioner. Clause XXXVI was amended to remove the words “Gold Commissioner” and replace them with “majority of said Board”. This change granted the Board power over meetings, elections, and membership. In a practical sense, the cumulative effect of these changes made the Board self-governing.

Following the *Gold Fields Act, 1864*, that same spring, the Government passed a law facilitating the creation of Joint Stock Companies for mining purposes. The *Mining Joint Stock Companies Ordinance, 1864* made it possible for miners to register their companies with the Gold Commissioner rather than the Registrar of Joint Stock Companies located in New Westminster. The Gold Commissioner was given the power to certify companies and all related documents were to count as evidence in court.²⁵¹

²⁵⁰ Attorney General to Colonial Secretary, 16 February 1864, BCA, GR 1372, F63. Clauses in the new act that were added in light of the possibility of selling and transferring claims included Clause 51, which set fees for related administrative services, Clause 52, which outlined the necessity to document transactions, and Clause 53, which makes registration required to secure title.

²⁵¹ *Mining Joint Stock Companies Ordinance, 1864*, 4 May 1864, in *Ordinances passed by the Legislative Council of British Columbia, during the session from February to December, 1864*.

The new mining laws were published in the *Colonist* in their entirety on March 7th. That spring advertisements for the Antler Bed Rock Flume Company and the Artesian Gold Mining Company could be found in the newspaper. These new companies, made possible by the work of the Mining Board, were highly capitalized publically traded companies. The Antler Bed Rock Flume Company was advertised as having \$60,000 in capital or 2400 shares of \$25 each. The Artesian Gold Mining Company was advertised as having a capital of 132,000 or 2640 shares of \$50 each.²⁵²

Commissioner Cox reported from Richfield that a meeting of traders and miners took place and they decided to extend the drain up Williams Creek. He also reported: “a few copies of the new mining laws have been received by private individuals and afford universal satisfaction.”²⁵³

Later, the Williams Creek Bed Rock Flume Company and Williams Creek Bed Rock Drain Companies were established. Once constructed, the Williams Creek Bed Rock Flume cut into the bedrock of Williams Creek above the canyon, stretching for a mile. It collected water, tailings, and fine particle gold from individuals’ smaller flumes and was also used for hydraulic mining. Cut as close to the bedrock as possible, the open flume was on average twenty feet below ground level. Twice a year, when the water level of the creek was low, the gold was collected.

Equally, if not more important, the Williams Creek Bed Rock Drain was built below the canyon to drain water from individual shafts and tunnels so that those claims didn’t have to invest in costly pumping mechanisms. The “drain” was actually a long tunnel, or drift, that ran along the bedrock, sixty feet below the surface of the ground, connecting to each claim that it passed. It ran

²⁵² See advertisements in *The Daily British Colonist*, 12 March 1864.

²⁵³ Cox to Colonial Secretary, 27 March 1864, BCA, GR 1372, F379. The Cariboo East Mining Board was proving to be a model for other groups. That same spring a mining deputation from the Goldstream mines near Nanaimo approached the Governor advocating for assistance with a road-building project. They also proposed the creation of a Mining Board and the Governor responded in a receptive way. “Mining Deputation to the Governor,” *The British Colonist*, 8 April 1864.

one and an eighth of a mile, from the lower end of the canyon near Barkerville, past Camerontown, to “the meadow”. Reinforced with wooden beams, the average height and width of the drain was five and a half by four feet. The company charged fees from claims which benefited from the structure. Estimated to have drained “half a mile of ground.” the original capital outlay for the tunnel was \$100,000. It consistently lost money but was viewed as essential to the successful mining of the creek.²⁵⁴

In the spring of 1864, not long after he signed the amendment bill made up of the Mining Board’s recommendations, Governor James Douglas retired. Shortly thereafter, Frederick Seymour was nominated as Governor for The Colony of British Columbia. Seymour was an experienced colonial administrator who had already held a variety of posts, including Lieutenant Governor for British Honduras.

Seymour arrived at New Westminster, accompanied by Colonial Secretary Arthur N. Birch, to a modest reception. Speeches were made by the President of the Municipal Council and the new Governor, after which the day of his inauguration was declared a public holiday. Apparently less enthusiastic than his hosts, Seymour described New Westminster as “a melancholy ... picture of disappointed hopes ... decay appeared on all sides [and] the stumps and logs of the fallen trees blocked up most of the streets”.²⁵⁵ Not long after being sworn in as Governor, road construction crews were attacked by aboriginal people in the far north-western portion of the colony, east of Bute Inlet. This event later came to be known as the Chilcotin War.

²⁵⁴ John Ash and Charles Good, *Annual Report of the Minister of Mines for the Year Ending 31st December, 1874, Being an Account of Mining Operations for Gold, Coal, and Silver in the Province of British Columbia* (Victoria: Richard Wolfenden, 1875), 548-549.

²⁵⁵ Ormsby, *British Columbia*, 202. Also see Seymour to Cardwell, 21 March 1865, TNA, 6176, CO 60/21.

A large historiography has developed on the subject of the Chilcotin War. Survey texts tend to treat the issue briefly and retell it through the prism of government or development. For Ormsby, the Chilcotin war was told from the perspective of Governor Seymour and it fit into a narrative of his career as a governor. The cause of the war was partially attributed to Waddington's ambitious plan for an alternative route to the gold fields, in an attempt to redirect trade to Vancouver Island, which was then part of a narrative of feuding between the two colonies. More specific motivations for the killings were found in aboriginal peoples' fears about the introduction of smallpox to the region, the poor treatment of aboriginal workmen, and aboriginal protection of aboriginal land title.²⁵⁶ For Barman, the Chilcotin War fit into a narrative of transportation systems and economic development. The impractical road project, backed by Victoria's business community, ran into problems when the terrain was "impassible" and northern locals, i.e. aboriginals, were "hostile". The killing of the workmen was attributed directly to aboriginal peoples' fears that newcomers were bringing smallpox.²⁵⁷

Other works have considered legal and identity issues. For Williams, legal rules which could have been used in favor of the defendants were not applied during the trials resulting from the Chilcotin War. As he showed, the capture and confession of the suspects was induced both by the fear of punishment and hope of reward. According to the law of evidence, the existence of either criterion should have excluded the admissibility of the confessions. While this may be true, he noted that nineteenth century courts did not always apply the exclusionary rule and that there was sufficient independent evidence, exclusive of the confessions, to support convictions. He attributed the murders as having been motivated by the fear of smallpox.²⁵⁸ For Loo, the "Bute

²⁵⁶ Ormsby, *British Columbia*, 204-207.

²⁵⁷ Barman, *The West Beyond the West*, 79.

²⁵⁸ Williams, *The Man for a New*, 111-117.

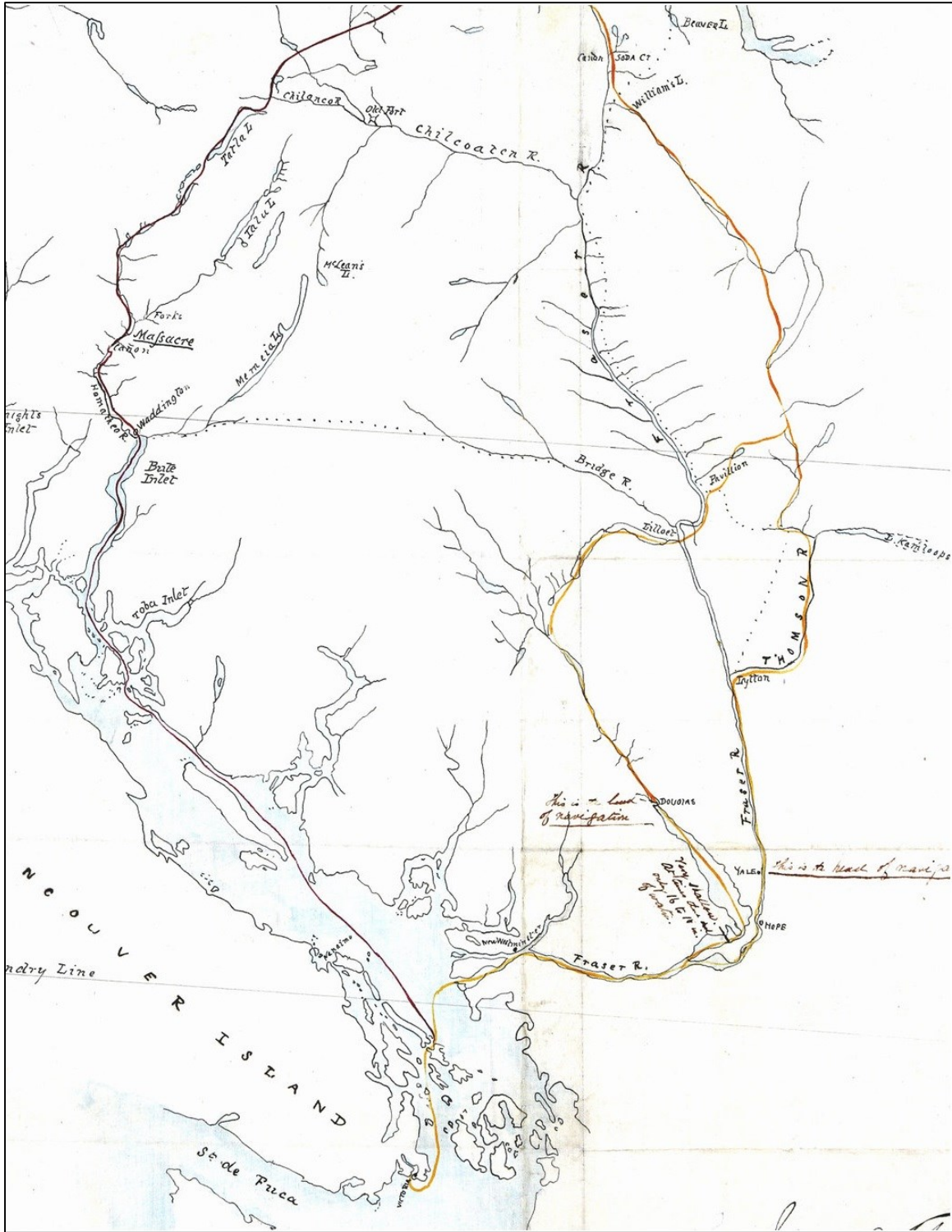


Figure 5 Map showing routes north as well as site of Bute Inlet Massacre on left hand side. Bute Inlet and Fraser River routes from the mouth of the Quesnel River to Victoria on Vancouver Island. British Columbia showing the Bute Inlet and Fraser River routes. (Detail). Reproduced with Permission from the National Archives of the UK.

Inlet Massacre” provided examples of the discourse of Otherness, which has its own long tradition. The particular expression of this discourse in Colonial British Columbia revealed the form and content of European colonial identity and beliefs about Native people. In this discourse, European British Columbians were contrasted as rational, methodical, and civilized against aboriginal peoples’ irrationality, passion, and savagery. But this identity, premised on distinctions between the Self and Other, was shown to be fragmented and contradictory in light of the colonial populations’ enthusiastic calls for a violent reaction to the massacre, the unkempt comportment of the military expedition, and the surrender of the accused aboriginal people under false pretenses.²⁵⁹

The road project from Bute Inlet to the mouth of the Quesnel River along the Homathco River had been initially conceived by a Victoria businessman named Alfred Waddington as an alternative route to the Cariboo District. Waddington had promoted the project to the business community in Victoria and thirteen miles of road had been constructed in 1862 but the following year’s work was mostly focused on repairing damage due to flooding. Although the work prompted speculative investment in a town site at the mouth of the Homathco River, raising capital proved to be a problem. In an attempt to cut expenses, Waddington hired Chilcotin laborers. Tensions rose between the white workers and the aboriginal laborers, later attributed to aboriginal peoples’ fear of smallpox, the poor treatment of aboriginal workers, and concerns about aboriginal land title.

On the morning of April 30th, 1864 groups of aboriginal people attacked two crews of road workers, killing nineteen men in the process. Two weeks later, another party of road workers, approaching from the interior, was attacked by aboriginal people.

The news made it to Victoria and New Westminster on May 11th, 1864, prompting an immediate response from Governor Seymour. He sent instructions to Cariboo Gold Commissioner

²⁵⁹ Loo, *Making Law, Order, and Authority*, 134-156.

William George Cox to organize a force of men. He also gave instructions to New Westminster Chief of Police Chartres Brew to prepare a force. Brew's men sailed to Bute Inlet on May 15th but his party failed to reach the interior. As a result, Seymour, accompanied by reinforcements, sailed to Bentinck Arm to join Brew's force.

The New Westminster and Cariboo parties rendezvoused at Puntze Lake from where Cox led a force to Bute Inlet. At this place, after Cox had extended an unauthorized assurance of amnesty, Klatsassin and his party (comprised of Klatsassin, Telloot, Chee-loot, Tapitt, Pierre, Chessus, Chedekki, and Tnanaki) surrendered to Cox on August 15th. Although induced to surrender and confess, the captives were tried and found guilty. Five of them were hanged at Quesnel in September of that year.²⁶⁰

Unlike the Canyon War in the summer of 1858, there's little evidence to show that the organizing principles and decision making behavior of miners' meetings were applied in the response to the Bute Inlet killings.²⁶¹ Instead, the response to Bute Inlet was made up of miners from Cariboo and citizens of New Westminster and led by colonial officials. Decision making was not "popular" or democratic in the way that it had been during the Canyon War. No popular leader emerged. Nevertheless, the two episodes are similar in that they were both demonstrations of force which asserted the dominance of white settler society over the aboriginal population.

Following the capture of the accused aboriginal people, Governor Seymour decided to visit the Cariboo mines before making his way back to New Westminster. His visit caused much

²⁶⁰ For the Chilcotin War see Ormsby *British Columbia*, 204-207, Barman, *The West Beyond the West*, 79, Williams, *The Man for a New Country*, 111-117, and Loo, *Making Law, Order, and Authority*, 134-156.

²⁶¹ This conclusion is reached after reviewing Brew and Cox's reports. For Brew's correspondence see Brew to Colonial Secretary, 23 May 1864, BCA, GR 1372, F193, Brew to Seymour, 18 August 1864, BCA, GR 1372, F193, and Brew to Colonial Secretary, 8 September 1864, BCA, GR 1372, F193. For Cox's correspondence see Cox to Colonial Secretary, 29 May 1864, BCA, GR 1372, F379, Cox to Colonial Secretary, 19 June 1864, BCA, GR 1372, F379, and Cox to Seymour, 15 August 1864, BCA, GR 1372, F379.

excitement since Governor Douglas had never visited Cariboo. Seymour passed through Alexandria, Quesnel, and Richfield, toured the diggings around Williams Creek, and was honored with an elaborate dinner at the newly constructed French Hotel.²⁶²

During his stay on Williams Creek, Seymour was formally address by Dr. Black on behalf of the Cariboo East Mining Board. Black underlined the importance of mining to the Colony's economy and clearly indicated that the Board viewed its reform of the mining laws as unfinished and ongoing. Black's address was published in the *Colonist*.

[We] are happy to know that your Excellency has chosen this practical method of studying the country, the people, and the mining laws now in force here. Called into existence by a general conviction of the imperfectness and inapplicability of our system of mining laws, the Mining Board has not yet had time to mature and perfect the reforms demanded by our constantly increasing experience. Indeed it will hardly be doubted, that so long as new districts may be discovered, new methods of mining may be adopted, and new evils arise to be avoided, the necessity of a board of practical miners to digest and adopt new regulations, and to provide against existing hardships, and to submit the results of their experience and observation to the Legislative Council of the Colony, will continue to exist.²⁶³

While the Board had managed to have most of its recommendations passed into law the previous winter, the mining law as a whole remained disorganized. At the time of the Board's address to Seymour, the foundation of the mining law was the *Gold Fields Act, 1859* upon which had been added ten sets of regulations and acts.²⁶⁴ In response to this convoluted set of laws, Joseph

²⁶² Ormsby, *British Columbia*, 208.

²⁶³ "Cariboo Letter," *The British Colonist*, 15 August 1864.

²⁶⁴ In sequential order, the mining law compiled up to August of 1864 was comprised of the following: *The Gold Field's Act, 1859*, 31 August 1859, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*, *Rules and Regulations under Gold Fields Act, 1859*, 7 September 1859, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*, *British Columbia Joint Stock Companies Act, 1859*, 10 December 1859, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*, *Rules and Regulations under Gold Fields Act, 1860*, 6 January 1860, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*, *Rules and Regulations under Gold Fields Act, 1862*, 29 September 1862, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*, *Rules and Regulations under Gold Fields Act, 1863*, 24 February 1863, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*, *Gold Fields Act, 1863*, 25 March 1863, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*, *The Mining District Act, 1863*, 27 May 1863, in *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [also 1865]*, *The Mining Drains Act, 1864*, 1 February 1864, in *Ordinances passed by the Legislative Council of British Columbia, during the session from February to December, 1864*, *Gold Field's Act, 1864*, 26 February 1864, in *Ordinances passed by the Legislative Council of British Columbia, during the session from*

Park, a Cariboo lawyer, compiled a layman's guide to the mining laws. In the introduction, he explained the need for such a work: "[d]uring the last mining season at Cariboo, a want was universally felt of some work in the nature of instructions rather than rules, to the miners in their various mining operations; this was rendered the more necessary as the mining Proclamations and Rules and Regulations seldom found their way in a complete state into the hands of miners."²⁶⁵

With this mandate in view, the election for the next Cariboo East Mining Board was held. After the election, the first act of the new Board called for the laying over of claims.²⁶⁶ Shortly thereafter, another election was held for the Legislative Council in New Westminster. Three candidates presented for Cariboo East and George Anthony Walkem came out with 218 votes, winning his seat. The people of Cariboo West elected Walter Moberly as their representative.²⁶⁷

As the events of the Chilcotin War were unfolding, during the spring and summer of 1864, there was a large gold rush to Wild Horse Creek, on the prospecting frontier in south eastern British Columbia, just north of the border with the United States. Like at Rock Creek, the mining law that developed spontaneously on Wild Horse Creek was a throwback to rudimentary miner's meetings or social organization along the Fraser River during the rush of 1858 – albeit a well-organized version.

February to December, 1864, Mining Joint Stock Companies Ordinance, 1864, 4 May 1864, in Ordinances passed by the Legislative Council of British Columbia, during the session from February to December, 1864.

²⁶⁵ Joseph Park, *A Practical View of the Mining Laws of British Columbia* (Victoria: Printed at the British Colonist Office, April 1864).

²⁶⁶ Those elected were John Polmere, Edgar Dewdney, James McLaughlin, Captain Hennison, and H.R. Steel. W.W. Of the previous Board, Sweeney and Kurtz were out of the country; Cunningham had passed away. O'Reilly to Colonial Secretary, 24 August 1864, BCA, GR 1372, F1281-F1285, O'Reilly to Colonial Secretary, 9 September 1864, BCA, GR 1372, F1281-F1285, O'Reilly to Colonial Secretary, 16 September 1864, BCA, GR 1372, F1281-F1285.

²⁶⁷ O'Reilly to Colonial Secretary, 13 October 1864, BCA, GR 1372, F1281-F1285. Also see "Roll of the Honourable Legislative Councillors," in *Journals of the Legislative Council of British Columbia, From the 12th December, 1864, to the 11th April, 1865, in the 28th Year of the Reign of Her Majesty Queen Victoria* (New Westminster: Government Printing Office, 1865).

Intrigued by Gold Commissioner Haynes' reports of miners' self-government, Acting Colonial Secretary, Arthur Nonus Birch and Supreme Court Registrar, Arthur Thomas Bushby, travelled to Wild Horse Creek in the fall of 1864. Upon arrival, Birch made contact with leaders within the mining community, who had been actively cooperating with the recently installed Commissioner Haynes and who had provided him with written copies of laws they had created for the mining community at a miners' meeting.

These laws had been reportedly created at a miners' meeting after a fight led to two men being shot. One of the original discoverers of the creek, Mr. Dore, along with a collection of supporters took it upon themselves to organize a system of laws and governance *against* "miners from the adjoining territories" who were "utterly regardless of law and order".²⁶⁸

The laws themselves were divided into two sections. The first delegated authority and defined compensation for the performance of specific tasks. It allowed for the election of a judge, prosecuting attorney, sheriff, court clerk, and treasurer. The compensation allowed for each elected individual was also taken into account – elected officials were to be compensated for duties performed; they were not to be paid a regular salary. The second section of the miners' laws was legislative in nature and ignored colonial mining law completely:

Article 1st. All Creek Claims should be two (2) hundred feet in length and running from "Bank to Bank" including all low Bars.

Art. 2nd. All Hill Claims shall be one hundred and fifty feet. Facing the Creek, running back the same distance of One hundred and fifty Feet. These are called "Bench Claims."

Art. 3rd. No Miners shall be allowed to back water on any Prior Claim by a "Dam" or otherwise to the injury of the other Party.

Art. 4th. All Creek Claims shall be represented every week by a Day's work.

²⁶⁸ Haynes to Birch, 6 September 1864, BCA, GR 1372, F740. Also see Arthur Nonus Birch, Manuscript, Birch Family Papers, BCA, Chapter IV, 51.

Art. 5th. No miner shall be allowed to hold more than one Hill, Creek and Gulch Claim by preemption.

Art. 6th. All Claims shall be respected when noticed for six (6) days after location.

Art. 7th. The said District shall be known as the Kootenay District, commencing at the crossing of Wild Horse Creek, and running up said Creek the distance of (7) seven miles.²⁶⁹

Back in New Westminster the Legislative Council convened in mid-December 1864 and members of the Cariboo East Mining Board relocated to New Westminster in order to work with the Legislative Council on drafting a comprehensive reform of the mining laws.²⁷⁰

That same winter the people of Cariboo petitioned the Government. One petition complained that Chinese miners were not paying the miners' license fee. This petition was brought to the attention of the Cariboo East Mining Board in New Westminster. The Board prepared a draft reply to the Cariboo miners explaining that it had recommended that Chinese miners be compelled to pay the license fee but, while the Governor agreed that Chinese are "not the most desirable colonists", the recommendation was not supported.²⁷¹ Not long thereafter, Cox reported to the Colonial Secretary that a meeting had been recently held in Cariboo to expel Chinese people from the district after a Chinese man had assaulted an Englishman but "the disturbance was suppressed with ease, and good feeling exists again amongst them."²⁷²

While the Legislative Council was meeting that winter, the question of importing a gold export tax was raised by Governor Seymour. In fact, during the winter sessions, the Legislative

²⁶⁹ The resolutions passed at a miners' meeting held on April 10, 1864 on Wild Horse Creek can be found in Birch, "British Columbia in 1863," Birch Family Papers, BCA, Box 2, Folder 2, Item IV, 130-133.

²⁷⁰ *Journals of the Legislative Council of British Columbia, from the 12th December, 1864, to the 11th April, 1865, in the 28th Year of the Reign of Her Majesty Queen Victoria* (New Westminster: Government Printing Office, 1865). "Misrepresentations of the 'British Columbian': To the Editor of the Cariboo Sentinel," *The Cariboo Sentinel*, 30 September 1865.

²⁷¹ Untitled Petition, [January 8, 1865?], BCA, GR 1372, F1350.

²⁷² Cox to Colonial Secretary, 19 January 1865, BCA, GR 1372, F381.

Council passed two acts which were to become extremely unpopular in and outside of the colony. The first act was the Gold Export Ordinance which was partially prompted by the colony's mounting debt.

Following the Chilcotin War, the debt had mounted to eighty-thousand dollars.²⁷³ It was thought that import duties could not be raised further and road tolls should be reduced rather than raised so the only way to increase revenue was through an increase in taxation. Seymour rationalized this move in a Legislative Council session, arguing that the cost of the Cariboo Road and the Chilcotin War had been expended for the benefit of the mining population and that this population must now contribute through taxation. Furthermore, he pointed out that the mining and trading population may migrate out of the colony at any time and that the resident colonists should not be asked to bear the burden of expenditures undertaken for that transient population.²⁷⁴

The bill was drafted, debated, and eventually passed by the Legislative Council on February 13, 1865. It set customs rates for gold export at 2 shillings per ounce or 1 shilling and 6 pence per ounce, if the gold was assayed at a government office. Designed to direct gold through official channels, the bill defined penalties for evasion and approved methods of export.²⁷⁵

The second act which became unpopular in the colony was one which raised tariff rates on imported goods. This act was designed to protect local merchants in mainland Colonial British Columbia from outside merchants, i.e. those in Victoria, fostering the growth of the mainland commercial economy. Previous to this, Victoria's free port had led to the establishment of an important commercial class in that city, one which New Westminster wished to compete with more

²⁷³ Ormsby, *British Columbia*, 207, 210-212.

²⁷⁴ Governor Seymour's speech to the Legislative Council, 12 January 1865, in *Journals of the Legislative Council of British Columbia, from the 12th December, 1864, to the 11th April, 1865, in the 28th Year of the Reign of Her Majesty Queen Victoria* (New Westminster: Government Printing Office, 1865) 10-13.

²⁷⁵ *Gold Export Ordinance, 1865*, 25 March 1865, in *Ordinances passed by the Legislative Council of British Columbia, during the session from January to April, 1865*. For Crease's comments on the law see Attorney General to Colonial Secretary, 9 May 1865, BCA, GR 1372, F65.

effectively. So the Customs Amendment Ordinance was passed by the second sitting of the legislature. The bill established general and specific rates for the importation of finished goods. Raw materials, or those used in rough manufacturing, were permitted to be imported free of duty. If not specifically defined, the tariff rate was calculated as twelve and a half percent of the value of the object in the port from which it was shipped.²⁷⁶

In response to the passing of these acts, a public meeting was held on February 25th in Victoria by the “Miners, Traders, and others, citizens of British Columbia”. This group drafted an address detailing their grievances with the combined influence of the gold export tariff and duty. They argued the import tax would raise the already high cost of living and that, when combined with the gold export tax, it would drive people from the colony. They were also concerned that the tariff would discourage traders and packers from doing business in the colony, contributing to a decrease in imported goods. They pointed out that, in some cases, the tax targeted the necessities of life rather than luxuries.²⁷⁷

Seymour responded to this group of concerned citizens, which he referred to as “the Miners of Cariboo,” and promised to forward their petition to the members of the legislative council. While downplaying the increase in the tariff, he acknowledged the law was designed to discourage merchants from storing goods and transporting them from Victoria and encourage direct importations to New Westminster but maintained that the measure was not based in “unfriendliness” towards Victoria. Rather than regional antagonism, the need to pay the colony’s

²⁷⁶ *The Customs Amendment Ordinance, 1865*, 15 February 1865, in *Ordinances Passed by the Legislative Council of British Columbia, During Session from January to April, 1865*.

²⁷⁷ “Appendix C: Petitioners to Governor Seymour,” 25 February 1865, in *Journals of the Legislative Council of British Columbia, from the 12th December, 1864, to the 11th April, 1865, in the 28th Year of the Reign of Her Majesty Queen Victoria*, (New Westminster: Government Printing Office, 1865), vi-vii.

debt motivated the tariff. He remained confident that the population of the colony would become “much larger” in the coming year.²⁷⁸

While these questions were being debated, the legislative council and the Mining Board had finished a complete revision of the gold mining laws. The result of these efforts was the passing of the *Gold Mining Ordinance, 1865* on March 13th, 1865.²⁷⁹ The recommendations of the 1863 Mining Board clearly made their way into this revision; the major sections initially introduced by the previous Board – relating to tunnels, bed rock flumes, the drainage of mines, partnerships, and the powers of Mining Boards – all made it into the revised law.²⁸⁰ While the 1864 Mining Board assisted with the preparation of this reform – the initiatives taken by its predecessor resulted in the introduction of new legislation. The 1864 Mining Board reorganized the mining law. Commenting on the finished product, the Attorney General wrote to the Colonial Secretary: “[t]his enactment is rather remarkable for the rearrangement of the various Proclamations drawn by my predecessor and myself, than for the introduction of new matter into the statute book.”²⁸¹

Whether or not it was caused by the combined influence of the tariff and gold export tax, in the spring of 1865 the concerns of the Victoria petitioners were realized. In 1865 the economy softened and there was no rush to the Cariboo from San Francisco. Miners and companies evaded the tax as much as possible.²⁸² Despite this economic downturn a newspaper was founded in

²⁷⁸ “Appendix D: Seymour to Petitioners,” 23 March 1865, in *Journals of the Legislative Council of British Columbia, from the 12th December, 1864, to the 11th April, 1865, in the 28th Year of the Reign of Her Majesty Queen Victoria* (New Westminster: Government Printing Office, 1865), vii-ix.

²⁷⁹ *Gold Mining Ordinance, 1865*, 28 March 1865, in *Ordinances passed by the Legislative Council of British Columbia, during the session from January to April, 1865*.

²⁸⁰ This statement is supported by a review of three groups of documents: “Mining Board Resolutions 1863,” BCA, GR 673, Box 2, File 2, *Gold Fields Act, 1864*, 26 February 1864, in *Ordinances passed by the Legislative Council of British Columbia, during the session from February to December, 1864*, and *Gold Mining Ordinance, 1865*, 28 March 1865, in *Ordinances passed by the Legislative Council of British Columbia, during the session from January to April, 1865*.

²⁸¹ Attorney General to Colonial Secretary, 13 May 1865, BCA, GR 1372, F65.

²⁸² Ormsby, *British Columbia*, 212-213.

Barkerville by George Wallace, which he named *The Cariboo Sentinel*. Wallace became a harsh opponent of the tariff and gold export tax or, in his terms, the Government's policy of favoring New Westminster at the expense of Victoria and the Cariboo.²⁸³

His concerted criticism of the Government and the New Westminster "clique" resulted in his becoming engaged in a war of words with John Robson, the editor of the New Westminster paper, *The British Columbian*. In response, and in an attempt to show that broad support had existed for the Gold Export Ordinance, Robson claimed that unanimous support had existed for the measure, including amongst all the Gold Commissioners and the Cariboo Mining Board.²⁸⁴ Individual members of the Cariboo Mining Board responded to Robson's claims by vehemently denying that they had ever supported the Gold Export Ordinance or passed any resolutions in its favor. John Polmere explained that members of the Mining Board had met with the Governor privately and discussed the Gold Export Ordinance but maintained that the Board had made clear its opposition to the measure.²⁸⁵ Despite these clear denials on the part of Mining Board members, Robson continued to assert that the Board had supported the Gold Export Ordinance.²⁸⁶

Regardless, the Gold Export Tax was repealed by the Legislative Council the next spring with the *Gold Export Repeal Ordinance, 1866*. Governor Seymour was in England at the time and Birch was administrating the colony in his stead. Birch, in his address to the council members on

²⁸³ "Injustice of the Gold Export Tax Law," *The Cariboo Sentinel*, 12 June 1865, "The Gold Tax," *The Cariboo Sentinel*, 12 June 1865, and "The Gold Export Tax," *The Cariboo Sentinel*, 17 June 1865. See also "Fourth of July in Cariboo," *The Cariboo Sentinel*, 8 July 1865, "Untitled Article," *The Cariboo Sentinel*, 15 July 1865, "To the Editor of the Cariboo Sentinel," *The Cariboo Sentinel*, 15 July 1865, and "Untitled Article," *The Cariboo Sentinel*, 5 August 1865.

²⁸⁴ "The Gold Export Tax," *The British Columbian*, 26 August 1865. The voting patterns in the journals of the Legislative Council indicate that there was some division on the subject of this bill. Council Minutes, January and February 1865, in *Journals of the Legislative Council of British Columbia, from the 12th December, 1864, to the 11th April, 1865, in the 28th Year of the Reign of Her Majesty Queen Victoria* (New Westminster: Government Printing Office, 1865) 21-30.

²⁸⁵ "Misrepresentations of the British Columbian," *The Cariboo Sentinel*, 30 September 1865, "More Misrepresentations of the British Columbian," *The Cariboo Sentinel*, 30 September 1865, and "Misrepresentations of the British Columbian: To the Editor of the 'Cariboo Sentinel'," *The Cariboo Sentinel*, 30 September 1865.

²⁸⁶ "The Mining Board and the Gold Tax," *The British Columbian*, 11 October 1865.

January 18, 1866, described the failure of the tax. It had realized less revenue than had been predicted, partially explained by the failure of an anticipated gold rush to the Kootenay District. In addition to not having raised the expected revenue, he recognized that the population was generally against the tax and for this reason he acted to have it abolished. He reasoned that it is “the paramount duty of the Executive to carry out as far as possible the well understood wishes of the community.”

In place of the Export Tax, Birch took a page from the Cariboo miners and suggested making up for the loss in revenue by enforcing the Gold Fields Act and compelling Chinese miners to purchase gold mining licenses – it being “well known” that Chinese miners evaded purchasing mining licenses. He also suggested increasing the cost of trade and liquor licenses. Although acting to abolish the tax, Birch wished to continue gathering the statistical information on gold production that it had provided. Therefore, he proposed some alternative form of registration that would not prove as objectionable as a tax.²⁸⁷

Before the matter of the Gold Export Tax had been “resolved”, during the fall of 1865, a new problem had presented itself which would prove to have serious implications on social order in the Cariboo District. A petition signed by John L. Bramley, John R. Adams, and three hundred and fifty other people representing the “Miners, Merchants, and Traders in the Districts of Cariboo East and West” was presented to Governor Seymour. Given the high expense of operating and working gold mines in Cariboo and given the long winters and shortness of the mining season, the petitioners expressed concern about delays caused by litigation. They requested that “a law be

²⁸⁷ Arthur N. Birch’s address to the Legislative Council, 18 January 1866, *Journals of the Legislative Council of British Columbia, From the 18th January, to the 5th April, 1866* (New Westminster: Government Printing Office, 1866), 1-4.

enacted, which will prohibit all disputes concerning mining interests from ever being held in a Court of Chancery where delays are inevitable”.²⁸⁸

Following the Fraser River gold rush of 1858, miners spread out across different prospecting frontiers in search of the next large gold discovery. One important frontier was referred to as the “upper country” near Fort Alexandria. Another was in the south eastern portion of the colony, near the border with the United States. On these frontiers, in the absence of any government authority, miners relied on customary methods of social organization. They used miners’ law and miners’ meetings to organize frontier mining society.

During this time the Government was intent on developing a formal system of mining law which resulted in the creation of *The Gold Fields Act, 1859*. But despite the existence of a formal and fairly comprehensive mining law, miners’ meetings and customary practices persisted as a method of social organization and regulation in British Columbia. This was because the colonial Government had little practical ability to administer the mining law on the settlement frontier. There was often no Government officer stationed to mining districts, well after major discoveries had been made and after substantial numbers of miners were working in a given area. Even after Government officials were stationed “on the ground” they were often unable to enforce the formal law owing to the vast territory and the large number of miners under their administration. Furthermore, popular practices had become normalized and proved difficult to overturn.

Even after the creation of a formal law, in districts staffed by Government officers, miners in British Columbia found the law wanting. It did not respond to the circumstances in which miners

²⁸⁸ “Number 6c: Bramley et al. to Governor Seymour,” 17 November 1865, in *Journals of the Legislative Council of British Columbia, From the 18th January, to the 5th April, 1866, in the 29th Year of the Reign of Her Majesty Queen Victoria. Being the Third Session of the Legislative Council of British Columbia* (New Westminster: Government Printing Office, 1866), iv.

found themselves. As a result, they lobbied the Government by petitioning Government officials and holding miners' meetings. They outlined their concerns and made their recommendations in the form of resolutions directed at the Governor. The basic method or practice of miners' meetings remained the same: meetings of miners were held and resolutions were passed. But the practice adapted to changing political circumstances in British Columbia: rather than passing their own laws, miners used miners' meetings as a political strategy to influence the Government's mining laws.

The miners had a receptive audience. The Colonial Government was willing to hear the mining population's suggestions on the subject of the mining laws. *The Gold Fields Act, 1859* allowed for the creation of Mining Boards, a representative institution that mining communities could use to create gold mining legislation. And while Mining Boards seem to perform a similar function to miners' meetings, they proved to be very different in form and substance. Mining Boards were created for very specific purposes, mandated by the mining community to solve a particular problem or issue. The 1863 Mining Board, which had a dramatic influence on the development of the mining laws and mining on the colony, was principally concerned with the capital and technical exploitation of the Cariboo mines.

Furthermore, whereas miners' meetings were principally concerned with basic social stability and with equality of opportunity for certain types of miners, i.e. white miners, the example of the 1863 Mining Board shows that this institution was concerned with liberty for capital. Miners' meetings had traditionally passed laws setting work requirements for claims, ensuring that mining ground did not go unworked. They also traditionally passed laws limiting the number of claims that could be held by one person, ensuring that one interest did not dominate any particular region. Somewhat differently, the Mining Board was a move away from concerns about equality.

Fueled by the belief that the Cariboo country could not be mined sufficiently by small interests – that to develop the deep diggings of Cariboo restrictions had to be removed for capital – the Mining Board made a number of recommendations. It recommended the creation of laws defining the legal rights of copartnerships. It removed the limitation on the number of claims which could be held by any one interest. It recommended the creation of specific types of stock companies, Bed Rock Flume Companies and Drain Companies, which constructed what amounted to large infrastructure projects for mining interests. In partnership with the Government, Mining Boards made recommendations for legal changes which never would have been conceived or undertaken by a miners' meeting.

The work of the 1863 Mining Board ultimately became *The Gold Fields Act, 1864*. Almost all the recommendations made by the Board found their way into the new act – in some cases, the recommendation of the Board were passed into formal law verbatim. But even as the formal law became increasingly elaborate and technically sophisticated, miners' meetings were still held in British Columbia, as shown by the example of Wild Horse Creek. This demonstrates the different role performed by miners' meetings and Mining Boards in different areas during the same time period. Miners' meetings allowed for basic social organization on the settlement frontier. In the absence of formal government, they created a sufficient level of social stability to allow for mining to take place. On the other hand, Mining Boards were charged by the mining community with a specific mandate. The examples offered by the 1863 and 1864 Mining Boards show that they were focused on adapting the formal law to conditions in the Cariboo and on rationalizing the gold fields law. Mining Boards were intent on adapting the gold mining law in order to influence mining society, increase the profitability of the mines, and make them more productive. Whereas miners'

meetings were concerned with social stability and protecting the interests of certain groups, Mining Boards were concerned with the economy and adapting the law to unlock economic opportunities.

Chapter 3

Return to Grouse Creek

Authority to create law was shared in Colonial British Columbia, when it came to the mining law. The Colonial Government ceded an important degree of authority to the Cariboo East Mining Board for practical political purposes. It entered into dialogue with the mining community and governed through that community which lent its technical expertise to the law making process. This dialogue resulted in the creation of new law and the revision of old law which allowed for capital interests to exploit the gold deposits of the Cariboo District to a greater degree than they would have been able to otherwise.

The 1863 and 1864 Mining Boards and the Government had fairly cordial relationships. Almost all of the recommendations submitted by the first Mining Board were accepted and passed into official law. The second Mining Board worked closely with the Legislative Council in New Westminster to work on reforming the mining laws. These representative bodies were not unlike each another: they saw themselves as having the same purpose: the material and economic development of the colony.

But as the 1866 mining season ended a problem was identified by the mining community in Cariboo. There was a rise in lengthy and costly appeals to the Supreme and Chancery Courts which tied up mining claims in legal proceedings. This seemed unjust to the people of the Cariboo Mining District – especially when good mining ground went unworked for a season while judgment on a case was pending. Adding to frustrations was the perceived arbitrary nature of specific judgments made by the Judge of the Supreme and Chancery Courts, Judge Begbie. According to critics, those decisions undermined faith in the justice system and raised doubts about the security of property.

Contributing to tensions was the fact that the Grouse Creek Flume Company had failed to meet its lease conditions, making its lease liable to forfeiture. The company had been required to lay a specific amount of bed rock flume each year but it had failed to do so. By 1866, much of the creek went unworked. Cariboo miners were aware of this and eager for access to mining ground on Grouse Creek; as a result, they petitioned the Government to forfeit the flume company's lease. Not unlike the Chancery issue, the perception was that the Government was unnecessarily blocking miners' access to good mining ground.

These two issues intersected during the summer of 1867 and contributed to the Grouse Creek War – a dispute over mining ground that threatened social order in the district. For Williams, the conflict was caused by Supreme Court Judge Matthew Baillie Begbie's judgments on two complex mining cases and his unwillingness to hear an appeal to the Supreme Court; while his execution of the law was sound, the mining community's lack of legal expertise contributed to a misunderstanding of his actions which inflamed the situation.²⁸⁹ Loo saw the problem as having stemmed from an attempt to apply rigid universal principals of law to a community that had its own particular understanding of the law based in "common sense"; a deafness to local sensibilities and voices contributed to the conflict.²⁹⁰

In addition to these interpretations, the Grouse Creek War is instructive in the way it draws out the relationship between the Mining Board and miners' meetings. The Mining Board had been mandated with fixing the appeals process and it had also lobbied to make the land along Grouse Creek available to local miners. As a result, it was at the center of the Grouse Creek War. And as the situation deteriorated, mass miners' meetings chaired by Cornelius Booth of the Mining Board were held in support of the Canadian Company and as part of an attempt to lobby the Government.

²⁸⁹ Williams, *The Man for a New*, 64-80.

²⁹⁰ Loo, *Making Law, Order, and Authority*, 122-133.

This shows that, when formal practices failed, there was a return to miners' customary political practices. Miners' meetings continued to be utilized as a political strategy, even in mining districts with highly developed systems of formal law like the Cariboo – and especially when formal systems of law broke down or were disputed.

There was broad frustration amongst Cariboo miners with the appeals system for civil mining cases. The appeals process was seen as too costly and lengthy, favoring those with means over smaller interests. Indeed, there was a wealth of options if one wished to appeal a case. If a party were unhappy with a judgment made by the Gold Commissioner's court, it could appeal to the Supreme Court on a point of fact, prompting a retrial of the case, or on a point of law, challenging the procedures of the Gold Commissioner's Court or its interpretation of the law. Parties also had the right to file suit in the Court of Chancery which based its judgments on 'equity'. In the English legal tradition, the Court of Chancery was meant to serve as a corrective to the Common Law and could override decisions made by Common Law courts. It eventually developed into a system of law completely distinct from the Common Law.

The perceived injustice of appeals to the Chancery Court influenced more than three 350 people on Williams Creek to sign a petition addressed to the Governor. The petitioners complained that lengthy court proceedings when combined with the short length of the mining season and the expensive cost of litigation, resulted in miners being pushed from claims, out of the country, or into other industries. They called for the governor to create laws which would stop mining cases from ever entering a Chancery Court.²⁹¹

²⁹¹ "Appendix: Number 6c," November 1865, in *Journals of the Legislative Council of British Columbia, From the 18th January, to the 5th April, 1866, in the 29th Year of the Reign of Her Majesty Queen Victoria* (New Westminster: Government Printing Office, 1866), iv.

Cariboo Gold Commissioner William George Cox also thought the appeals process should be changed. In his view, parties were using the appeals process to circumvent the decisions of the Gold Commissioner's Court. In an attempt to stop this practice, he submitted a proposed act to the Legislative Council titled *An Ordinance to prescribe the manner of taking appeals from the decisions of the Gold Commissioners*. It required that parties wishing to appeal the judgment of the Gold Commissioner enter into bonds and agree to "conform to the judgment of the Supreme Court" which would block access to the Chancery Court. It also required that the Gold Commissioner's judgment be observed from the date it was made notwithstanding the filing of an appeal as long as the party in whose favor the commissioner ruled was willing to enter into bonds and "abide by and conform to the decision of the Supreme Court" – a clause designed to allow for the non-interruption of mining despite an appeal. The last clause of Cox's law required that appellants swear on good faith and record in an affidavit the reasons for which they were appealing.²⁹²

Judge Begbie did not welcome Cox's suggestions. His frustrated notes are found in Cox's letter's margins. In response to the first suggestion, he wrote that it is a repetition of the existing law. For the second, he wrote that "[t]his is of course, + has long ago been judicially noticed as law." For the third suggestion he wrote: "[t]his is improper. Of course every appellant would be ready to depose that he believes he has a good cause." But while Begbie clearly disagreed with Cox, he didn't address the broad aims of the proposal: limiting appeals to the Chancery Court and stopping the use of the appeals process to forestall the decision of the Gold Commissioner.

²⁹² Cox to Colonial Secretary, 8 January 1866, BCA, GR 1372, F384. In his reply to the Colonial Secretary in April, Cox makes it clear that the intention of his draft law was to stop parties from obstructing the decision of the Gold Commissioner by appealing to the Supreme Court without grounds, a practice which Cox identifies as having been in "vogue" at the time. Cox to Colonial Secretary, 25 April 1866, BCA, GR 1372, F384.

Apparently disagreeing that a change to the appeals process was necessary, Begbie wrote: “This is all a mere repetition of the existing law, which is in fact more full and proper.”²⁹³ Cox’s suggestions were not considered by the Legislative Council.

In this context, two mining cases heightened concerns about the judiciary in the Cariboo District. The first case, *Borealis Company v. Watson Company*, began during the 1865 mining season and it was over a mining claim. It went before the Gold Commissioner’s Court where a decision was made in favor of the Watson Company. In response, the Borealis Company brought a *de novo* appeal before the Supreme Court where Judge Begbie affirmed the decision of the Gold Commissioner’s Court in favor of Watson Company.²⁹⁴ The next summer, the Borealis Company brought the Watson Company to the Chancery Court where Judge Begbie ruled in favor of the Borealis Company, appearing to reverse his own Supreme Court decision.²⁹⁵

Coinciding with this controversial judgment was the Legislative Council Select Committee’s recommendation that the existing appeals process *not* be changed. Having been formed to consider the Cariboo miners’ petition submitted the previous November, the Select Committee recognized there was a problem but recommended the Appeal Courts be expanded rather than increasing the jurisdiction of the Gold Commissioner’s Court.²⁹⁶

This finding was met with indignation by the public. One critic viewed the Select Committee’s conclusion as designed to protect the interests of lawyers of which the Committee was comprised. According to that critic, the complicated and endless litigation, “the obnoxious

²⁹³ Cox to Colonial Secretary, 8 January 1866, BCA, GR 1372, F384.

²⁹⁴ “Borealis Mining Co. v. Watson Co.,” *The Cariboo Sentinel*, 24 June 1865.

²⁹⁵ “Borealis Company vs. Watson Company,” 18 April 1866, *The Cariboo Sentinel*, 17 May 1866. On this case see also Loo, *Making Law, Order, and Authority*, 115, and Williams, *The Man for a New Country*, 68-69.

²⁹⁶ Report of the Select Committee, 5 April 1866, in *Journals of the Legislative Council of British Columbia, From the 18th January, to the 5th April, 1866, in the 29th Year of the Reign of Her Majesty Queen Victoria* (New Westminster: Government Printing Office, 1866), 38.

Chancery business”, was unnecessary. Instead, appeals should go before the Gold Commissioner and a jury of miners.²⁹⁷

That same season the judgement in another mining case caused controversy. As the result of a dispute over a mining claim, the Davis Company brought charges against the Aurora Company before the Gold Commissioner’s Court. Commissioner Cox ruled in favor of the Davis Company. The Aurora Company appealed, bringing a *de novo* case before the Supreme Court. Judge Begbie issued an injunction ordering the Davis Company to stop work.²⁹⁸ On June 18th the appeal went before the Supreme Court and a jury of local citizens. The jury deliberated until midnight and ultimately decided to divide the claim—measuring 130 feet across—into two equal parts, reversing the Gold Commissioner’s judgement.

But Judge Begbie disagreed with the jury’s decision and, with the consent of the plaintiff and defendant, he set the decision of the jury aside and acted as arbitrator. The following day, Judge Begbie returned with his decision in favor of the Aurora Company. The mining community immediately was up in arms.²⁹⁹

A miners’ meeting was held in the streets of Barkerville to protest the decision. 500 to 600 people attended and voiced their dissatisfaction with Judge Begbie’s particular style of “arbitrary justice”. The miners passed three resolutions, expressing their displeasure in no uncertain terms and demanding the creation of an Appeals Court:

Resolved – That in the opinion of this meeting the administration of the Mining Laws by Mr. Justice Begbie in the Supreme Court is partial, dictatorial, and arbitrary, in setting aside the verdict of juries, and calculated to create a feeling of distrust in those who have to seek redress through a Court of Justice.

²⁹⁷ “Letter from New Westminster,” *The Cariboo Sentinel*, 6 August 1866.

²⁹⁸ This led to a minor controversy when Cox, against the instruction of Begbie, refused to issue the injunction without the Supreme Court seals. See “Irresponsible Deputies: Decisive Stand Taken by Judge Cox,” *The Cariboo Sentinel*, 31 May 1866.

²⁹⁹ Loo, *Making Law, Order, and Authority*, 116. Williams, *The Man for a New Country*, 70-72. According to Williams, Begbie divided the disputed ground into 19 and 3/4 parts of which 14 were awarded to the Aurora Company and 5 and 3/4 were awarded to the Davis Company.

Resolved – That this meeting pledges itself to support the Government in carrying out the Laws in their integrity, and beg for an impartial administration of justice. To this end we desire the establishment of a Court of Appeal, or the immediate removal of Mr. Justice Begbie, whose acts in setting aside the Law has destroyed confidence and is driving labor, capital and enterprise out of the Colony.

Resolved – That a Committee of two persons be appointed to wait upon His Excellency the Administrator of the Government with the forgoing resolutions, and earnestly impress upon him the immediate necessity of carrying out the wishes of the people.³⁰⁰

The resolutions were interspersed with speeches which were interrupted by cheers and contributions from the crowd. Mr. Towers criticized Begbie's setting aside of the jury's decision, an institution which is the "grand bulwark of the British Government." A member of the Davis Company, Mr. Laumeister spoke, claiming that Begbie did not consider the African American members of the company in his decision and reassured the crowd that they would not lose their shares in the remaining ground. Others touched on the dissatisfaction stemming from mining companies taking proceedings in Chancery Court, after decisions had been passed by the Supreme Court. Mr. Burdock highlighted the farce created by the same judge sitting as head of both courts and ruling against his own decisions. He pointed to the injustice created when those with means could take proceedings in Chancery while others were "froze out."³⁰¹

John MacLaren was another prominent figure at the miners' meeting. He spoke of the need for a Court of Appeal made up of "two men or more" to restore faith in the justice system and prevent men from being driven from the colony. Touching on the defiant spirit raised by the miners' meeting, he reassured the crowd they were well within their rights to protest: "I am not intimidated at the action we are now taking. We know that the 'habeas corpus' and the bill of rights still exist."³⁰²

³⁰⁰ "Mass Meeting," *The Cariboo Sentinel*, 25 June 1866.

³⁰¹ Ibid.

³⁰² "Mass Meeting," *The Cariboo Sentinel*, 25 June 1866.

After the meeting Cornelius Booth led a delegation to the door of Commissioner Cox, and read a prepared statement expressing confidence in the Commissioner and “his administration of the Mining Laws in the District.” He then presented Cox with a declaration of support signed by 500 miners of the surrounding creeks as well as a cane made of rosewood and topped with more than five ounces of Cariboo gold. Prepared by a craftsman in Victoria, the gold at the top of the cane was shaped in the form of an octagon, on which each face was inscribed a different image related to gold mining. Also engraved was an inscription reading “[p]resented to G.W. Cox, Esquire, Gold Commissioner, by the Miners of Williams Creek, Cariboo, 1866.”³⁰³

Acting as Cariboo delegates, Mr. MacLaren and Mr. Laumeister traveled to New Westminster to present the Cariboo miners’ resolutions to the Government. The *Sentinel* warned the Government not to underestimate the mining community, reasoning that, since it is the principal revenue generating district, its concerns should not be dismissed.³⁰⁴ The *Colonist* contrasted Judge Begbie unflatteringly against Judge Needham and questioned his legal qualifications. It reported that Judge Begbie’s rulings had undermined confidence in the ownership of mining claims, leading some to consider disregarding his decisions altogether.³⁰⁵

News of the Cariboo delegates’ progress reached Barkerville on July 16th. They had arrived at New Westminster and had presented their mission to the Officer Administering the Government, Mr. Birch. They had met with him twice and were awaiting a formal written response to their concerns. They also reported that Birch planned to visit the Cariboo.³⁰⁶ With an official reply from Birch and assurances that he would visit the district that summer, the delegates returned to Cariboo.

³⁰³ Untitled Article, *The Cariboo Sentinel*, 25 June 1866. The editor of the *British Colonist* took a critical view of Begbie’s decision to set aside the decision of the jury. “The Tyrant Judge,” *The British Colonist*, 28 June 1866.

³⁰⁴ Editorial, *The Cariboo Sentinel*, 28 June 1866.

³⁰⁵ “The British Columbian Judiciary,” *The British Colonist*, 11 June 1866. This was reprinted in “The British Columbian Judiciary,” *The Cariboo Sentinel*, 2 July 1866.

³⁰⁶ “Our Delegates,” *The Cariboo Sentinel*, 16 July 1866.

Apparently sympathetic to the petitioner's demands, Birch wrote that the establishment of a Court of Appeal has "long since claimed my attention." He explained that the settling of the issue had been delayed by recent efforts to unite the Colonies of British Columbia and Vancouver Island and that any judicial appointment, prior to the colonies being united, would not be appropriate.³⁰⁷ In the meantime, he suggested the Cariboo Mining Board be reestablished and reminded the miners of Cariboo that the powers granted to the Mining Board under section XI of the 1865 Gold Fields Act could be used to forestall unnecessary and protracted litigation.³⁰⁸

The editor of the *Sentinel* responded enthusiastically to Birch's suggestion. Pointing out that, if a Mining Board were constituted, few amendments would be necessary to make the desired change. He proposed that appeals from the Gold Commissioner's Court should go before a jury of miners in the same court – cutting the Supreme Court and Chancery Court out of civil mining litigation. All decisions rendered by a jury of miners in the Gold Commissioner's Court would be final. Such a measure would therefore stop all unnecessary and expensive litigation.³⁰⁹

Taking Birch's suggestion, the district set about organizing for the election of a Mining Board. The *Sentinel* called for the community to take the election seriously, as it was not a "mere formality" but an important method of establishing good legislation, upon "which our future interests and those of the colony depend." The established consensus was that it would be the duty of the Mining Board, once elected, to amend the appeal clause.³¹⁰

The election was held on Tuesday July 31st, 1866. It was met with enthusiastic support but voting irregularities, caused by a misunderstanding of the voting guidelines set out in the Gold

³⁰⁷ The Colony of Vancouver Island and the Colony of British Columbia were united in August 1866. Victoria was chosen as the Capital city where the Legislative Council would sit.

³⁰⁸ "Arthur N. Birch to Messrs. Laumeister and MacLaren, 5 July 1866," *The Cariboo Sentinel*, 23 July 1866. See also "Mr. Birch's Answer," *The British Colonist*, 16 July 1866.

³⁰⁹ Editorial, *The Cariboo Sentinel*, 23 July 1866.

³¹⁰ "Mining Board Election," *The Cariboo Sentinel*, 30 July 1866.

Fields Act, led to the results being nullified. Gold Commissioner Cox called an election for the following Friday.³¹¹

Polls opened at 10 o'clock in the morning at Richfield, Barkerville, and Cameron town, on Friday August 3rd. This round of voting was met with festive enthusiasm. A particularly jubilant atmosphere developed at Camerontown, despite the rain which fell throughout the day. Caricatures, poking fun at the candidates and their parties, were presented, "some of which were highly ludicrous and amusing, and produced not a little irritation on the part of several of the individuals ridiculed." A large placard with the inscription "voxpopuli, voxdei" or "the voice of the people, the voice of god," was mounted onto a decorated express wagon, encouraging all to vote. Throughout the day the festive atmosphere was maintained. The polls closed at four and there were no noted outbreaks of violence. The twelve elected were: W. Hazeltine, John MacLaren, Samuel Drake, James Anderson, Cornelius Booth, James Burdick, Angus Hardie, J.S. Thompson, R.R. Monroe, J.B. Wilkinson, Dr. Foster, and Henry Coulter. Approximately 408 people voted.³¹²

Reflecting on the election, the editor of the *Sentinel* expressed confidence in the members of the new Mining Board. Commenting that: "[t]he men composed of it are in the main of the right stamp (i.e.) men of good practical experience and the only men from whom we can expect the proper measures to guide and govern a mining camp." The editor then took the opportunity to underline the clear mandate given to the Mining Board: to facilitate the adjudication of mining cases and reduce unnecessary expenses. By this point, the editor of the *Sentinel* had developed his own opinion as to the course to be pursued. He proposed that appeals from the Gold

³¹¹ "Election," *The Cariboo Sentinel*, 2 August 1866. The names of candidates were listed in "Cariboo Mining News," *The British Colonist*, 2 August 1866.

³¹² "Election," *The Cariboo Sentinel*, 6 August 1866. Brief coverage was also given in "From the Interior: Miscellaneous," *The British Colonist*, 9 August 1866.

Commissioner's Court should go for final adjudication to the Mining Board under the direction of the Gold Commissioner. He suggested that seven members of the Mining Board would be necessary to constitute a quorum, in this case.³¹³

Having reconstituted the Mining Board, a breakdown was made of voting patterns. Of the twelve Mining Board members John MacLaren, James Anderson, and Cornelius Booth received the most votes.³¹⁴ At an early meeting Cornelius Booth was elected Chairman and John MacLaren, Secretary.³¹⁵ Continuing its support of the Board and its mandate, the *Sentinel* reported on Mining Board meetings, published their minutes, and commented upon their progress in editorials.

True to his word, Birch visited the Cariboo that summer. And upon his arrival the Mining Board presented him with an address outlining its demands. According to the *Sentinel*, the Board was friendly but direct, covering the different questions it hoped to resolve. But to the Board's disappointment, Birch remained non-committal and he changed the subject almost immediately after having been presented with the address. The editor of the *Sentinel* came out strongly against Birch's reaction and his "unfair trifling with the interests of a large and important community like ours."³¹⁶

Upset but determined, the Board retired the same day to a meeting where it considered a range of issues, including Birch's response. Frustrated, the Board resolved that Birch be presented with a written copy of the resolutions passed that day and that he meet with the Mining Board to give them a reply. The Board then considered a number of issues, important to the district, such as the management of the hospital, trail building projects, and complaints that the Bed Rock Flume was encroaching on the rights of individual miners.

³¹³ "Election of a Mining Board," *The Cariboo Sentinel*, 6 August 1866.

³¹⁴ "Mining Board, *The Cariboo Sentinel*, 9 August 1866.

³¹⁵ Untitled Article, *The Cariboo Sentinel*, 9 August 1866.

³¹⁶ "Mr. Birch and the Mining Board," *The Cariboo Sentinel*, 13 August 1866.

Returning to their mandate, the Board raised the issue of the mining laws. Mr. Burdick passed a resolution claiming that Begbie's carrying of mining cases into Chancery Court was illegal, according to the mining laws. He emphasized that Begbie did not have the confidence of the mining community and that a Court of Appeal was necessary. Mr. Thompson presented a motion that called for a change to the system of appeals and which was similar to suggestions that had been made by the editor of the *Sentinel*. Thompson proposed that appeals go from the Gold Commissioner's Court to a jury of seven free miners. If the jury affirmed the decision of the Gold Commissioner, no other appeal would be permitted. Alternately, if the jury reversed the decision of the Gold Commissioner, an appeal could be brought to the Mining Board, which would decide by majority vote.³¹⁷

The following Monday, Birch met with the Mining Board at the Richfield court House to discuss the resolutions passed at the previous meeting. Prior to meeting, Birch had communicated with Begbie who had refuted Mr. Burdick's claim that the carrying over of cases into Chancery was illegal – in contradiction with the mining laws. The question of mining cases being brought over into the Chancery Court was at the center of Birch's discussion with the Board and various solutions were considered. Birch was careful to explain that, because British Columbia was a Crown Colony, and therefore governed by English law, the Legislative Council could not block appeals to the Supreme or Chancery Courts. Regardless, he suggested that other options were available. He explained that bylaws could be passed to avoid litigation or parties taking cases before the Gold Commissioner could make a special agreement, prior to the trial, binding them to the decision of the Gold Commissioner.

³¹⁷ "Mining Board Meeting," *The Cariboo Sentinel*, 13 August 1866.

Regarding the proposition of the Mining Board, that cases go to appeal before a jury of seven miners with the possibility of appeal to the Mining Board, Birch thought that juries should be used by the lower court, rather than by an appeal court. He then proposed that parties, before this lower court jury, could make a special agreement binding them to the decision of the court but opined that this configuration could present its own problems. Alternately, Birch declared his intention to place a bill for the creation of a Court of Appeal before the Legislative Council – voicing confidence that the creation of such a court was a real possibility.

Another solution, advanced by Mr. Thompson was the limiting of appeals to the Supreme Court to points of law, which would grant more authority to the Gold Commissioner’s Court, making it a Court of Record. Birch was supportive of this course of action, emphasizing that the current practice of hearing cases *de novo* in the Supreme Court is expensive and therefore unpopular. Regardless, Birch suggested that the Board draft and forward their proposals to the Attorney General who would then make the necessary preparations. He also suggested that the Board may wish to consult with a lawyer while drafting their proposals.³¹⁸

From the time of Birch’s visit in August to mid-October the Mining Board regularly met in pursuit of its mandate and other mining related matters of concern to the community. Meetings were open to the public—the editor of the *Sentinel* was formally invited to attend—and held

³¹⁸ “The Administrator of the Government and the Mining Board,” *The Cariboo Sentinel*, 16 August 1866, and “Interview Between His Honor the Administrator of the Government and the Mining Board,” *The Cariboo Sentinel*, 16 August 1866. Interestingly, Birch saw his visit to the Cariboo in very different terms than those chronicled by *The Cariboo Sentinel*. In his own private papers, he described that when he arrived at Williams Creek he was greeted by a “large but silent crowd”. He immediately went to Begbie’s quarters, and having found Begbie, faced the crowd, and defended Begbie’s arbitration of *Aurora v. Davis*. In this account, Birch won over the crowd and was invited to a public dinner but he agreed only to attend if Begbie was also invited. Consequently, an invitation was extended to Begbie and the two went “arm in arm to a big dinner in a large barn.” A.N. Birch to John Birch, 12 August 1866, BCA, Birch Family Papers, Chapter IV. See also Williams, *The Man For a New Country*, 74-75. While Birch refers to a large dinner attended by himself and Begbie there is no mention of such a dinner in *The Cariboo Sentinel* which tended to chronicle large public events.

regularly.³¹⁹ They discussed, on several occasions, the management of the hospital and raised funds to support that institution.³²⁰ Another issue, discussed on several occasions was the rights of miners and those of the Williams Creek Bed Rock Flume—after many miners brought complaints before the Board. Ultimately, the Mining Board decided to recommend that no special privileges be granted to the Williams Creek Bed Rock Flume Company or the Williams Creek Bed Rock Drain Company, beyond those outlined in the mining laws.³²¹ Concerns around damage to the Bed Rock Drain having an impact or damaging other claims on the creek was another issue raised before the Board. Part of the threat posed to the Bed Rock Drain was the failure of some to effectively maintain their claims from seasonal flash floods or freshets. The Gold Commissioner was identified as having powers to compel miners to maintain their claims and a committee was formed to assist the Gold Commissioner in the performance of this duty. Despite this initiative, Mr. Cox was of the opinion that the act granted him sufficient powers to make any necessary intervention.³²²

In the light of recent accidents, the Board also raised the issue of dangerous mining works by passing a resolution calling for the better protection of life and property against slides, open shafts, and other dangerous works.³²³ Finally, they also called for the post office and literary

³¹⁹ “Mining Board,” *The Cariboo Sentinel*, 20 August 1866.

³²⁰ “Mining Board Meeting,” *The Cariboo Sentinel*, 27 August 1866, “Mining Board,” *The Cariboo Sentinel*, 10 September 1866, “Mining Board,” *The Cariboo Sentinel*, 17 September 1866, Cox to Colonial Secretary, 24 September 1866, BCA, GR 1372, F384, and “Mining Board,” *The Cariboo Sentinel*, 24 September 1866.

³²¹ “Mining Board,” *The Cariboo Sentinel*, 20 August 1866, “Mining Board,” *The Cariboo Sentinel*, 3 September 1866, and “Mining Board,” *The Cariboo Sentinel*, 30 November 1866.

³²² “Mining Board,” *The Cariboo Sentinel*, 24 September 1866, “To the Editor of the Cariboo Sentinel,” *The Cariboo Sentinel*, 27 September 1866, “Mining Board,” *The Cariboo Sentinel*, 1 October 1866, “Mining Intelligence: Williams Creek,” *The British Colonist*, 11 October 1866, and “Mining Board,” *The Cariboo Sentinel*, 15 October 1866.

³²³ Mining Board to Gold Commissioner Spalding, 3 December 1866, BCA, GR 262, and “Mining Board,” *The Cariboo Sentinel*, 30 December 1866.

institute to be moved to Barkerville, seeing as how that city would most likely become the principal place of business in the district.³²⁴

During this time the Mining Board and the *Sentinel* publically nominated Mr. MacLaren as candidate to the Legislative Council for the upcoming elections. Billed as a “people’s candidate”, MacLaren was said to have the interests of the people at heart and “upon whom self-interest or officialdom can have no influence.”³²⁵

The only problem was MacLaren had not been notified beforehand and, upon hearing the news, he declined the nomination almost immediately. He explained that he did not wish to run pointing to problems he viewed with the Government and the Colony. In his view, with only one elected member, Cariboo was woefully underrepresented in the Legislative Council despite the fact that it held a third of the population of the colony. As he explained, while the district is the most important, in terms of revenue generation, it receives a comparatively small amount of the public works projects. He expressed dissatisfaction with the Government’s tendency to portray the citizenry as content, when the opposite was often the case, while the civil list was larger than the population required. He finished his explanation with a comment on the level of animosity between the miners and the Government: “I perceive also that the only relationship existing between the miners and the Government of present is a supreme contempt on the part of the former and a morbid insensibility on the part of the latter — a relationship with which I do not wish to deal.”³²⁶

In light of MacLaren’s refusal to run for a seat of the council, the editor of the *Sentinel* expressed “extreme regret” and, having so strongly backed MacLaren, he refused to throw his support behind the alternative candidates. Mr. Walkem, viewed as a “doughty champion of

³²⁴ “Mining Board,” *The Cariboo Sentinel*, 31 December 1866.

³²⁵ “Our New Candidate,” *The Cariboo Sentinel*, 20 September 1866, and “The Election Contest,” *The Cariboo Sentinel*, 17 September 1866.

³²⁶ “To the Members of the Mining Board and Many Others,” *The Cariboo Sentinel*, 24 September 1866.

monopoly,” somebody not to be trusted, shedding “crocodile tears” over Chancery suits while filling his pockets with miners’ money. The alternative, Mr. Harris, while not an ideal candidate, was “decidedly in every way an improvement over Walkem.”³²⁷ In the end, the outcome was so close, Harris with 523 and Walkem with 519 votes, that a recount was necessary, at the end of which Walkem was declared the winner.³²⁸

Having been elected, Walkem offered the Mining Board assistance with their revision of the mining laws. Some members, such as Mr. Thompson, were open to accepting Walkem’s assistance but others were not. An official response to Walkem’s offer was delayed until a full sitting of the Board took place which led to it being ignored. The Board formed its recommendations without his assistance.³²⁹

With the election to the Legislative Council settled, the Mining Board returned to its review of the mining laws. The most important amendment it recommended was that called for by their mandate: resolving the Chancery issue. The official recommendation for the resolution of the Chancery suit issue was informed by the Mining Board’s discussion with Birch: that appeals from the Gold Commissioner’s Court go to the Supreme Court and that those appeals be limited to points of law, made in good faith, and not used as a delay tactic. Also, informed by their discussion with Birch, the Board recommended that the act be changed so as to allow for a jury of three to

³²⁷ “Our Candidates,” *The Cariboo Sentinel*, 27 September 1866. The *Colonist* was much more forgiving of Mr. Walkem, although Mr. Harris was still viewed as preferable. “The Cariboo Election,” *The British Colonist*, 12 October 1866.

³²⁸ “Election Returns,” *The Cariboo Sentinel*, 8 October 1866. On the close election call see also “From Cariboo,” *The British Colonist*, 26 October 1866.

³²⁹ “Mining Board,” *The Cariboo Sentinel*, 22 October 1866, and “Mining Board,” *The Cariboo Sentinel*, 29 October 1866.

five miners to be summoned by either party bringing a suit before the Gold Commissioner's Court.³³⁰

At one of the last Mining Board meetings, on December 21st, attention turned to the Grouse Creek Bed Rock Flume Company.³³¹ Addressing the Board, Mr. Hankin reminded it that the Flume Company's lease was set to expire next spring and that it had not fulfilled its lease conditions. The Board concluded that the Flume Company's lease should not be renewed after May 20th, 1867, which would make a large section of Grouse Creek available for preemption. It passed a resolution addressed to Birch, in his capacity as Officer Administering the Government, recommending that it not renew the lease.³³²

Ever a champion of the Mining Board, the *Sentinel* published a glowing editorial, summarizing its activities and role. While reflecting on the importance of the institution, the editor warmly complimented the Board on "the gentlemanly conduct, the attention and diligence of the individual members during all their meetings."³³³

The Grouse Creek Bed Rock Flume Company had initially applied for a ten-year lease on Grouse Creek beginning on April 30th, 1864. At the time, the lease application had been handled by Gold Commissioner Peter O'Reilly. The Flume Company was granted a section of the creek, beginning at "a point at the old trail on the divide at the head of Grouse Creek" from where it followed the creek down the valley. The lease measured 4.6 miles long (7.4 km) by one hundred feet across, the width being measured fifty feet in either direction from a center line, in Grouse Creek.

³³⁰ "A Copy of the Resolutions Passed by the Mining Board Proposing Alterations in the Mining Laws," *The Cariboo Sentinel*, 31 December 1866.

³³¹ Hereafter referred to as the Flume Co.

³³² "Mining Board," *The Cariboo Sentinel*, 31 December 1866.

³³³ "The Mining Board," *The Cariboo Sentinel*, 31 December 1866.

According to the terms, the Company was to construct a specific amount of flume each year or the lease could be forfeited. It could also be forfeited if the Company failed to pay rent or meet other specified requirements. Between 1864 and 1866 the company invested twenty to thirty thousand dollars into building a bed rock flume along Grouse Creek but by the spring of 1866 it had failed to lay the sufficient length of flume to meet the conditions outlined in its lease.³³⁴

Because it had failed to meet the conditions, many believed that the Grouse Creek Flume Company's lease would soon be forfeited. Cariboo miners were eager to prospect the creek. A column in the *Sentinel* pointed out that the flume "is built and laid in a very substantial manner, and is a highly credible piece of workmanship; the only pity is to see it lying idle when there is plenty of water to work with and numbers of men who might be profitably employed on it."³³⁵

A petition was sent to the Colonial Secretary by the Free Miners and Residents of Cariboo who wanted access to Grouse Creek. They pointed out that the Grouse Creek Flume Company had not laid out the necessary length of flume and that the Gold Commissioner had issued a notice on May 26th making it clear that if the company did not lay the necessary length of flume by June 30th, according to the terms of its lease, its right to the creek would be forfeited. The petitioners expressed their belief that the company would apply for an extension to its lease and, if so, they requested that the Government refuse that extension because it would result in large sections of the creek remaining unworked for an "indefinite period" of time. Because there were miners willing to work and prospect the creek right away, they asked for the Government to allow the lease to expire.³³⁶

³³⁴ "Canadian Company vs. Grouse Creek Flume Co., Ltd.," in *Reports of Mining Cases Decided by the Courts of British Columbia and the Court of Appeal Therefrom to the 1st of October, 1902; with an Appendix of Mining Statutes from 1853 to 1902; and a Glossary of Mining Terms*, ed. Archer Martin, 3-4 (Toronto, Canada: The Carswell Company, Limited, 1903).

³³⁵ "Mining Intelligence" *The Cariboo Sentinel*, 11 June 11 1866.

³³⁶ Free Miners and Residents of Cariboo to Colonial Secretary, 16 June 1866, BCA, GR 1372, F1352.

The Attorney General was well aware of the situation. Just as the Cariboo miners had suspected, Crease had received a request from the Grouse Creek Company asking for the lease to be extended. In an unaddressed letter, he wrote that the Company “makes a good case” and if it succeeds “it will be the means of introducing the permanent working of sluices, with a large influx of capital.” But expectations had been raised as a result of the Gold Commissioner’s notice. Crease therefore recommended it “be quietly withdrawn but in such a manner as to keep intruding “jumpers” watching their opportunity from giving troubles.” He then recommended that two or three months be extended to the company which will allow the Government time to study the question. In his opinion, the Government had the legal power to modify the Charter.³³⁷

In a draft reply to the petitioners Crease wrote that he understood how recent gold discoveries on Grouse Creek have made it attractive to individual miners. But according to the Chairman of the Grouse Creek Flume Company, those discoveries were made possible *as a result* of the construction of the bed rock flume which drained the adjacent ground of water. Crease reasoned, if that were the case, some leniency should be shown to the company. It had invested thirty thousand dollars on the creek and the individual miner stood to benefit from its works.³³⁸

Speculation on what would happen to the Flume Company’s land had continued into the fall. Testing the limits, the Anti-Heron Company was brought before the Gold Commissioner’s Court by the Flume Company for encroaching on its land. The Anti-Heron Company argued that the Flume Company had failed to fulfill its lease and had therefore abandoned the ground. In his decision, Gold Commissioner Spalding explained that the Flume Company still had a right to the

³³⁷ Attorney General, 13 June 1866, BCA, GR 1372, F67.

³³⁸ Attorney General to Petitioners, 16 June 1866, GR 1372, F1352.

ground because its application for an extension of its lease had been granted till May 20th, 1867, on condition it lay 500 feet of flume before that date.³³⁹

Regardless, encroachment continued into the fall. In October, the Canadian Company, for which Cornelius Booth was a foreman, registered a claim with Gold Commissioner Spalding that infringed on the Flume Company's ground.³⁴⁰ In addition, the Keystone Company and the Big Bend Company had both been found to be encroaching on the Flume Company's land in November.³⁴¹

The Mining Board resolved on December 21st that the Flume Company's lease not be extended the following spring.³⁴² Mr. Hankin's petition and the Mining Board's resolution were forwarded to the Colonial Secretary by Commissioner Spalding who wrote: "I need not further occupy your time than to represent the general dissatisfaction it would occasion amongst the mining community of the Colony, was the Grouse Creek Bed Rock Flume Co permitted to hold the land in question, to the exclusion of all other parties, after the 31st May next."³⁴³

During the winter Spalding toured the district. In his report, he wrote that many companies are working throughout the winter because of the mild weather. According to his estimate, 900 miners were working in the district on January 31st. On Grouse Creek, the Heron Company,

³³⁹ "Gold Commissioner's Court," *The Cariboo Sentinel*, 27 September 1866.

³⁴⁰ The Canadian Co. registered the ground with Spalding but that they did not place their stakes. "Canadian Company vs. Grouse Creek Flume Company, Ltd.," in *Reports of Mining Cases Decided by the Courts of British Columbia*, ed. Martin, 4-5. Normally, when registering a claim, Free Miners submitted a description and map when registering claims. Gold Commissioners did not inspect each claim in person upon registration. Clarification of boundary lines often resulted from civil cases in the Gold Commissioner's Court. This explains how Spalding could register a claim for the Canadian Co. on the Flume Co.'s ground.

³⁴¹ As foreman for the Keystone Co., Mr. C. Hankin was brought before the Gold Commissioner's Court by the foreman of the Big Bend Co., Andrew Park. After several witnesses were heard it was determined that the land in question belonged neither to the plaintiff nor the defendant. It belonged to the Grouse Creek Flume Co. As a result, the case was dismissed. "Gold Commissioner's Court," *The Cariboo Sentinel*, 30 November 1866.

³⁴² "Mining Board," *The Cariboo Sentinel*, 31 December 1866.

³⁴³ "Spalding to Colonial Secretary, 20 December 1866, BCA, GR 216, Vol. 11. The May 31st deadline was set by Mr. Birch. The original deadline set by Commissioner Spalding, was not so generous. See "The Administration of the Mining Laws," *The Cariboo Sentinel*, 15 December 1866.

Discovery Company, and Full Rigg Company were working. Acknowledging the excitement surrounding the creek, he wrote that “much prospecting is also going on, on this creek, and the results in the Spring are looked forward to with confidence... I may with safety say that many hundreds of miners are likely to be at work there during the coming season, in the event of the Ground which is at present held by the Grouse Creek Bed Rock Flume Co. being thrown open for pre-emption.”³⁴⁴

In March, the Government chose to renegotiate and extend the Flume Co.’s lease. The former lease was extinguished and a new lease with more forgiving terms and a smaller allocation of ground was granted. The allocation of ground was reduced from 4.6 miles by 100 feet to 0.23 miles (or 1250 feet) by 100 feet.³⁴⁵ On the day the new lease became official, Spalding notified the public and the Mining Board. Approximately 4.5 miles of creek below the renegotiated lease was opened up for pre-emption.³⁴⁶

The Mining Board met a few days later to discuss the decision. It was the first time it had met since the previous December. The news was not well received and it provoked a “considerable discussion”. The Board passed a resolution calling for the Mining Board Secretary, MacLaren, to write to Spalding in order to request that he provide the Board with a copy of his instructions from the Colonial Secretary. MacLaren did not agree with the course of action but he was outvoted by the other Board members.³⁴⁷

³⁴⁴ Spalding to Colonial Secretary, 1 February 1866, BCA, GR 216, Vol. 11. Spalding makes no mention of having seen the Canadian Company working on Grouse Creek that winter but, according to statements later made in court, the Canadian Company entered and worked the land as of 8 October 1866 and continued to do so throughout the winter of 1866-1867. “Canadian Company vs. Grouse Creek Flume Co., Ltd.,” in *Reports of Mining Cases Decided by the Courts of British Columbia*, ed. Martin, 5-6.

³⁴⁵ Ibid.

³⁴⁶ Spalding to the Secretary of the Mining Board, 23 March 1867, BCA, GR 216, Vol. 11.

³⁴⁷ “Mining Board,” *The Cariboo Sentinel*, 30 March 1867.

Three days later, the Board met to consider Spalding's reply. Spalding wrote that he could not provide the Board with the requested document, owing to the rules governing the public service. He assured the members of the Board that the information provided to them was based entirely on the instructions he had received from the Colonial Secretary.³⁴⁸ In response, the Board passed three strongly worded resolutions: condemning the conduct of the Gold Commissioner as being disrespectful to the Mining Board, condemning the "tenor" of the Gold Commissioner's communication, and declaring the revised grant to the Flume Company to be illegal and contrary to the spirit of the mining laws.³⁴⁹

Despite the Mining Board's protests, Spalding reported that he viewed the renewed grant as reasonable. And apart from the Board's response he believed the news was received with "general satisfaction". Since the public was notified of the new lease, several companies staked off claims on the land opened up for preemption and a "considerable" amount of prospecting has been taking place.³⁵⁰

That same spring, the Legislative Council and Governor Seymour were passing into law the revised version of the Gold Fields Act which had been influenced by the Mining Board's recommendations.³⁵¹ The first recommendation of the Board, respecting the right of parties before the Gold Commissioner's Court to request a jury of miners, was incorporated into Part 1 section VI of the new act. Although in the formal law the role of the jury was reduced to a factual assessment of damages, whereas in the original conception the jury had been involved in the

³⁴⁸ Spalding to the Mining Board, 26 March 1867, BCA, GR 216, Vol. 11. This was also printed in "Mining Board," *The Cariboo Sentinel*, 15 April 1867.

³⁴⁹ "Mining Board," *The Cariboo Sentinel*, 15 April 1867. John MacLaren opposed all of these resolutions.

³⁵⁰ Spalding to Colonial Secretary, 3 April 1867, BCA, GR 216, Vol. 11.

³⁵¹ *Gold Mining Ordinance, 1867*, 2 April 1867, in *Ordinances Passed by the Legislative Council of British Columbia During the Session from January to April 1867*.

formation of the judgment in collaboration with the Gold Commissioner.³⁵² So the enlarged role conceived by the Board for local juries had been tempered by the Legislative Council.

Most important to the original mandate of the Mining Board was its third recommendation inspired by the Chancery suit issue. The original recommendation suggested that appeals of a value of more than \$1000 go from the Gold Commissioner's Court to the Supreme Court but only on points of law. Informed by the Board's discussion with Birch, the ultimate end of this amendment was to discourage the possibility of mining suits going into Chancery Court. The spirit of the Board's recommendation was honored by the Legislative Council in the passing of the amendment. Section 17 declared that appeals of a value of more than \$250 would move from the Gold Commissioner's Court to the Supreme Court but that no appeals would be granted on matters of fact.³⁵³

With its renewed lease in hand, the Grouse Creek Flume Company pressed charges against the Canadian Company in the Gold Commissioner's Court for infringing on its lease. In its defense, the Canadian Company argued that the land in dispute was open for preemption according to the terms of the new lease. Spalding passed judgment in favor of the Canadian Company based on its "priority of record" – the registration of its Grouse Creek claim with him the previous October.³⁵⁴ Less than two weeks later, on April 22nd, the Flume Company brought another suit against the Canadian Company in the Gold Commissioner's Court, again for infringing on its lease. This time, Spalding ruled in favor of the Flume Company and ejected the Canadian Company from the land.

³⁵² The original intention of the Board can be inferred based on its communication with Birch and the wording of the Board's recommendation. Originally, the popular solution was to have appeals go to a jury of miners or the Mining Board. This was then pared down to a jury assessing damages in the Gold Commissioner's Court and not participating in the judgement directly – quite a different role for the jury. Gradually, officials steered the Board away from an appeals system that was based on a local jury – a solution which resembles a miners' meeting.

³⁵³ *Gold Mining Ordinance, 1867*, 2 April 1867, in *Ordinances passed by the Legislative Council of British Columbia, during the session from January to April, 1867*.

³⁵⁴ "Gold Commissioner's Court," *The Cariboo Sentinel*, 15 April 1867. The court sat on 9 April 1867.

Mr. Booth of the Mining Board had been working as foreman for the Canadian Co. at the time and Spalding explained the judgment to him in person. Booth then, in turn, notified the Canadian Company members of Spalding's decision and resigned from his position as foreman with the company.³⁵⁵

At this point, following Spalding's decision on April 22nd, the Canadian Company made a *de novo* appeal to the Supreme Court and Commissioner Spalding registered the appeal. According to claims made later by members of the Canadian Company, at the time of Spalding's decision on April 22nd, neither Spalding nor the Canadian Company members knew the new *Gold Mining Ordinance, 1867* had recently passed the Legislative Council and had been signed into law by the Governor on April 2nd. The Canadian Company had not had an opportunity to read the amendment. As a result, it did not know it was limited to appeals on points of law.³⁵⁶

At the end of May, members of the Canadian Company were again charged with infringing on the Flume Company's ground. The Flume Company brought a charge of trespass against the Canadian Company in the Magistrate's Court. The Canadian Company was found guilty and the foreman of the Canadian Company at the time, Anthony Mellowday, was sentenced to a month of imprisonment. Two laborers for the Canadian Company, Cameron and Sanderson, were sentenced to two weeks of imprisonment. A man named Walker, despite not having been confirmed as a member of the Canadian Company, was also imprisoned for one week.³⁵⁷ It was later explained that members of the Canadian Company had entered the ground after interpreting, as a result of

³⁵⁵ "Gold Commissioner's Court," *The Cariboo Sentinel*, 6 May 1867. The court sat 22 April 1867. For Booth's resignation after the judgement see "Magistrate's Court," *The Cariboo Sentinel*, 1 June 1867.

³⁵⁶ For the Canadian Co.'s argument that its appeal should be considered because it did not know the *Gold Mining Ordinance, 1867* had been passed into law on 2 April 1867 and that they did not have the opportunity read the ordinance till 9 June 1867, after their civil case, see "To the Editor of the Cariboo Sentinel," *The Cariboo Sentinel*, 12 August 1867. For the Canadian Co.'s appeal to the Supreme Court see "Gold Commissioner's Court," *The Cariboo Sentinel*, 6 May 1867. The court sat on 22 April 1867.

³⁵⁷"Magistrate's Court," *The Cariboo Sentinel*, 3 June 1867.

another suit between the Flume Company and the Black Hawk Company, that a strip of land between the Flume Company's and Black Hawk Company's boundary lines had been declared vacant. Having made this interpretation, the Canadian Company attempted to pre-empt that "vacant" land but it was not open for preemption, according to the Magistrate's Court.³⁵⁸

At the beginning of July, the Supreme Court sat in the Cariboo and the Canadian Company's appeal of Commissioner Spalding's April 22nd decision came up before Judge Begbie. But because of the recent amendment to the *Gold Fields Act*, limiting appeals to questions of law, Begbie determined that he could not hear the appeal.³⁵⁹ Surprised by this application of the new amendment, in protest, forty miners representing the Canadian Company went and occupied the strip of land between the Flume Company and the Black Hawk Company – the same piece of land that had been in dispute during the Magistrate's Court trespassing case. The Canadian Company group began working a shaft they had constructed on that strip of land. They also bought an inclining piece of land from the neighboring Black Hawk Company which allowed them access to their strip. Wedged between the Flume Company and the Black Hawk Company, the Canadian Company was determined to make a stand.³⁶⁰

Three constables and a surveyor were sent to Grouse Creek by the Gold Commissioner to eject the Canadian Company. In order to obstruct the Canadian Company's mining, the constables closed up the incline providing access to the strip of land. In response, the Canadian Company miners worked on the strip of ground and in the shaft constructed there. Constable Fitzgerald attempted to arrest one of the members of the Canadian Company, working at the windlass of the shaft, but when he tried to do so he was surrounded by approximately thirty to forty men. They

³⁵⁸ "Trespassing on the Grouse Creek Bed Rock Flume Co.'s Ground," *The Cariboo Sentinel*, 3 June 1867. See also "Gold Commissioners Court" *The Cariboo Sentinel*, 30 May 1867.

³⁵⁹ "Supreme Court," *The Cariboo Sentinel*, 8 July 1867.

³⁶⁰ They later explained that this tactic was taken in an attempt to force a new case.

told Fitzgerald that if he wanted to arrest one of them he would have to arrest all of them. Not knowing what to do, Fitzgerald returned to Richfield, leaving two constables to guard the incline.³⁶¹

The following Sunday afternoon a public meeting was held at Barkerville in C. Fulton's saloon at which over 500 people reportedly attended. The purpose of the meeting was to publicly declare the grievances of the Canadian Company. Mr. Lovell was voted as Chair and W.W. Hill as Secretary. After making it clear that he was no longer an "interested" party in the Canadian Company, Mr. Booth spoke about what had happened to that company. He summarized how the Canadian Company took up the land on Grouse Creek the previous fall, lost their case at the Gold Commissioner's Court, and were denied an appeal to the Supreme Court. Answering for the Mining Board, he maintained, it had never been the intention of the Board to deprive parties, absolutely, of their right to appeal. He asserted that the Canadian Company had a genuine right to the land they were occupying and they felt they were being unjustly denied a fair hearing. Those in attendance passed a resolution in sympathy with the Canadian Company and pledged to aid them by any lawful means.³⁶² In a long editorial, the *Sentinel* recounted the saga of the Canadian Company and expressed confidence that it could still access "the justice they feel themselves debarred from."³⁶³

From this point, the conflict escalated. Officials at Richfield, including Begbie, Ball, and Spalding, intent on restoring order, armed and swore in approximately fifty prominent local citizens as special constables. This force, under the direction of Spalding, and followed by hundreds of spectators, made its way to Grouse Creek to read an injunction to the Canadian

³⁶¹ "Grouse Creek Mining Difficulty," *The Cariboo Sentinel*, 15 July 1867. See also "Public Meeting," *The Cariboo Sentinel*, 15 July 1867.

³⁶² "Public Meeting," *The Cariboo Sentinel*, 15 July 1867.

³⁶³ "The Grouse Creek Flume Co. in Trouble Again," *The Cariboo Sentinel*, 15 July 1867.

Company, ordering them off the land. When they arrived on Grouse Creek many of the special constables and Canadian Company miners knew each other well. Instead of confronting one another they exchanged friendly conversation while spectators looked on. Spalding read the injunction ordering the Canadian Company to vacate the ground to which they unanimously replied “No!”. Not knowing what else to do, Spalding left the creek.

By early August, it was public knowledge that the Governor was going to travel to the Cariboo to resolve the dispute and the Mining Board was being looked at as potentially at fault for the whole matter. Joseph Irving of the Canadian Company wrote a public letter to the Mining Board blaming it for the limiting of appeals to questions of law and for the current state of affairs, generally. He demanded the Board explain its actions.³⁶⁴

To this challenge the members of the Mining Board responded on August 12th in a public letter. The members summarized the initiatives they took which, they were eager to point out, had in fact all been published regularly in the paper and had been public knowledge. They pointed out that the amendment bill had passed the Legislative Council on March 19th and was signed into law by the Governor on April 2nd. Despite this, no copies of the law had been received in the Cariboo till June 9th – not even the Gold Commissioner had been aware of its contents. The Commissioner allowed appeals to the Supreme Court under the old guidelines but these appeals were later refused by the Supreme Court Judge when the Supreme Court sat in the Cariboo in July, since the law had changed. The Board members argued that copies of the new laws should have immediately been forwarded to colonial administrators, especially to administrators in districts such as the Cariboo which was deeply interested in the matter. They argued that if the Canadian Company had known in April that it could have appealed on a point of law it might have conducted its case in the Gold

³⁶⁴ Joseph Irving on behalf of the Canadian Co. to the Chairman and members of the Mining Board, published in “Mining Board,” *The Cariboo Sentinel*, 8 August 1867.

Commissioner's Court differently – “they might have been more particular in establishing facts before the Commissioner.” Finally, the Board maintained that according to the recommendation submitted by the Board an appeal should still be open to the Canadian Company on a point of law.³⁶⁵

Governor Seymour personally made the trip to Cariboo to intervene. Booth acted as an intermediary between the Governor and the Canadian Company and helped to settle the agreement that, in exchange for leaving the creek, the Canadian Company would have a new trial, *de novo*.³⁶⁶ Hedging its bets, the Government took precautions: Chief Constable Chartres Brew reported to the Colonial Secretary from New Westminster that five constables had been dispatched to Cariboo armed with Lancaster rifles and colt revolvers.³⁶⁷

In late September the case went before Justice Needham for arbitration. The Canadian Company argued that by registering their claim on Grouse Creek with Gold Commissioner Spalding on October 8th the lease had been dismissed or forfeited. They proposed that the Grouse Creek Flume Company's failure to contest that registration had constituted a “legal surrender” of the land. But Justice Needham disagreed, interpreting the recording of the claim as the act of the plaintiff – not as an act of the Crown – and therefore it could not function to extinguish the lease. The Canadian Company also argued that by its failure to comply with the lease terms the Flume Company had forfeited its lease, making the land available to free miners. But Justice Needham did not agree with this argument either. In his judgment, the lease had not been forfeited but only became *liable to forfeiture*. As Needham wrote in his judgment: “[t]he plaintiffs were altogether

³⁶⁵ Thompson, Booth et. al, “To the Editor of the Cariboo Sentinel,” *The Cariboo Sentinel*, 12 August 1867. In a lengthy declaration, the Canadian Co. later argued that Spalding refused to hear evidence in the Gold Commissioner's Court, referring to it as a “mock trial” they claim he gave his decision without hearing their case. See “To the Editor of the Cariboo Sentinel,” *The Cariboo Sentinel*, 26 August 1867.

³⁶⁶ “Grouse Creek Difficulty,” *The Cariboo Sentinel*, 12 August 1867. “Grouse Creek Dispute Again,” *The Cariboo Sentinel*, 2 September 1867.

³⁶⁷ Brew to Colonial Secretary, 4 September 1867, BCA, GR 1372, F196-F198.

strangers to the lease, and could have no rights under or over it. The Crown, as lessor, could alone enter for conditions broken”.

With the failure of these arguments, the Canadian Company laid its claim to the famous “strip of land” between the Grouse Creek Flume Company’s and the Black Hawk Company’s claims, measuring 12 ft. 2 in. in width. After interviewing witnesses and considering the available evidence, Needham came to the conclusion that the boundary markers relied on by the Flume Company, “Baker’s stake” and the “Heron Sapling”, were the most reliable for the purposes of measuring the center of the creek. As a result, the strip of land was determined to be part of the Grouse Creek Flume Company’s lease.³⁶⁸

The Canadian Company lost its case through arbitration but the whole affair resulted in the clarification of a point of law: “[t]he Crown alone can declare a forfeiture and re-enter for breach, or waive it. Free miners in general are strangers to such a lease and have no rights under or over it. Cessation of mining operations for want of funds is not proof of intention to abandon, even if that question could be raised by strangers to the lease. The act of recording the claim is the act of the party and not of the Crown, so cannot operate as a re-demise of ground already leased by the Crown.”³⁶⁹

The mining community of the Cariboo Mining District identified some problems with the appeals process. Lengthy and costly civil suits were seen as damaging for local miners. There was a concern that suits of this kind were tying up good mining ground in litigation and would result in miners being driven from the country. The perceived arbitrary nature of judgements made by Judge

³⁶⁸ Martin, *Reports of Mining Cases Decided by the Courts of British Columbia*, 3-8. Loo, *Making Law, Order, and Authority in British Columbia*, 118-122. Williams, *The Man for a New Country*, 78.

³⁶⁹ Martin, *Reports of Mining Cases Decided by the Courts of British Columbia*, 3-8.

Begbie contributed to frustrations with the appeals process. There was a related concern that the current appeals process favored large interests, those “with means”, and squeezed out smaller companies.

As a result of these problems, the Government was petitioned and the 1866 Mining Board was elected with a mandate to change the appeals process. There were a number of proposed solutions made by individuals within the mining community. Some of these propositions suggested that appeals from the Gold Commissioner’s Court should go to the Gold Commissioner and a jury of local miners or the Mining Board. A change along these lines would have amounted to a fundamental reordering of the jurisdictions outlined by *The Gold Fields Act, 1859* – it would have turned the Gold Commissioner’s Court and a jury of miners or the Mining Board into a civil appeals court at the expense of the Supreme Court and the Court of Chancery.

The Government and its representatives, namely Birch, resisted such populist proposals, instead favoring the suggestion that appeals go to the Supreme Court only on questions of law – a change that would have the effect of making the Gold Commissioner’s Court a Court of Record. This proposal was eventually taken up by the Mining Board which recommended that either parties to a dispute in the Gold Commissioner’s Court be allowed to call a jury of local miners and that appeals to the Supreme Court be limited to questions of law.

Those recommendations were partially accepted at the end of the 1866 season. On April 2nd, 1867 the amendments became formal law. But they were not transmitted to the Cariboo until early June. The Canadian Company maintained that when it appealed Spalding’s decision in the Gold Commissioner’s Court on April 22nd, it did not know the amendment had passed and it did not know that appeals had been limited to questions of law. This is a plausible explanation for the

Canadian Company's behaviour; it explains that company's reaction in early July when it discovered it would not be permitted an appeal – it protested and attempted to force a new trial.

Cornelius Booth attempted to clear himself of any conflict of interest by resigning from his position as foreman for the Canadian Company after Spalding's decision on April 22nd. From this point on he periodically represented the Canadian Company as a "disinterested" party on behalf of the Mining Board. He possibly acted as a spokesman for the Canadian Company and liaised between the Government and the Canadian Company because, as a prominent member of the Mining Board, he felt responsible for the situation in which the Canadian Company found itself. When viewed in this way, his behaviour is explicable.³⁷⁰

In fact, the actions of parties involved in the Grouse Creek War are put into greater perspective when it's kept in mind that the *Gold Mining Ordinance, 1867* was passed into law on April 2nd, 1867, but not relayed to the Cariboo until months later. In the meantime, parties including the Gold Commissioner had been acting as though the old rules were still in effect. When informed the amendment had been passed, the Canadian Company remained indignant and maintained that it should enjoy its rights under the old system. It would appear as though not all were aware that such a change had been recommended by the mining Board or what its implications would be.³⁷¹

The Grouse Creek War tells us some things about the functioning of Mining Boards. They served as representative institutions responding to a problem perceived by the community. They tended not to be formed on a regular basis but instead were elected in response to a specific problem identified by the mining community. While representative and taking on different aspects

³⁷⁰ It has been suggested that Booth's actions were deeply ironic. Williams, *The Man for a New*, 75, 78. Loo, *Making Law, Order, and Authority*, 119. This can be partly explained by the conflation of the Canadian Co. and the Mining Board. While some, like Booth, passed between these two groups, they were in fact distinct organizations with different ends.

³⁷¹ Joseph Irving on behalf of the Canadian Co. to the Chairman and members of the Mining Board, published in "Mining Board," *The Cariboo Sentinel*, 8 August 1867.

of community administration and life, Mining Boards were principally concerned with mining and the law – the legal and technical administration of mining. They viewed themselves as advocates for the community. While they often had amicable relationships with the Government and its representatives, the Grouse Creek War and the Mining Board’s championing of the Canadian Company’s cause demonstrates that this was not always the case.

The Grouse Creek War also shows us that, as the formal law lost legitimacy and broke down and as the relationship between the Mining Board and the Government became fraught with tension, mining communities returned to popular rallies – miners’ meetings – in order to send signals to the Government. Despite being the Mining District that was the most capially invested and technically sophisticated – despite the fact that a well-developed body of law existed on the subject of gold mining – the Cariboo mining community continued to turn to customary mining practices in an attempt to influence the Government’s decisions. Miners’ meetings were part of the mining community’s cultural baggage—it was a part of its political culture—so when other practices failed, it was a strategy that the community returned to in order to assert political influence on legal and social questions of concern. Finally, the Grouse Creek War helps to show that Mining Boards did not “replace” miners’ meetings or stop them from becoming “established” in British Columbia. It shows that miners’ meetings were a cultural practice that remained part of the mining community’s cultural makeup despite an overlay of formal law.

Conclusion

Californian miners brought their knowledge of gold mining to British Columbia. They also brought their mining customs, miners' law, and miners' meetings. It had been previously argued and widely accepted that the tradition of miners' meetings did not become "established" in British Columbia because the Colonial Government had adapted to the mining community's needs by allowing for Mining Boards. Despite this wide acceptance, little attention had been paid to miners' meetings or Mining Boards as a historical subject in British Columbia.

It has often been asked: how can we explain the relatively peaceful settlement and development of Colonial British Columbia? Mining Boards have often been pointed to as an answer to this question. In the context of British Columbia, Mining Boards seemed to help explain the difference between the "violent" American frontier and the "peaceful" British Columbian frontier. The British spirit of compromise, in creating the institution, had tempered the boisterous American element within the settlement population.³⁷²

This thesis, rather than asking whether or not miners' meetings became established, rather than asking why the British Columbian mining frontier was different from the American, explored the different ways that mining customs and miners' law adapted to the political and social context in the Colony of British Columbia and how these practices and traditions influenced the development of the Colony. An investigation along these lines demonstrates that miners' meetings were brought from California to British Columbia during the Fraser River gold rush (1858). Miners' meetings were used during that event to create mining regulations and organize mining society. Along the banks of the Fraser River, on Hill's Bar, miners created their own laws to regulate gold mining. In much the same way, at nearby Fort Yale, miners created mining

³⁷² For the historiography on the subject of miners' meetings and Mining Boards see the Introduction.

regulations which drew on the same traditions. Beyond using miners' meetings to create legislative forms of law, miners used this method in an attempt to order, or police, society along the river. Concerned about the trade of liquor and weapons to aboriginal people, miners created laws against these practices and made attempts to enforce that law.

Customary mining regulations along the Fraser River completely ignored Governor Douglas' Proclamation and Regulations on the subject of gold mining. When Governor Douglas visited the mines and found practices out of step with the formal law, he adapted the formal law to follow the miners' practices. In this way, miners' customary law directly influenced the creation of the early formal mining law.

When conflict between miners and aboriginal people of the Nlha7kpmx nation broke out during the summer of 1858, in what has since come to be known as the Canyon War, miners' used miners' meetings in an executive capacity. During this event they assumed rights normally afforded to sovereign states: the right to make war and peace. Miners' meetings were used throughout the conflict, by military leaders such as Captain Snyder, to organize military companies and make decisions about how to proceed. But this flexible political practice played a dual role in this conflict. In addition to functioning as a basic method of organization and decision making, by taking the responsibility of decision making out of the hands of any one individual and lodging it in the wider community, miners' meetings functioned to prevent any future liability for the legally ambiguous actions of the mining community.³⁷³

If the miners had been concerned about an investigation or retribution for their behavior, they must have been reassured when Governor Douglas only reiterated his support for the mining community following the conflict. Douglas had been having difficulty enforcing the mining law.

³⁷³ This function of miners' meetings has been identified by Stone, "Mounties as Vigilantes," 94-95.

In many cases, he was unable to collect miners' license fees and had been advised against strictly compelling miners to take out miners' licenses by Colonial Secretary Lytton, owing to Britain's tenuous grasp on the mainland. With this in mind, it's clear that it would have been unrealistic for Governor Douglas, and potentially politically dangerous, to attempt to bring the mining community to account for the Canyon War.

Following the war, Governor Douglas made attempts to normalize administration of the mining community. Administrators had been appointed—Commissioner Hicks at Yale, Justice Perrier at Hill's Bar, and Revenue Officer Travaillet at Lytton—and Douglas made assurances to the population that legal preparations were being made for the opening of the country. He took it on his own responsibility to allow Commissioner Hicks to begin allotting land pre-emptions for agricultural purposes. But as Governor Douglas returned to Victoria miners quickly became frustrated with their colonial officers. Unhappy with Commissioner Hicks, miners used miners' meetings to alert the Government to their concerns. Hicks became the target of frequent attacks and accusations of corruption.

Perhaps in response to these accusations, P. B. Whannell was nominated to serve as Justice of the Peace for Yale but not long after becoming established he became entangled in McGowan's War, a conflict between himself and Justice Perrier over jurisdiction which was exacerbated by factionalism within the mining community. Concerned about a general uprising, Governor Douglas sent military forces, led by Colonel Moody and Judge Begbie, to restore order. Not to be intimidated, in response the mining community invited Moody and Begbie to a miners' meeting where its side of the story and Justice Whannell's misconduct was made clear.

During the Fraser River gold rush miners used miners' meetings much as they would have done in California. Beyond this and as the Colonial Government increasingly made attempts to

administer the mining population, miners' meetings adapted as a political practice to conditions in British Columbia. In areas where there were government administrators, miners' meetings were used to lobby and influence the decisions of the Government.³⁷⁴

After the legal creation of the mainland colony in November of 1858, the Government moved to create a comprehensive set of laws on the subject of gold mining. This effort produced *The Gold Fields Act, 1859* which was as much about the politics of power in the new colony as it was about gold mining. This act allowed for the creation of Mining Boards, a representative institution that would allow mining communities to create their own bylaws with some conditions. But despite the creation of this formal law, it was not applied in vast regions of the colony.

After the Fraser River gold rush, many miners became disappointed with the prospects of the country. Some left the colony altogether while others continued to prospect in as yet unexplored regions. Prospectors dispersed across the landscape. In the far north, during the 1859 and 1860 seasons, in what came to be known as the Cariboo District, there was a considerable prospecting and mining population but there were no government administrators stationed to the area. Beyond reports coming through Commissioner Elwyn, stationed in Cayoosh District, Commissioner Ball, stationed in Lytton, and newspaper reports, there was little information about what was taking place in the far north. From what can be gleaned, and based on knowledge of how miners organized themselves, it's most likely that, during this time, miners in the upper country organized themselves using customary mining regulations and miners' meetings. There is some hint of this in Elwyn's reports to the Colonial Secretary on conditions in the upper country. In one he writes that miners in the upper country were not allowing Chinese people past Fort Alexander; they're

³⁷⁴ Jan Nicholson has noted that in California miners' meetings took on the responsibility of Government whereas in British Colonies they were used in an attempt to influence the Government. Nicholson, "Procedures and Perceptions of Authority," 396-397.

not being allowed to work on the Quesnel River.³⁷⁵ In another report he wrote that miners travelling south told him that, in the upper country, “the Americans being in the majority make mining laws on the different bars to suit themselves.”³⁷⁶

Similar to the upper country, miners who dispersed to the south-eastern portion of the colony made gold discoveries on Rock Creek, near the US border. This prompted a gold rush and in the absence of any government administration, miners used miners’ meetings to organize mining regulations and order society. Similar to reports from the upper country, there were reports from Charles Wilson, who was surveying the 49th parallel at the time, that Chinese people were being prevented from digging for gold in the area.³⁷⁷ Even after Commissioner Cox was stationed to the new district, it seems that customary legal practices were still used as a method of settling disputes in some cases.³⁷⁸

Despite the existence of a formal mining law, miners found it wanting. Miners in Cayoosh complained to Elwyn that the formal law was not fit for the shallow diggings found there. Furthermore, in practical terms, the Government and its administrators were unable to enforce the *Gold Fields Act* in certain parts of the colony. Upon being nominated as Commissioner for the Cariboo district in the fall of 1860, Phillip Henry Nind reported that he was not able to enforce the claim sizes laid out by the formal law. Instead, he suggested that the Government sanction the large claim sizes the miners had given themselves in the upper country. Nind later reported that many miners in the upper country didn’t understand what was required of them by the law.

³⁷⁵ Elwyn to Colonial Secretary, 23 July 1859, BCA, GR-1372, F524.

³⁷⁶ Elwyn to Colonial Secretary, 2 July 1860, BCA, GR-1372, F524.

³⁷⁷ Entry for 30 August 1859 in *Mapping the Frontier: Charles Wilson’s Diary of the Survey of the 49th Parallel, 1858-1862, while Secretary of the British Boundary Commission*, ed. George F. C. Stanley, 108, n. 6., 126 (Toronto: Macmillan of Canada, 1970).

³⁷⁸ See “News from the River,” *The British Colonist*, 16 October 1860, and Young to Haynes, 12 December 1863, BCA, GR 1372, F740.

The types of mines in the upper country, Cariboo country, were different than in the southern portions of the colony. The diggings were deeper, literally. In order to get access to the bedrock miners were required to construct vertical tunnels. Upon arriving at the bedrock, they then constructed horizontal tunnels, or drift mines, in search of ancient stream beds where they hoped to find gold. In some cases, they would run drift mines right into the side of a hill in order to get access to bedrock or a “lead”.

Major gold discoveries were being made in the Cariboo district but the formal mining laws made no mention of tunnels. Practices in the upper country had completely diverged from the formal law. In an attempt to protect their interests, in February of 1862, Cariboo miners wintering in Victoria held miners’ meetings to bring this problem to the attention of the Government. They lobbied for changes to the mining laws. These meetings led to formal amendments undertaken by the Government, the creation of tunnel laws. They also led to the creation of the first Mining Board in 1863. This Board was mandated by the Cariboo mining community with the task of making the mining laws more liberal in nature, i.e. removing restrictions for capital. The sentiment was expressed that, because of the deep nature of the diggings, in order to “accelerate” the economic development of the district the laws needed to be amended to allow for greater capital investment. The 1863 Mining Board undertook this mandate and made a number of recommendations to the Colonial Government. It recommended changing the law to allow for the holding of multiple claims by one person. It recommended amendments to the law on mining companies. It also recommended the Government create a general act of incorporation that would clarify the rights, liabilities, and privileges of corporations. It recommended draft acts that would allow for joint stock Bed Rock Flume and Bed Rock Drain Companies and other types of large scale leases.

Almost all of the recommendations of this Mining Board made their way into the *Gold Fields Act, 1864*. Some of them were accepted verbatim.

Whereas miners' meetings in frontier regions had sometimes taken on the responsibilities of Government—establishing mining regulations, nominating local officials, administering law, and even policing crime—and miners' meetings in regions with some government presence were used to lobby the Government and influence its decisions, the activities of the 1863 Mining Board were completely distinct from anything previously considered by a miners' meeting in British Columbia. Clearly different from miners' meetings, the 1863 Mining Board was mandated with a specific task, the liberation of capital and creation of legal structures for capital on William's Creek, and it worked towards that purpose. It built on the pre-existing law and social structures that already existed.

Furthermore, miners' meetings had traditionally created laws concerned with equal access to the mines, for white miners. For this reason, limitations on the number of claims that could be held were traditionally set by miners' meetings. They were traditionally concerned with individual access to the mines or smaller scale interests. This was a completely different orientation from that taken up by the first Mining Board in the Cariboo.

During the summer of 1864 Chilcotin aboriginals attacked and killed road crew workers east of Bute Inlet. The Government mounted a formal response to find and identify the killers. Groups of men from the Cariboo were organized and led by Commissioner Cox and groups from New Westminster were organized and led by Commissioner Brew and Governor Seymour. A group of Chilcotin aboriginals was tracked to Puntze Lake where they were coaxed from the wilderness and induced to confess by Commissioner Cox. They were put on trial in Quesnel and five of them were hanged later that year. A review of Commissioner Cox and Commissioner

Brew's reports on the incident suggests that the Chilcotin War does not seem to have been organized and driven by miners' meetings, unlike the Canyon War. This would seem to indicate that, while willing to participate in this police action, miners were removed from any decision making capacity. Furthermore, since the intervention was officially sanctioned, there was no need to use miners' meetings to disperse responsibility throughout the wider body of miners, as had been done during the Canyon War.

During the same year as the Chilcotin War—despite the existence of a comprehensive set of formal Gold Fields Laws, recently amended on the recommendation of the Mining Board—when a gold rush to Wild Horse Creek occurred in the far south eastern portion of the colony, miners used miners' meetings to establish mining regulations and nominate officials including a trial judge and sheriff. This is remarkable because it shows a few things. It demonstrates that the practice of miners' meetings persisted well after the legal allowance for Mining Boards. It confirms that the practice was most often found on the frontier, in the wake of gold discoveries prior to the establishment of formal administrators. It also demonstrates that miners' meetings and Mining Boards operated simultaneously in different contexts for different purposes, i.e. the political practice of miners' meetings performed a different function from the representative institution of the Mining Board.

Following the Chilcotin War, a new Mining Board was elected in the Cariboo. Because the mining laws were comprised of many different acts created between 1859 and 1864, they were often incomprehensible to the average miner and impractical to interpret. This new Mining Board was therefore mandated with reforming the mining laws in their entirety. Following its election, the Board went to New Westminster to work on the revision with the Legislative Council. During this Legislative Council session, in an attempt to address the colony's debt, Governor Seymour

created a Gold Export Tax. Extremely unpopular, this tax was protested by public meetings and petitions from Cariboo miners, demonstrating that an adapted form of miners' meetings was consistently used by the mining community to influence the decisions of Government.

Frustration over the administration of the law in Cariboo, especially with regards to the appeals process for civil mining cases, led to the election of the 1866 Mining Board with a mandate to change the appeals process. This mandate threatened to infringe on the operation of the Supreme and Chancery Courts. In some ways, while the first two Mining Boards had worked to build up capital and infrastructure in the Cariboo—in an attempt to accelerate economic development—the third Mining Board responded to the work of the first two – working against some of the forces that the first two Mining Boards had set in motion. Large interests were tying up good mining land in expensive civil mining cases which was perceived as unfair. At the same time, a large joint stock company, the Grouse Creek Bed Rock Flume Company, was failing to meet the terms of its lease agreement and that, nevertheless, the Government was protecting it – further barring smaller mining interests from accessing mining ground. Contributing to frustration and undermining faith in the justice system was the feeling that justice could be bought by individuals or companies with means. The perceived arbitrary nature of some decisions made by the Supreme and Chancery Court Judge Begbie didn't help to maintain faith in the justice system.

The 1866 Mining Board was tasked by the Cariboo mining community with improving the appeals process. It was not the only body looking for solutions. Frustrated by the use of the Supreme and Chancery Courts to forestall the decisions of the Gold Commissioner's Court, even Commissioner Cox had drafted proposed revisions to the appeals process that would close the Chancery Court as an option to litigants. It seems like many were invested in finding a solution. The *Sentinel* had proposed that appeals from the Gold Commissioner's Court go before a jury in

the same court, completely excluding the Supreme and Chancery Courts.³⁷⁹ The editor of the Sentinel shortly thereafter proposed another solution: that appeals from the Gold Commissioner's Court should go to the Mining Board under the direction of the Gold Commissioner.³⁸⁰ J. S. Thompson of the Mining Board proposed that appeals go to a jury of seven free miners. If this jury agreed with the Gold Commissioner's decision, no other appeal would be allowed, but if it disagreed, an appeal could be brought to the Mining Board.³⁸¹

Not unlike Cox's previous suggestion, in a meeting with the Mining Board, the Officer Administering the Government, A.N. Birch, suggested that parties before the Gold Commissioner's Court could make a special agreement binding them to the decision of the Gold Commissioner. In response to the propositions that appeals go to juries of miners, Birch felt that a system like that would not be appropriate – that juries should be used by lower courts and, if both parties desired, decisions could be bound to the Gold Commissioners Court by a special agreement. Also during this discussion, Thompson suggested limiting appeals to points of law, a suggestion that Birch seemed to agree with.³⁸² In the end, the Mining Board made the recommendation that either party before the Gold Commissioner's Court be able to request a jury of three to five miners and that appeals to the Supreme Court be limited to points of law. A slightly modified form of this recommendation made its way into the *Gold Mining Ordinance, 1867*, passed into law on April 2nd, 1867.

The Grouse Creek War unfolded after the Government chose to renegotiate and extend the Grouse Creek Flume Company's lease over a portion of Grouse Creek. This decision was made

³⁷⁹ Editorial, *The Cariboo Sentinel*, 23 July 1866.

³⁸⁰ "Election of a Mining Board," *The Cariboo Sentinel*, 6 August 1866.

³⁸¹ "Mining Board Meeting," *The Cariboo Sentinel*, 13 August 1866.

³⁸² "Interview Between His Honor the Administrator of the Government and the Mining Board," *The Cariboo Sentinel*, 16 August 1866.

known to the Mining Board and the wider mining community on March 23rd, 1867. This led to legal disputes in the spring of 1867 before the Gold Commissioner's Court when on April 9th the Grouse Creek Flume Company charged the Canadian Company with infringing on its lease. Commissioner Spalding decided in favor of the defendant, the Canadian Company. But less than a month later, on April 22nd, the Grouse Creek Flume Company brought the Canadian Company back to the Gold Commissioner's Court for infringing on its lease. This time, Commissioner Spalding ruled in favor of the plaintiff, the Grouse Creek Flume Company. Following this decision, Mining Board member Cornelius Booth resigned from his position as foreman with the Canadian Company which then appealed to the Supreme Court – an appeal which was accepted by Gold Commissioner Spalding.

It was later maintained by the Canadian Company that it had not seen the formal law amendment, the revised *Gold Mining Ordinance, 1867*, before it appealed its case to the Supreme Court on April 22nd. It asserted that its members as well as the Gold Commissioner hadn't seen the amendment, or the full text of the revised mining laws, until early July when Judge Begbie refused to hear its appeal. While difficult to confirm, this appears to be a plausible explanation for the actions of the Canadian Company the members of which would have been understandably indignant on having been refused an appeal based on information that was not available to them at the time. Also partially corroborating this version of events is the fact that Commissioner Spalding seems not to have been aware of the amendment as well, based on his acceptance of the appeal on April 22nd and his later silence when this argument was presented by the Canadian Company. With this explanation in mind, the Canadian Company stubborn insistence on their right to appeal appears more reasonable and appears to have been based in its conviction that its registration of the claim in October had quashed the Flume Company lease. Ultimately, the Canadian Company's

insertion of itself into the decision making process on the question of the renegotiation of the Flume Company's lease, speaks to the mining community's sense that it could shape the formal mining law. Disagreeing with the Government, it felt the right to weigh in on the question of the lease extension through the judicial process. The challenging of that perceived right threatened to break down into outright violence between the Canadian Company and the Government.

Denied its appeal, the Canadian Company went and occupied the strip of ground between the Heron and the Grouse Creek Flume Company claim in an attempt to force another trial. Constable Fitzgerald attempted to remove the Canadian Company from the land but was obstructed by members of the Canadian Company. Following this confrontation, a large scale miners' meeting was held to air the grievances of the Canadian Company, presided over by prominent Mining Board member, Cornelius Booth. At this meeting, perhaps feeling responsible for the predicament of the company, Booth made the case for the Canadian Company's right to an appeal. Here we have another example of the mining community using the strategy of public meetings in an attempt to influence the Government and its administrators. It also demonstrates the relationship between the formal law and popular practices: the mining community turned to popular practices when the process allowed for by the formal law broke down.

An understanding of the Grouse Creek War is broadened when keeping in mind the history of miners' meetings and Mining Boards in British Columbia. The interplay between miners' meetings and the first two Mining Boards contributed to the development of the formal mining law. But the mining community on Williams Creek was less than enchanted with the results. It became critical of the way that the elaboration of the mining law had affected smaller interests and as a result charged the 1866 Mining Board with a mandate to correct what it perceived as abuses and

tendencies which favored large interests. By chance, two of the initiatives pursued by the Board intersected during the 1867 season to produce an unexpected result. There was a disagreement over the Canadian Company's right to an appeal resulting in a stalemate. The Grouse Creek War represented a challenge to the Crown's right to extend the Flume Company's lease. Fueling the conflict, from the perspective of the mining community, was that the Government's response seemed to confirm the very criticisms the mining community had been directing against the Government: small interests were disadvantaged by the Government which was rendering arbitrary decisions and which was unaccountable. As a result, the community rallied to the side of the Canadian Company which pressed its right to appeal. The Grouse Creek War also shows that the mining community's creation of law was not limited to miners' meetings and Mining Board bylaws, amending the formal mining law. That community also actively shaped judicial law on the subject of mining by stubbornly refusing to allow itself to be dictated to by the Government.

Following the Cariboo gold rush (1862) there was a gold rush to Omenica District (1871) to the north and west of the Cariboo. As during previous gold rushes, miners prospected, made discoveries, and rushed to Omenica well before any Government administration was established. In the meantime, miners self-organized using miners' customary laws much as they had done before. Customary practices during this gold rush were described by Jim Bryant, a prospector in Omenica in 1871: "[upon arriving] [t]he first thing I did was to record my claim, which could be done, in the absence of a gold commissioner, by depositing five dollars with any responsible man and obtaining a receipt for the amount. This payment was always acknowledged by the gold commissioner on the production of the money, and the receipt."³⁸³

³⁸³ Walkem, *Stories of Early-British Columbia*, 164-165.

Another gold rush took place to the Cassiar District in 1874. And when the Klondike gold rush took place in 1896, there was smaller gold rush that took place to the Atlin lakes district in 1898. It's reasonable to suppose that, as had happened in southern and central British Columbia between 1858 and 1867, miners' meetings and customary law continued to be an important part of miners' culture during these later gold rushes in northern British Columbia. Future research should therefore attempt to draw the line of continuity between miners' meetings and camp justice during the Cariboo gold rush and that same tradition during the Klondike and Yukon gold rushes.³⁸⁴



Figure 6 Miners Meeting on First Street, Atlin., April 1899.
Image A-06713 courtesy of the Royal BC Museum and Archives.

A close examination of the early-to-mid colonial period in British Columbia shows that miners' meetings persisted as a political practice long after the passing of *The Gold Fields Act*,

³⁸⁴ The history of miners' meetings during the Klondike and Yukon gold rushes has been documented in the work of Thomas Stone.

1859, which had allowed for the establishment of Mining Boards. Furthermore, a close examination of the actions of Mining Boards demonstrates that they performed an entirely different function from miners' meetings in colonial society. Whereas in frontier regions miners' meetings were used to organize frontier society and establish mining regulations—performing legislative, judicial, or executive functions, in different circumstances—and in more developed regions miners' meetings adapted and were used by mining communities to influence the decisions of the Government, Mining Boards were representative institutions that were mandated by election to fulfill a specific purpose.

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