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Attachment 1

Nipissing Nation
Grievances with regards to Power Generation

McLeod/May 2008

This synopsis provides an overview of an unfair policy of Hydro One, Ontario Hydro, (H.E.P.C.), the 'permittee' 'licensee' of record on the agreements for the transmission lines that traverse Nipissing lands. The unfair policy ensured that proper remuneration would not be received by Nipissing for transmission lines that traverse Nipissing Nation unsold surrendered lands.

This synopsis also provides historical information with regards to the actions of agents and surveyors for the federal and provincial governments, either by instructions, recommendation of policies ensured that the boundaries of Nipissing Reserve did not contain rivers and valuable water power sites. It will be shown that government legislation was later enacted to legalize the wrongful oversights.

There is a lack of consultation on the proposed future upgrading of the transmission line right of ways through Nipissing. Part of the grievance on consultation is the lack of timely response to questions posed by a Nipissing representative at the spring 2007 Nipissing University, North Bay IPSP session. Nipissing received a response in February of 2008. Nipissing wishes to relate to the readers of this synopsis the following five requests by Nipissing:

1. Nipissing wishes to describe in this synopsis and future presentation of our development to date on establishing Nipissing Nation as a power generator.
2. It is understood by Nipissing that the intervenor status is not a forum for settling outstanding claims with federal or provincial authorities. All Nipissing requests is an understanding of the issues and if possible a process to address the grievances put forth.
3. Nipissing wishes to have costs paid for preparing and attending intervenor status meetings and or hearings.
4. Nipissing Nation believes in meaningful mediation, negotiation and dispute resolution. Ensuring that these meaningful processes are set in place on new projects, such as the upgrading of the transmission lines that traverse

Nipissing lands, will be beneficial not only to the Nipissing people but to all parties concerned.

5. Nipissing wishes to address power development projects on crown lands within it's territorial lands. Not enough consultation has taken place with regards to power lines though the traditional lands of our Nations.

The Native people of Ontario in the past, have not had a history of being encouraged to develop a capability for power generation. In recent years great change has been initiated to encouragement of partnerships and involvement of Nations in power generation.

Investigation into power generation:

Since 2001 Nipissing Nation has been approached by a number of Individuals and companies wishing to develop power on Nipissing Nation lands and its territorial lands. Proposals were received on power generation utilizing wind, on shore and off shore; solar, water, co-generation utilizing natural gas, bio-diesel fired generation and gasification powered generation through a process of burning refuse.

Nipissing continued over the years to investigate the different proposals put before Chief and Council. It was evident that Nipissing required assistance in dealing with the proponents of the power generation proposals. None of the proponents moved further than requesting the approval to construct and operate these facilities on Nipissing Nation land as lessees of Nipissing. None of the proponents of the proposals approached Nipissing as an owner or in partnership. Nipissing has leased land since the 1950's for residential, commercial and industrial use. It has never been the intention of Nipissing to contemplate development of a lease relationship with regard to power generation capabilities. Nipissing has taken on the challenge to investigate the possibilities on ownership of power generation facilities.

Nipissing approached FedNor for financial partnership to develop the Nipissing Nation Electricity Generation Business Guide. This Guide completed by Gartner Lee Limited in May of 2006, provided information of value to Nipissing in reviewing and studying all processes and probabilities for Nipissing to achieve power generation capabilities. The Guide provided the identification of various electricity generation options available to Nipissing. The Guide also specified typical range of resource requirements, a roadmap to develop an electricity generation project, identified risks, provided a framework to evaluate those risks, provided Nipissing with a due diligence framework for evaluating potential partners and gave recommendations for next steps for our Nation in power generation.

In early 2007, Nipissing Nation partnered with Gemini Power Corporation to explore the potential for development of a 10 MW Combined Heat and Power Biofibre Generating Station. The partnership is also investigating other power generation projects in accordance with the Nipissing Energy Guide. The partnership known as Mshkowzeemgut Power Inc. is presently in the final drafting of the business plan for the biomass project.

Nipissing Grievances:

Three grievances will be outlined. The first is with the transmission lines that are situated on Nipissing's unsold surrendered lands. The second grievance is the historical events that led to Nipissing land base being set in place with no water power generation sites. Protection of archaeological sites will be put forth as the third grievance.

Transmission Line Easements and Rights of Ways:

Nipissing Nation has 3 hydro transmission line right of ways through its 'unsold surrendered lands'. The land was surrendered in 1907 and remained unsold surrendered after the land failed to obtain sales in the 1919 land auction sales. The land came under the jurisdiction of the Province of Ontario under the 1924 Land Agreement. Nipissing Nation retained underlying interest in the lands. After going under provincial jurisdiction the land remained in administrative and management limbo. Neither the federal or provincial governments exercised jurisdiction other than to allow for easements and right of ways to transverse the

lands. Provincial non-action was in a silent response of not having responsibility for the lands or for native affairs. Federal non-action because in light of the 1924 land legislation, the Province was required to provide a mechanism to transfer the lands back to federal control.

In 1963 Nipissing Nation Chief and Council requested that the lands be revoked back to Nipissing. Four parcels of land in Commanda were transferred to reserve status in 1968. This transfer imparted a response from both governments that no legislation covered the revocating of unsold surrendered land back to reserve status. In 1986, the Indian Land Agreement provided the appropriate provincial mechanism to allow for the repatriation of unsold surrendered lands to its former owners. Negotiations were re-started on the return of the unsold lands to Nipissing and culminated in a tri-partite Specific Agreement being signed in 1995 between Nipissing Nation, Canada and the Province of Ontario. Implementation of the Specific Agreement to put in place reciprocal Orders in Council to effect the final transition of the lands to reserve status remains incomplete. The Province provided their Order in Council registered as instrument number 167738 on July 2, 2004. Canada is presently completing the final title searches and surveys to complete their Order in Council. It is anticipated that another year will be required at minimum to complete the federal OC process.

The Permits/Agreements/OC:

One permit for transmission line right of way was granted in 1957, for as long as required and the right of way obtained under P.C. 1956-319 and the permit agreement is granted under Section 28(2) of Chapter 149 of the Indian Act, 1952. Compensation was for \$4,329.56. The power line is a 230 kv that runs through lots 1, 2 and 5 to 12, concession IV, in Commanda Township containing 63.89 acres. The right of way is noted as being 100 feet wide on the survey plans, but appears to be in the very least approximately 150 feet wide. This hydro corridor accommodates two transmission lines. In Beaucage Township the transmission line tranverses lots 2, concession 4, lots 3 to 10 in concession 5 containing 55.85 acres of land. In Pedley Township the right of way transverses lots 1, 3 and 7, concession 4 containing 18.57 acres. In survey notes under number 205-1963-3, lots 4, 5, 5, 7, concession 5 and lot 7, concession 6 are noted as part of the right of way in Pedley. The surveyors notes dated February 27, 1957 do not give acreage.

Nothing on file shows payment for the right of way. In September of 1963 an Order in Council was obtained under instrument number 1963-1413, file quoted as 43/34-1-1 under the Public Lands Act for compensation of \$1.00. The transmission line would transverse over lots 2 in concessions 4 and 5 for a total of 5.797 acres in Beaucage Township. Two other lots were added to the right of way description in October of 1981 under plan number 67784 for lots 3 and 4 concession 4 in Commanda Township. These two lots were reconvened to reserve status in 1968. No compensation or mention of acreage is made.

Another right of way was granted under the Public Lands Grant Act in 1954, under Order in Council 1953-1939 and again in 1969 under Order in Council 1969-419. The compensation stated in the permit was for a sum of \$4,968.60. No paperwork shows this amount being paid. The agreement was granted "for as long as the said lands are required". The transmission line was to run through lots under plan number 54036 and 54037 containing 105.548 acres of land. A 115 kv transmission line occupies these lands. The right of way is stated as being 100 feet wide.

A right of way was stated to have been granted on February 16, 1956 under a Letter dated February 27, 1956. It was for a 115 kv line under a plan noted as 97701 e.t. and being required for "John Mansville has recently acquired lines will cross over Reserve, compensation required." This transmission line is located on Lot 1, Concession B, Commanda Township. No paperwork shows that compensation was paid.

The three rights of ways for the three transmission lines were granted to HEPC and Nipissing was to receive a total of \$9,299.16 in compensation for the right of ways through their lands. No paperwork on file in the Nipissing Land Office files indicates if payment was ever received. A letter from W.C. Bethune to Henry Gauthier dated February 16, 1956 states that "Payment has not been received." A very loose calculation on the 'upfronted' one time payment over the last 54 years, from the 1954 to present day translates to a cost by H.E.P.C., Ontario Hydro, Hydro One of \$172.20 per year.

In 1993 Nipissing Nation met with officials of the Indian Taxation Board and Ontario Hydro. The meeting was to exercise implementation of grants in lieu

of taxes in preparation of the signing of the Specific Agreement. At this meeting, Nipissing Nation was informed that grants in lieu payments from Ontario Hydro would not be forthcoming from them until the lands were legally in the name of the Nipissing Nation. Nipissing has always been at odds with this unfair advantage set down by the permittee/licensee. The policy of Hydro only provides payments of grants in lieu for 'reserve lands' and not 'unsold lands'. This policy allowed for the permittee/licensee to have decision making powers and approvals of who they deemed to be the owner of the lands they traverse. The major contention is that the agreements for the transmission lines were set in place by Band Council Resolutions from Nipissing to locate the transmission lines on their unsold surrendered lands. The agreements signed by H.E.P.C. in the 1950's, 1960's and as far back as 1939 acknowledged the use of Band Council Resolutions in obtaining authorization for their transmission line agreements. If the approval of Nipissing Nation Council was all that was required to put in place the agreements, Nipissing is grieving that a Band Council Resolution should be all that would reasonably be required to set in place grants in lieu payments to Nipissing.

The inaction for collection of grants in lieu on these right of way lands also is in contravention of the permits granted under the Indian Act and Public Lands Act. Clauses within these agreements grant the easement for as long as required for hydro transmission purposes and included a clause that states "That the Grantee shall pay all charges, taxes, rates and assessments whatsoever which shall during the continuance of this right be charged upon or be payable in respect of the lands herein described."

Nipissing Nation wishes to advise all readers of this synopsis, that Nipissing Nation is in full support of mediation processes to negotiate fair and equitable agreements. In no way, is this synopsis or any presentation as an intervenor, to be interpreted that Nipissing Nation is not favourable of negotiation, so long as any negotiations are based on the principal to provide favourable, equitable negotiations that will culminate in agreements favourable to both parties.

Historical reasons for absence of water power generation sites on Nipissing lands:

Historical documentation shows that surveyors sent into the field to provide surveys for reserves under the treaty were setting in place the

orders of agents for the government, or at times, for the surveyors own use as a proponent of resource extraction. It is shown that the type of recognizance by surveyors supported colonization and resource extraction more favorable to the proponents of resource extraction than for the settling of boundaries for reserves. Surveyors recorded resources and acted as recognizance agents for government, industry and themselves. The resources of the land dictated how and when surveys were carried out. It will be shown, how treaty land surveying took a back seat to the anticipation of the harvest of the vast timber resource and the water power required for mills to manufacture the forest product.

The land of the Nipissing, for a time remained outside of the scope and scrutiny for resource exploration as mineral investigations by agents and explorers were focused on the western Lake Superior parts of Ontario in the first half of 1800's. Earlier reports of native use of copper in the Lake Superior area was the catalyst for mineral exploration and the reason for treaty making. Copper usually predisposed an area to gold. The years leading up to the treaty signing year of 1850 was dedicated to the more lucrative "mining" prospects of the more western regions around Lake Huron and Superior.

Historical documentation shows the attention representatives of the government(s) in the traditional lands of the Nipissing became evident in 1860's when the timber resource of the eastern and southern regions began to be depleted. It is documented that proper instrument surveys were utilized in the regions surrounding the Nipissing to enable the licensees to acquire licenses.

Historical sources also provide documentation on the pre-occupation of agents, surveyors and governments with the concerns of colonialism. Much is written on protecting the sensibilities of colonists being offended by native ownership of vast resources, possible water transportation systems or the location of reserves near the best or most opportunistic land for colonization efforts. Added to the above colonization objectives was the new vast wealth of possible power generation sites.

The first development to retain water power sites came in the form of directives developed to retain the best of resources from the land bases of the treaty signatories. Later confrontations between federal and provincial governments highlighted power sites, and a provision in their agreements *“emphasizes that the suggestion that water-power may be within the gambit of Indian water rights and has not been abrogated”*. *Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian Water Rights, KE 7715, B35 1988, c.3, Page 207.* Protectionist policies were incorporated into an agreement in 1905 between Ontario and Canada that no suitable water power site would be located on reserve if the potential exceeded 500 horsepower.

The misunderstanding by government officials on the ideals contained in the Royal Proclamation and their protectionist attitude for the Crown and their own self interests, did not rally a concern to ensure that the full descriptions of the lands described under the treaty were carried out and set apart.

Nipissing is contending that the main reason for treaty making at this time in history, was a response to accommodate coveting resource based companies. The providing of information on the potential of valuable resources within the native persons territory were not provided to the Native signatories of treaties. This type of disclosure would work against the prime reason for treaty making and may very well have ceased further exploratory envoys pushing westward. Native nations were encouraged to cede their territories for remuneration and promise of being protected and provided for in the future.

In 1850, the Nipissing became signatories of the Robinson Huron Treaty. Chief Shabokeshick and his Head Men, Penassy and O’jeek, were recorded in that treaty as the Chief and the Principal men of their Nation. To command the northern shore of Lake Nipissing and its main waterways was the major principal for land selection by the Nipissing at the time of the signing of the Treaty. The rivers were their transportation highways of the day and the falls of rivers were the spawning areas of many fishery species that were a main source of the native person’s economy. Fish was their primary source of food sustenance and their commerce.

The Surveys:

The Map of Exploration of French River and Lake Nipissing showing Indian Reserves No. 9, 10 & 11 under Treaty of September 9th, 1850 is signed by Jos. Denis, P.L.S. in Weston 4th May, 1853, shows Nipissing Reserve's outer boundary with a western boundary of 8 ½ miles, northern boundary of 19 ¾ miles and an eastern boundary of 7 miles noted as marked by a red pine tree.

It is recorded by Denis in his notes, that the Chief accompanied him to show him the boundaries and that the Chief agreed to change the western boundary eastward. This change in boundary is controversial and is an action completely against the Royal Proclamation directives on proper cessation of native interests and the nature of any person who owns property. Chief Shabogesic owned property on the Sturgeon River and it would be a very giving soul to relinquish his lands for other persons on the other side of the lake. It also is the contention of Nipissing that Dennis was wrong in having not explained to Shabogesic, that he need not relinquish his lands in favour of the eastern planting grounds as the eastern boundary need only be moved to include the planting grounds. This issue becomes more contentious as actual instrumental surveys were delayed. Chief Shabogesic was reported to have passed from this world in July of 1869, before actually seeing a survey of the reserve as stated under treaty. The markings of the 'southern' east and west boundaries were the only actual markings, if these markings were actually set in place by Dennis. No northern limits were provided showing the depth of the land base. The matter became even more contentious as 'Leagues versus miles' issue is brought forward.

Denis reports on pages 23 and 24 in his survey notes that *at* Lake Nipissing he made a visit with the 'intelligent Indian' Ducas. Denis accompanies Ducas and member of his Band leaving Lake Nipissing on October 15th. He made an examination of a large island 'Okicka-dawb' and the land south of the French River which was reserved for the Band. Denis has written;

"The Chief states that he meant that the Indian word used at the Treaty to indicate the measure of length, should represent the League that he knew nothing of miles and that the tract which he desired was between two certain rivers about 3 leagues apart."

Denis reports that this Chief stated that he only understood leagues and did not understand the other measurement. No acknowledgement or report in Denis's notes cites that he may have made an error in understanding Shabokeshick with regards to miles versus leagues when he made his map, even though the discussion took place

immediately after talking with Shabogesis. Not even when Denis knew that Ducas Trading Post was on Shabokeshick's Reserve and would more than likely have understood the same measurement.

The Nipissing land base under treaty would have encompassed lucrative water power sites and would have caused for great prosperity. If the measurement were in miles the land base would have retained one large power generation site. The water power sites were purposely omitted from the Nipissing land base by agents, surveyors and the remaining land base was later surrendered by government to ensure that resource extraction and colonization efforts were successful enterprises.

The Association of Land Surveyors published a poster to commemorate its Centennial 1892 – 1992. The poster contained an insert that states the following:

"Survey parties were sent out to take stock of the natural wealth of the sixty million acres lying north of the French River and Lake Nipissing in the early 1900's. The instructions stated, '*The land surveyor will control and direct the work.*' This information acquired by the land surveyor embraced soil information, minerals, forest resources, plant specimens and inventory of animals and fish, the general features of the country and the location of important falls and do graphic information. The land surveyor was the early gatherer of land information throughout Ontario."

Surveyors were usually the first to view, explore and assess resource values and these usually documented in the survey field notes. The surveyors have documented as applying for resource licensing. Keating an Ontario Land Surveyor and the immediate reporting supervisor for Joseph Dennis, OLS, who was charged with the responsibility of surveying Nipissing Indian Reserve and provided the "Map of Exploration of the French River and Lake Nipissing Indian Reserve" dated 1853, is recorded in the Lake Huron Timber Privileges application log, on Page 459, as a recorded entry for Keating & Davis, Applicant:

"29 Nov. – 5th Dec, 1850, Are desirous of obtaining a license to cut timber on both banks of the White Fish River, without the limit of the Upper Canada Company Mining Company. 14 Feb. – 25 Feb., 1851, J.W. Keating applies for a license to cut timber within the limits of the Territory ceded to the Crown concluded last autumn, to be described as follows:- Commencing at the Western Boundary of the Indian Reserve No. 3 thence up a small stream & chain of lakes in the interior towards Shibah-oh-nah-ming being about three miles in width by ten in depth or thirty square miles."

Of greater interest is the survey instructions handed down by Keating. Keating writes his instructions to his colleague in running the survey of the

Reserves, in his letter (Keating:182) from Penetanguishene on June 23rd, 1852, wherein, he writes:

“-for I think the Indians would desire your or my constant attention during the survey when their wishes with regard to the extent of the Reserves and the points of departure will ascertain and settled.

I have however reason to believe that both minerals and valuable tracts of timber (oak and pine) probably known only to the Indians are to be found which would amply repay the expense and time of examination, & from what I heard last winter on the North Shore I believe that many acres fit and desirable for settlement are to be found-

This being the case it would be desirable wherever there are sufficient grounds for us doing so make a more extensive exploration than would be effected during the short time we should be in the vicinity of the respective Reserves whilst merely placing monuments & define them in that case I should suggest that you might survey the outlines of any such Reserves whilst I make a satisfactory exploration of the ~~vicinity~~ adjacent country.

Your other party no doubt will find abundant work, in the survey of those tracts—the Boundaries of which we shall have fixed & which may not afford the inducement for more than a cursory examination.”

This type of planning by an individual entrusted to carry out surveys under the treaty and the giving of survey instructions, possibly proved more advantageous to him and others of his profession than the treaty signatories. Mr. Keating by his instructions ensured that it is clear that his attention is placed on resources rather than surveying. He states his ‘exploration of adjacent country’ to be his primary interest. His ownership of a timber license gives a clear indication of what his mind is on. The motivation of these agents, treaty negotiators and surveyor/licensee(s) were based on wealth of the new nation or for themselves. It is obvious that Keating’s application and obtaining of a license sends an approval nod to his subordinates. Mr. Denis is recorded to have obtained a license on a reserve and or abutting crown lands of reserves. No direction was given to put in place standards for fairness in fair extinguishment aboriginal interest as stated under the Royal Proclamation. Agents went into the land with treaty and with pre-planned ideals and given directives to dissolve aboriginal interest in land and resources. The least amount and lesser land of value to be retained by the native people were supported and the least amount of technology was utilized to record the boundaries.

Not only did the Nations have to contend with surveyors with a predilection to obtaining licensing and resource extracting companies, they

also had to rely on government who allowed commissioned surveyors to carry out surveys in the best interest of government and the surveyors themselves. The statement by Keating that *'would amply repay the expense and time of examination'*, sends the doomsday message to be mindful of the resources that only the Indians would know of would amply repay costs. Keating also wrote in this letter that *'your other party no doubt will find abundant work, in the survey of those tracts – the Boundaries of which we shall have fixed & which may not afford the inducement for more than a cursory examination'*. It appears from the language quoted, that Keating had a plan for ensuring his non-surveys were more lucrative than his government job. The surveying of Reserves would not be in the government or the surveyors' best interests. Resources received the greatest of attention. The Keating directive on surveying shows that even his explanation of a Reserve which had no visible valuable assets would receive lesser attention as the reserve *'may not afford the inducement for more than a cursory examination'*. Keating's plan for non-survey would lead to grave consequences for the Native people and their Reserves.

The native people were not on the winning side. For clarity, resources should not be interpreted to not only be defined as valuable minerals, timber or land. Water power was required to move timber resources down rivers and power mills. Survey recognizant notes and plans were pre-occupied with all these resource elements, every rapid and water fall documented.

There is a Technical Plan of Lake Nipissing in the Archives of Ontario and is noted as number 38 bearing no date and no cartographer information. It is found under file number RG15-13-3-0-313. Resources such as falls and their height are recorded. Water power at that time was and is, as today, still is a very important lucrative business.

A Topographical Plan by Geological Survey of Canada of part of River Mattawa, by Sir W.E. Logan, Provincial Geologist was completed in 1854. The eastern half up to what is now called Beaucage Point is shown. The Indian village on this point was observed besides usual points of interest in geology, shoreline, portages along with rapids and falls. To date no map

from this source for the western half of Lake Nipissing has been found. If a western map exists, and is found it will be provided supplemental to this synopsis. What the two provided maps indicate, is that water power sources were being investigated.

There is a sketch of the Hudson Bay Property in 1880 in Springer Township survey completed by McLean, OLS, showing an Indian Burial Ground on Lot 8, Concession B, across from the Hudson Bay Post where Shabokeshick is said to have his lands. Denis in his notes on his meeting with Shabokeshick in 1852, reports no burial ground and does not report any of the falls existing in the upper Sturgeon River. What today is now known as the Sturgeon Falls is shown on the undated Technical Plan 38 and is a little over 2 miles from Shabokeshick's land and Denis does not note anything of the falls in his report or his map. To obtain a better understanding of exploration work completed regarding resources, colonization and the surveys to be conducted on the Reserves, one must review the reports provided at the time.

Denis with regards to his discussion with Keating noted the "utter worthlessness" of lands of previous Indian Reserve surveys being the reason for "*so as to enable to fix with approximate accuracy the general position of the tracts respectively, mark the angles would enable me to Map and describe the Reserve.*" This statement allowed for the fixing of general positions of the tracts when a tract of land is thought to be of utter worthlessness. In his May 14th, 1853 report, he writes on page 18 of his field notes with regards to the 1853 map of Lake Nipissing he produced from his survey work in 1852:

"The map is not of course to be taken as perfectly correct, but it is as much so as could be produced from any other than a complete instrumental survey."

The admission by Denis in writing that the survey was not perfectly correct would have grave impact when utilized by the later surveys commissioned beginning in the 1880's. He states further on page 19 that;

"So far as I am able to judge of that country, for such a survey it would be folly to go to the expense."

That statement was made in keeping with his agreement with Keating on why a more instrumental survey would not be required. On page 19 to 23, Denis describes Lake Nipissing;

“continued up to the north shore of Lake Nipissing where we were engaged from the 6th to the 15th of October in connection with the large Reservation of Shabokeshick and band – the position of which to suit the wishes of the Band. We placed about 4 miles further Easterly than is described in the Treaty but preserving about the same extent of frontage.

The position of Sturgeon River and the outline of the coast on the northshore of the lake we laid down from the rough survey made as aforesaid.

.....The south west, west and north west coast of Lake Nipissing is low and every way uninteresting and the later mentioned part, for miles east and west of H.B. station on Sturgeon River, may be considered an immense swamp.

On the north east part and also on the south east, opposite an escarpment of high land appears which on the north side where we had an opportunity of examining it is covered with a fair growth of timber, of maple birch hemlock and pine, but the soil is very light sandy nature and is beside very stony.

From the view across the Lake of the high lands on the south shore they appeared to indicate from the particular colour of the foliage at that season an extensive tract of Hardwood land which presentation was corroborated by the statement of the Indians but I doubt very much, however luxurious, the growth of the timber may be, whether the soil would not be found too rocky for agricultural purposes.

Lake Nipissing is shallow and dangerous to navigate on that account as well also in consequence of the reefs which abound. The water is the colour of strong tea and in the hot summer weather the Indians say is anything but potable. Indeed nothing more is necessary to establish the character of the water than to state that the whitefish taken in that Lake are very little indeed, if at all, inferior to the sucker of Lake Huron.”

This description would deem the Nipissing environs as useless to any competitor reviewing his report. It would be in keeping with the Denis - Keating agreement that a more detailed survey would not be required. This description and reasoning must be questioned when reviewing the Salter Report of 1856. *The Journals of the Legislative Assembly of the Province of Canada. Session, 1856. From the 15th February to the 1st July, 1856, 3rd of April 1856, Appendix (No. 37).* Andrew Pellew Salter, Provincial Surveyor description of Lake Nipissing is in total contrast to that of Denis’s report. He writes:

“Sturgeon River, emptying into Lake Nipissing nearly due north from Point Wabishcaunk, the entrance of the French River, is a fine deep stream and its average breadth about six chains. The first fall which impedes the navigation is about six miles from its mouth.

The land at its entrance into Lake Nipissing, is low and swampy, consisting on both sides of open prairie; and on the westerly side there is a cranberry marsh of considerable extent, from which is gathered, yearly, a large quantity of valuable fruit.”

“One mile from the mouth, on the westerly side of the river, is a post of the Hudson’s Bay Company, and from this ascending the river, the surface gradually rises, and with the exception of the points at which the rock ridges cross the river, and from the several falls, the land on both sides if of good quality; the soil a rich sandy loam, the sub-soil a clay, and the timber birch, soft maple pine, hemlock, cedar, spruce and balsam.

Inland, for several miles, the appearance of both soil and timber is the same, and large extensive tracts of very fine pine timber were met on both sides of the river above the first fall, and near it some fine white oak were observed. No hard maple was observed on this section."

...."It next becomes my duty, in compliance with your instructions, and in furtherance of the service with which I have been entrusted, to speak of the resources of the country, and while I approach the subject with diffidence, feeling my inability to do justice to it, I must say that after examination, and mature reflection, I see no reason to change the opinion I had formed when penning my report to you of 30th July last.

Viewed in three points; First, as an agricultural country; Secondly, as a mixed timber and mineral producing region; and Thirdly, as regard its fisheries, I feel warranted in saying that no very remote period, this section will be a source of vast revenue to the Province.

As an agricultural country, although it is true that on the coast of the Lake (Huron) and for some miles inland, the country is, in most places, rugged and barren, and equally true that further in the interior the valleys of good arable land are crossed by rock hills, presenting the same sterile appearance, yet large and expansive tracts are found with a deep alluvial soil, furnishing material for the formation of, I consider at least sixty fine townships of thirty-six square miles each, capable of producing to perfection, rye, oats, barley, maize, grass and all kinds of root crops.

That this is no theoretical view is substantiated from the fact, that in many places rude Indian clearings were met, where several of these crops were seen growing luxuriantly, and from this I think I may safely arrive at the conclusion that, where the country settled by a class of industrious agriculturalists, that which is now produced under the rude husbandry of the half civilized savage, could be profitably grown by those accustomed to tilling the soil.

As a timber region, many expansive tracts of pine, of a very fine quality were both seen, both red and white, and this valuable timber is scattered to a greater or less extent throughout the whole country, and further the birch, tamarack, cedar and spruce, of which timber there is no lack, all serve to enhance its value as a lumber country.

The demand from the whole growing region about her is immense and is yearly increasing. The receipts of lumber in 1847 were 32,000,000 feet, in 1855 they were 300,000,000.

The rivers with their magnificent water-power, and the more rugged and broken portions of the interior, hold out inducements to capitalists to employ their means in the manufacture of lumber, or to the development of the mineral resources of the country; while to those who prefer agricultural pursuits, an ample field is offered for obtaining subsistence for themselves, and of supplying the wants of those whose inclination leads them to embark in either of the other callings."

From the time that Mr. Denis provides his map of exploration and field notes on the 4th of May 1853 to Salter's report in May of 1856, Nipissing and its environs are reported by Mr. Salter as a vast wealth of timber including '*The rivers with their magnificent water-power...hold out inducements to capitalists to employ their means in the manufacture of lumber.....*' It is evident that Mr. Denis's report reports a completely different description than that of Mr. Salter's. It seems a little impractical that Denis would not have reported on the falls on the Sturgeon River as it is located upstream a little over two miles and is the main northern water source for Lake Nipissing. Shabokeschick would have wanted to retain command over the Sturgeon River and the La Vase as these were his source of travel being the highways of the

day. It would be more advantageous to exploring surveyors to have him conveniently change his mind on the lands on the Sturgeon River that held his ancestral burial ground, his land, the falls in his back yard and the river that gave him access to points north and north west. Denis had a role to play and he fulfilled that role with total compliance to the dictates of his employer and the governing bodies at that time.

Mr. Salter then offers his recommendations for the commencement of surveys. He ends his report with the following suggestions;

“In order to facilitate the settlement of the cultivable portions of the country, I would respectively recommend that the land should be offered to actual settlers at the lowest possible price; and that, as far as possible, speculation in them should be prevented.

A bar to the ready settlement of the country will, I fear, be found in the position of the Indian reserves, they being generally at the mouths of rivers, and although the land in rear is much better in character, I apprehend it will be difficult to induce settlers to penetrate and open up the interior, while large tracts unimproved, or only very partially cultivated, lie between them and the front.”

This last comment by Salter will negate any possibility or contemplation by government that Shabokeshick and the Nipissing people would receive surveys that would safeguard their lands retained under Treaty. This type of discourse by Salter with regards to the size of the reservations, *‘generally located at mouths of rivers’* on *‘large tracts unimproved, or only very partially cultivated’* that would pose problems associated with settlers and the location of reserves.

The location of reserves in proximity to settlements of colonists as far back as 1855 shows that the policy was carried out immediately after treaty signing and into the 20th century where in 1905, the Deputy Superintendent of Indian Affairs agreed with the Province that reserves should not be located near the settlements of colonists usually around falls of rivers.

When contemplating the biased reporting of Dennis the surveyor and the recommendations of Mr. Salter, it can only be said that if any reserve was described by Salter at that time, it was the proposed Nipissing Reserve. The description of the wealth of Lake Nipissing and its environs and the recommended protection of the resources and positioning of reserves, it can only be said that the amendment to the Nipissing boundaries had already been contemplated in 1856. The movement of the

reserve line from the location on the mouth of the Sturgeon River and that the Reserve would be smaller than Shabokeshick and his people would have wanted was already contemplated by Denis and Keating. Their actions were upheld by the Province of Canada in 1855 and 1856 with the Salter Report. Salter's comments supported Denis's deviation.

To clearly understand the importance of water power one must review the importance of the timber resource. It is recorded in the book, *Ontario Forests, A Historical Perspective*, Fitzhenry & Whiteside, Toronto, Ontario. On page 177, K. A. Armson writes:

"Settlement accelerated into central Ontario as the province opened up opportunities for lumbering on Crown lands. War and its aftermath continued to be a major factor affecting both the timber industry and the rate of agricultural settlement: the Crimean War (1853-1854) impacted the flow of Russian timber to Britain, while the American Civil War (1861 -1865) and its subsequent reconstruction period provided impetus to the industry." "Development of the lumber industry was linked to the opening up of forest lands. Logging required men, animals—horses and oxen—these in turn required food which farming communities on adjacent agricultural land could provide. The forestry industry was also recognized as a significant source of revenue to the country. In 1866, Sir Alex Campbell, in his annual report, noted that the value of timber exports was \$73,004,312 between 1856 and 1863, as compared with \$16,765,981 for agricultural products. Great Britain was still the major recipient of timber exports compared to the United States, at a ratio of approximately 3:1."

The importance of timber in the Nipissing area by the 1860's would mean that a greater importance would be placed on the water power resource of the rivers. Without this power, the timber resource could not be prepared for shipping and market.

The surveys that set the boundaries of Nipissing Indian Reserve /10;

No instrumental survey existed at this time for Nipissing Reserve No. 10. Surveys conducted on the surrounding townships were completed first. Nipissing Reserve would not receive a survey until the surrender of 1907, and the survey was commissioned to set in place the lots of the three townships in preparation for land sales to colonists rather than the boundaries of Nipissing Indian Reserve.

In a quotation from Gard's *North Bay* (1909:83-84), *The Gateway to Silverland*, the surveyor licensee Sinclair is recorded as having a timber limit in the North Bay area.

"Duncan Sinclair, a surveyor, had a 5 mile limit in which is now North Bay. It was he who laid out the trail line up the Mattawa and Nipissing, later taken by the C.P.R. for its present route."

The Nipissing people contacted the department with regards to Sinclair, the surveyor who has a timber license for what is now Widdifield Township and who set in place the eastern boundary of Nipissing. With regards to the surveyor and licensee's survey work it was reported;

"In 1868, the Nipissing Band contacted the Department of Indian Affairs (DIA) regarding the eastern boundary of their reserve, On 5 September 1868, W. Plummer, an Indian Department Visiting Superintendent, wrote to H. L. Langevin, SGIA, reporting that Chief Shabokeschick had stated that a person by the name of Sinclair had illegally cut timber from Nipissing I.R. #10. Shabokeschick also stated Sinclair had run a line "through the Reserve some 3 to 4 miles from the eastern boundary, and that he told (the Nipissing Band) that that portion there marked off did not belong to them." (280)

Reliance on surveyors who were obtaining timber licenses from their employers, the government would not be in the Nipissing people's best interests. In a letter dated June 1868, Mr. Sinclair had requested a timber license on Nipissing Reserve. Earlier in March of the same year, a letter to Mr. Sinclair, Secretary of State Langevin had informed Mr. Sinclair of costs for fees and process. Mr. Sinclair had also subsequently obtained a timber license for Nipissing Reserve timber license dated September 24, 1868 and was re-recorded October 31, 1868. Prior to the license was issued a letter dated September 5, 1868 from the Secretary of State is informing Mr. Sinclair that he received information that Sinclair had already cut on the eastern part of the Indian Reserve in Lake Nipissing without awaiting the license. Even though Sinclair had operated without a license and without paying the fees, had encroached and overcut onto the Nipissings' land, the licenses were issued by H. L. Langevin, Secretary of State on September 15 and again on October 31st. The 'licensee' Sinclair, who is a surveyor for the government, was caught cutting timber without a license, moved the boundary line and acting as his own agent and made a misrepresentation to the Chief and Nipissing people on a line that would only benefit himself (Sinclair) and he still received the license in the end.

With regards to the western boundary, Springer Township to the immediate west of the present day Nipissing boundary, was surveyed in 1880 by McLean. The survey instructions dated May 12th, 1880, called for 10 concessions and 14 lots across, and lots to contain about 320 acres. The survey instructions from T. B. Pardee, Commissioner of Crown Land described the Reserve survey thus:

“You are herewith furnished with a *tracing* of the Indian Reserve above alluded to, and with extracts from P.L.L. Salter’s Field Notes of Base line North Shore Lake Huron”.

The ‘*tracing*’, Commissioner Pardee was alluding too, is the Denis ‘tracing’ of 1853. The ‘tracing’ could not be the Beatty’s *re-tracement* survey of 1882, as it had not yet been completed. The Springer Township line was set in 1880 and established the Nipissing’s western boundary two years prior to Beatty’s re-tracement survey of the Reserve.

Grant Township was surveyed in 1884 by James; Charlton in 1890 by McLean; Blythe in 1888 by Rich and Coad. These townships were surveyed at later dates than the re-tracement survey conducted by Beatty in 1882. These surveys more than likely utilized the Beatty retracement survey utilizing the Denis trace of survey. Beatty’s ‘re-tracement survey’ was registered under CLSR 53197 in 1967. The Beatty’s survey is called a re-tracement as Denis’s ‘*tracing*’ was most likely utilized and that was how Dennis’s survey was described by government officials. The Beatty survey work shows a western boundary of 680 chains due north; the northern boundary was 1,444.37 chains due east and the eastern boundary were noted as 669.73 due north. This translates to a western boundary measuring 8.5 miles, a northern boundary measuring 18.05 miles and an eastern boundary of 8.3 miles. In contrast to the Denis measurements of 1853 that gave the measurements of 8.5 miles, 19 $\frac{3}{4}$ miles and 7 miles. The western boundary remained the same under Beatty’s re-tracement survey; the northern boundary decreased by 1.7 miles and the eastern boundary decreased by 1.3 miles. The Reserve decreased in size over the 29 years since the Denis tracing survey. The western boundary most likely remained the same as Beatty’s re-tracement survey was conducted 1882 and most likely utilized the Springer Township eastern boundary established in 1880.

A sketch of Nipissing Indian Reserve registered as T103 having been initialled by a T.B. and dated 12/10/98 does not show distances. Of interest is the upper western portion of Nipissing Reserve No. 10 appearing to be devoid of the ‘1904 surrendered lands’. This sketch if the date is correct predates the surrender of 1904 by six years and shows a coveting of the water power resources on the Sturgeon River that are now named Sandy and Crystal Falls. Of note on this sketch is that all townships along Nipissing Reserve No. 10’s northern boundary aligns imperfectly where the Springer, Grant and Field lines meet.

Another plan, T417, was provided by Crown Lands Ontario and is dated 1901. Department of Indian Affairs stamp dates 1903. This plan gives a measurement of the western boundary about 9 ½ miles, northern boundary about 18 ¼ miles and eastern boundary about 9 miles. The discrepancy in the measurements in this map with that of the Denis and Beatty description of approximately 1 mile on the western boundary puts more emphasis on the alignment of townships at the north west point of the reserve. If the western boundary was 9 and one half miles, the Crystal Falls site would undoubtedly be within the bounds of Nipissing. The 1882 re-tracement by Beatty put the location of the line lower than the Springer Township northern boundary in contrast to Crown Ontario's 1901.

Grant was surveyed in 1884 by S. James. Shaw surveyed Springer in 1910. A survey conducted by D. J. MacDonald in December of 1967 on the north boundary of Pedley was not accepted and file is recorded with number 177332. It may be in the investigation of why the Grant, Charlton and Blyth Townships, along with Pedley, Beaucage and Commanda all align from east to west in the same southern movement, out of alignment with the northern boundaries of Widdifield Township to the east and Springer Township to the west. The southern movement placed the Crystal Falls out of the boundary of Nipissing Reserve No. 10. The northern boundary of Springer Township is established with a northern alignment with Caldwell to the west and Widdifield to the east.

The 1904 surrendered lands are noted on the T103 of 1889 and T417 dated 1901. Both maps show the 1904 lands as being parceled off from Nipissing. No measurements are shown on T103, however, the 1904 lands are shown with measurement of approximately 2 ½ miles in an east west direction from the Springer Township line and 4 miles north to the Grant and Pedley Township lines on the T417 plan. Nipissing's northern boundary gradually moves southward on a movement from east to west and is lower than the alignment of the northern boundary of Springer Township. The southern boundary of Grant being lower than the northern Springer boundary and the southern Field boundary leaves the possibility of the Crystal Falls site from being attributed to Nipissing Indian Reserve. The T103 plan is 4 years in advance of the 1904 surrender by Nipissing. T417 is 3 years in advance of the surrender date. The importance of this portion of Nipissing coincides with requests by `power` developers of that time.

A number of individuals beginning in 1895 began to show interest in the water capability in what is now Pedley Township. Mr. George P. Cockburn on January 5, 1896 wrote to Indian Affairs requesting Sandy Falls. He was informed that the land was not surrendered for sale and that only an authorized agent could secure a surrender. Records show that the Nipissing repeatedly said no to any surrender from 1895 to October 27, 1903. In 1903 the same Mr. G. P. Cockburn becomes the Indian Agent. In January of 1904, Superintendent McLean, informs the Secretary of Indian Affairs that as of the 8th of January 1904 the Nipissing refused to sign surrender documents. Agent George P. Cockburn on April 2, 1904 states that he believes he would have no difficulty in obtaining the surrender. On April 7, 1904 signed surrender documents were provided by Agent Cockburn. On April 18, 1904, eleven days later an order in council accepting the surrender was passed by the federal government. The surrender document called for a cash payment of \$10,000.00. Agent Cockburn accepted a 10% down payment. Payment for the land and collection was recorded as problematic and had taken until February of 1909 to receive full payment. No record has been provided to show the payments actually being paid. A different owner patented the land after the original purchaser went bankrupt in June of 1908. No record of patent to 2nd purchaser was found on file and no comments as to the dispute or why the disputing companies wished the land patented to the 2nd purchaser. The 1904 land ultimately ended up under provincial jurisdiction by forfeiture and cost Nipissing Nation \$30,000.00 to settle the Booth timber license court case.

Historical documentation has shown that the Nipissing's attempts for self preservation was contested at many points during Nipissing's interaction over the years with federal, provincial, municipal and all the persons, companies and speculators that such developments bring. The requirement for resource extraction immediately after treaty signing set in place a delay on proper surveying. This delay set in place from the very beginning a Nipissing Reserve land base very different from what was described under the treaty. The delay of proper surveying, the misuse of authority by the Crown's agents and misinterpretation of laws, policies and directives led to two surrenders of land, that resulted in court cases, easements, right of ways that further decimated the revenues, opportunities and the remaining land base of the Nipissing.

The land sale of the surrendered land of the Nipissing in the end did not benefit to the Nipissing people. The land sale of 1918-19 reaped revenue amounting to a little less than \$20,000.00 dollars. The 1904 surrender reportedly reaped \$10,000.00. A subsequent court action in favour of the timber baron who held a license on the 1904 surrendered land and half the costs of the construction of the Old Government Trunk Road cost Nipissing Nation \$45,000.00.

It should be noted here that there were three other power sites located on Nipissing's unsold lands. These areas were noted as Mill site 1, Mill site 2 and Mill site 3. Mill site 1 and 2 are located in Beaucage Township and are minor power sites that have not attracted any attention. Mill Site 3 being the power site with the most potential was taken over by the Province of Ontario Highways Department in the 1950's. Nipissing retains the creek bed of the Duchesnay Creek and the falls located in Lot 1, Concession B, Commanda, as the purchase price of the land discounted water ways in the sale of the lands by the federal government to the province.

Commanda and Pedley Township was surveyed in the year 1907. Beaucage Township was surveyed in the year 1908. Beaucage, Commanda and Pedley Townships all measure the same width measurement of 12 township lots each of $\frac{1}{2}$ miles in width. The three surveys were not made to determine boundaries, but in response to the land becoming surrendered for sale. Surveys were required to set up the lots and concessions contained within and most likely were a cost to Nipissing.

The townships to the north of Widdifield, Phelps, Commanda, Pedley, and Beaucage all contain the same 12 township lot widths of approximately $\frac{1}{2}$ mile in width. The Townships of Widdifield and Springer do not fit this usual 12 lots in $\frac{1}{2}$ mile widths. The usual lot configuration could not happen as the Reserve boundaries conflicted with this type of configuration. Another problem manifests itself when the Townships of Merrick, Charlton, Blythe, Grant and Field Townships have problems associated with a gradual southern deviance from east to west direction that ultimately put Crystal Falls outside of the Nipissing Reserve. If this deviance was not enough to put this valuable water site outside of the reserve boundaries, the government attempted to obtain the rights to the

water resource under the land surrender 1904. As a result of trying to fit in the Nipissing Reserve after the other townships were set in place, Merrick and Field Townships have surveyed lines that have sustained problems of alignment with their neighboring townships. Field and Grant have north to south alignment problems with Springer and Pedley Townships. Upon review of all the surveys, township sizes differ and the difference collides directly with the boundaries of what remained of the proposed Nipissing Reserve #10.

The western line movement by Denis in an easterly direction ensured that the falls on the Sturgeon River in the town of Sturgeon Falls would be forever alienated from Nipissing. The potential for water power located on the Sturgeon River is shown as a main reason for the change.

Widdifield Township was surveyed twice the size of a normal 12 concession lot configuration utilized in the surveying of other townships in the area. Surveyor/timber resource licensee Sinclair dictated the western boundary of Widdifield before proper instrument survey of Nipissing Reserve. The north west portion of Pedley under the 1904 surrender was never surveyed at the time of surrender. This 6400 acre parcel of land relies on the Township surveys of Pedley, Grant and Springer to define that tract of land.

The retracement surveys being disallowed for whatever reason, makes even more sense as one views the southern movement of the Nipissing I. R. #10's northern boundary and its relationship with water power. The surrender of 1904 and 1907 makes more sense in that the government had failed to be successful in omitting the water power sites from Nipissing.

The final surveys of Beaucage and Commanda 1907 & 1908 reveal all 'mill sites' within those lands and these mill sites were carved out and not sold to the 'patented land owner' in accordance with the 1905 legislation on water power sites and the control by government dictated at that time.

To re-iterate, the land under treaty, not being surveyed before other townships, resulted in the most lucrative venture being left out of the Nipissing boundaries. What is known now as the Crystal Falls dam site failed to be included as Nipissing land. The difference in the east and northern boundaries begin to make more sense

and of even greater clarity is the adamant unchanged nature of the mileage for the western boundary. It remained at 8.5 miles from the Denis to the Beatty '*tracing*', keeping the Crystal Falls out of reach of the Nipissing people. A 1901 map noted as T417 calculated the western boundary at 9 ½ miles that would put the Crystal Falls within Nipissing Nation land base. Notation here this Plan of Nipissing Indian Reserve #10 was "Enlarged from the Map of Part of Northern Ontario published in 1901 by the Department of Crown Lands, Toronto, three years before the successful surrender of 6400 acres in the north west corner of the reserve. This portion of course contains the Crystal Falls and also shows a plan of alignment with the corners of Field, Springer, Pedley and Grant Townships.

The surveys conducted in the 20th century:

Surveys of the north east corner of Springer Township proved problematic in determining the exact alignment of Springer, Field, Grant and the 6400 acre north west corner of Pedley. In June of 1965 a Retracement Survey on the North Boundary of the Township of Springer was conducted by P. T. Clarke. He notes in his research the following:

"Two plans of survey were obtained, which established the north east angle of the Township of Springer and the north boundary across Lot 1, Concession VI, Township of Springer. Letters were sent out to all North Bay and Sudbury surveyors to determine if they had any records in this area. Various offices, including Ontario Hydro Survey Department were visited and copies of notes obtained....2. Trial Line and Evidence Found. The trial line was started at the north east corner of the Township. The first portion across Lot 1 in Springer Township was in the form of a road traverse. A line was then established across Lots 3 and 4 in the Field Township, the south east angle of Lot 3 and the southwest angle of Lot 4 being monumented and intervisible. From this point on the trial line was run westerly, an attempt being made to follow as closely as possible the true line as established by the Ontario Hydro in their survey of Field Township. Very little original survey evidence was found.....A number of bars and posts were found at the section corners in the west half of Field Township, these were planted by the Ontario Hydro during the course of the survey of a Transmission Line in 1952.....The Hydro also found and used the old cedar post at the north west angle of Lot 10, Concession VI, Township of Springer, they found the original blaze on the line between Lots 10 and 11, Springer which I could not locate.....In the east half of the Township there has been a few old surveys of R. W. DeMorest, O.L.S. and W.W. Stull, O.L.S. The survey by DeMorest was of Lot 3, Concession VI, Springer and was done in 1896. A 3/4 " Round Iron Bar and the remains of an old post were found at the north west angle of the Lot. The survey by Mr. Stull took place in 1924 and was in Lot 2, Concession I, Field Township. His notes show some form of monumentation at the south west angle of Lot 2 in Field and the north west angle of Lot 1, in Springer. I found evidence of these corners that had been planted by Simpson and Taylor, O.L.S. on independent surveys and although the lot widths did not agree with Mr. Stull's records the distance between these two points did. The Standard Iron Bar found at the north east angle of the Township of Springer was planted by W. E. G. Taylor, O.L.S. and established from previous Ontario Hydro Surveys."

Mr. Clarke's survey was 'not accepted'. What is also interesting to point out is that the surveyors relied on the surveys conducted by Ontario Hydro to determine the township lines in this area. Finding the old survey lines from the 19th century was a problem and reliance on surveys especially in this area became a guessing game.

In 1972 a survey was conducted of the Retracement survey of the West Boundary of the Township of Springer by M.N. Simpson, O.L.S.

“A trial line was continued northerly from this monument to Concession line V and VI, where the original B.T. as shown in the original notes of Caldwell Township was found, together with the point of the original post. It appears from comparison of topography shown in the original notes and conditions on the ground that this is a common corner with Springer Township. A Crown Lands S.I.B.B.C. and post previously planted in this area by P.T. Clarke, O.L.S. (instructions now cancelled) was removed. The trial line was adjusted to the original corner found and carried northerly to the Crown Lands S.I.B.B.C. defining the north west corner of Springer township. These two monuments are renewals of posts by Ontario Hydro surveys who in turn had renewed the original corners in approximately 1949.”

This Springer survey also notes reliance on surveys conducted by Ontario Hydro. Yet, once again we see this reliance in The Report and Field Notes of Retracement Survey West Boundary of Grant together with the re-establishment of the intervening section corners in the Townships of Grant and Field Townships, P.A. Blackburn, O.L.S. in 1983 relates the problems he had in determining the south west corner of Grant. The south west corner of Grant is more southerly by than the north east corner of Springer. He reports on Page 2:

“Again with reference to alignment and posting established by current retracement northerly from the southwest corner township of Grant to the northeast corner of lot 1, concession 1, township of Field, I emphasize that the monumentation by J.H. Shaw, O.L.S. relating directly to original posting was found, as a result of diligent and exhaustive searching on all points of original monumentation along this portion of the Boundary, and has been accepted herewith unconditionally as the best evidence of the Boundary, and in acknowledgement that monumentation by numerous surveys subsequent to date of retracement and monumentation by J. H. Shaw, O.L.S. are dependent upon inferior and therefore unsatisfactory evidence of the line between the Township of Grant and Field. In addition to prior MNR retracement surveys under MNR files 177332 and 172861, involving the north boundary of township of Pedley, the east boundary of township of Springer and the north boundary of township of Springer, surveys completed by Ontario Hydro, Simpson and Taylor, O.L.S., G.P. Angus, O.L.S. are based on evidence of the Boundary currently found to be contradictory to the position of the original evidence perpetuated by J. H. Shaw, O.L.S., all as further illustrated on accompanying survey returns.”

The problems associated with the location of the northern boundary of Nipissing Reserve No. 10 and Pedley Township is seen more clearly and becomes more evident in the Blackburn field notes that provides a sketch on page 9, of other surveys conducted in this area attempting to find the proper line. Of the four surveys completed in the years 1965 by Clarke, 1965 by Taylor, 1967 by McConnell and Shaw of 1920, the three 1960's surveys were 'NOT ACCEPTED'. The importance of these three surveys shows that there was and still is a problem with the alignment and the whereabouts of the northern boundary of Nipissing I.R.#10/Pedley Township. Dependence on H.E.P.C. surveys to locate the line should not give anyone any comfort level the boundary is found to be more northerly, land tenure on the strip of land left outside of the boundary of Nipissing and the land surrender of 1904 now becomes an issue. If this strip of land was not contained, as these surveys show in the surrender of 1904 then the land would rightfully still belong to Nipissing.

Research has been completed on the value and importance of water power to the Province of Ontario. As early as 1891 the importance of control of power generation sites was reported in “Lakes and Rivers, Water

and Waterpowers of the Province of Ontario”, E.B. Borrow, Stipendiary Magistrate, Toronto which was printed by Order of the Legislative Assembly. (Misc. F cc-y No. 92968, Amicus #13915827) The following excerpt is taken from page 22,

“Water-power (if good) costs little or nothing, except the interest on the first outlay for intake-lades or watercourses and tail races, and for wheels, turbines or other hydraulic engines, together with the cost of such slight repairs as may be needed from time to time”.

With regards to water power on Lake Nipissing, on page 25, it is written,

“Lake Nipissing.....but I have no doubt whatever it affords water power of great excellence and such as in the aggregate would be considered immense in any other country.”

On the control of rights to the waterpower it was written on page 33 that;

“The exclusive right of the Dominion to legislate on all matters coming within the class of subjects comprehended under the term ‘navigation’ has been claimed to include (inferentially) the full and complete control of all ‘navigable waters’.”

With regards to conservation of public rights page 35 reveals;

“The writer would, therefore, respectfully but strongly urge that all future sales of land the water, whether lakes or rivers.....should be reserved to the Crown as trustee for the benefit of the province generally.”

In the book “Aboriginal Water Rights in Canada. A Study of Aboriginal Title to Water and Indian Water Rights, Richard H. Bartlett, 1947, (KE 7715 B37 1988 c.3), Bartlett writes;

“Specific provision for water-power on Indian Reserves has been made by federal-provincial agreements in Ontario and in the prairie provinces. This provision, of course, emphasizes the suggestion that water-power may be within the ambit of Indian Water rights and has not been abrogated. In 1905 Ontario agreed to the terms proposed with respect to Treaty #9 and to the setting apart of reserve lands in accordance therewith, provided, *inter alia*, “that no site suitable for the development of water power exceeding 500 horsepower shall be included within the boundaries of any reserve.”

He writes further;

“The Deputy Superintendent General of Indian Affairs observed that such restriction was “a reasonable provision as it is not desirable to have the Indians located near the large centres of population which usually grow up around large falls where the water power can be readily utilized for commercial purposes.”

The above agreements by the Province of Ontario and the DSP of Indian Affairs clearly shows the policies of those governments with respect

to the native people of Ontario and their water rights. These policies were not favourable to the native people.

In conclusion, documentation under this synopsis with regards to water power sites definitely shows that:

The provincial government proactively pursued control over lakes and rivers and any power generation over 500 horsepower. The horsepower maximum to be left within reserves in Ontario works out to approximately 0.373 of a MW.

The government, its agents and contracting surveyors complicated compliance to the treaty when dealing with lands to be retained as Nipissing Reserve.

A government surveyor was acknowledged by its employer government and in turn the government upheld Salter and his 1856 report to parliament with regards to resource surveying, resource extraction and large tracts of lands being Reserved for Indians at the mouth of rivers, upholding the principal of withholding mouths of rivers from reserves and dissuading the surveying of large tracts of land that may lie in fallow and disturb the sensibilities of colonists.

Most importantly it has been shown that the surveyors by setting out measurements conforming to the English mile were setting out smaller tracts of land in compliance with the policy dictates of their employer governments and themselves.

Factual documentation from surveys conducted since 1920 to present day show clearly that the northern boundary of Nipissing Reserve #10/Pedley, Beaucage and Commanda Townships must be re-investigated to determine the exact location.

Archaeological Sites:

Ontario Hydro (Hydro One) has funded archaeological studies in compliance with Regulation 881, Part 6, of the Ontario Heritage Act, which states: "It is a term and condition of a licence, a) that the licensee keep in safekeeping all objects of archaeological significance that are found under the authority of the licensee and all field records that are made in the course of the work authorized by the licensee, except where the objects and records are donated to Her Majesty the Queen in right

of Ontario, or are directed to be deposited in a public institution under subsection 66(1) of the Ontario Heritage Act.”

Since 2003 a number of archaeological studies have been conducted on the hydro corridor, in the unsold surrendered lands as well as the Nipissing territorial lands ceded under the Robinson Huron Treaty. The sites have stone tool artifacts dating back to the last ice age. The studies were carried out in the surrounding areas of construction and replacement of poles. This sporadic investigation style has disturbed other sites outside of the study areas. It has been reported that construction vehicles and other trespassing vehicles (ATV's) have disturbed some sites. The sites Nipissing Nation land base is classified as moderate to high sensitive for archaeological sites. Some of the sites would be easily disturbed as some areas have very little ground cover, sometimes inches of earth or moss cover. Nipissing Nation has proceeded to put in place the Nipissing Nation Archaeological Management Plan. This very important area of information gathering, studies, collection and protection of these cultural heritage sites must be taken seriously by all users of the land. Nipissing Nation operates under the Land Management Act and the Nipissing Land Code that requires zoning, land use planning, environmental management laws and plans. In order to complete these management laws and plans, an archaeological management plan has to be set in place to complement land use strategies of Nipissing. Nipissing Nation is very cordially requesting that the area of archaeological studies be taken seriously and that all users of the land ensure that they do not destroy these very important sites. It is acknowledged that most instances of intrusion and destruction are not contemplated and wilful. Information should continue to be provided on the sites and studies should contemplate addressing issues of protection and/or collection with a willingness to ensure that a complete archaeological study is carried out ensuring that both Nipissing and client (permittee) understand sensitivity and requirements of the sites before any replacement and or construction of new structures.

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