

Sutherland, Anne-Marie ABR:EX

From: Dyck; Heinz ABR:EX
Sent: Friday, May 20, 2011 10:52 AM
To: Bettger, Gail ABR:EX
Cc: Hume, Christel ABR:EX; McRae, George ABR:EX; Porter, Charles ABR:EX; Fern, Dave ABR:EX; Lofthouse, Mark ABR:EX; Muzzin, Vanessa ABR:EX
Subject: Briefing Material for MMP Meeting with Chief Joe Hall

Gail,

Sorry for the delay ...



Stolo Overlap SXTA's two-part SXTA
Issues BN - may ... solution for t... spondence and Me

Heinz

MINISTRY OF ABORIGINAL RELATIONS
AND RECONCILIATION
BRIEFING NOTE

File: 280-20

Date: May 20, 2011

Ref. No. cliff #

- I Prepared for the **INFORMATION** of Honourable Mary Polak, Minister
- II ISSUE: Yale Final Agreement and Sto:lo Overlaps
- III BACKGROUND:

- The Yale First Nation, a small community of approximately 150 members in the Fraser Canyon near the town of Yale, entered the BC Treaty Commission (BCTC) treaty process in 1994.

CN/ED _____

ADM _____

DM _____

s.13, s.16

- The Yale Statement of Intent (SOI) area lies wholly or partially within the SOI areas of several of the 19 Sto:lo communities scattered along and near the Fraser River from Fort Langley to Hope.
- The Sto:lo First Nations are generally grouped in two bodies representing over 5000 members:
 - Sto:lo Nation – 11 bands, of whom 7 are negotiating in the treaty process under the name of the Sto:lo Xwexwilmexw Treaty Association (SXTA); and
 - Sto:lo Tribal Council (STC) – 8 bands, none of whom is in the treaty process.
- However, there are several independent Bands and there is no consensus as to which First Nations make up all the Sto:lo First Nations.

IV DISCUSSION:

s.13, s.16

- From the outset of treaty negotiations with Yale, Sto:lo bands have been invited to participate in consultations and public meetings. In recent years, provincial staff have met with STC and SXTA on numerous occasions to discuss their concerns (see attachment).

s.13, s.16

s.13, s.16

- In response to #1, Yale has consistently denied any cultural or historical connection to the Sto:lo. Yale claims its independence from both the Sto:lo and the Nlaka'pamux Nation Tribal Council (NNTC) to the north. Spuzzum, Yale's closest First Nation neighbour to the north, is an NNTC member.
- In response to #2, the treaty stipulates that Yale will consider requests by individuals for reasonable access to Yale First Nation Lands. Yale has agreed to participate in meetings facilitated by the BCTC to develop an access protocol with SXTA and are scheduled to meet again on May 20, 2011. Chief Clarence Pennier of STC has also been invited to attend.
- BCTC facilitated a meeting on November 30, 2010 between SXTA and Yale to address the overlap concerns. BCTC then liaised with both SXTA and STC about an appropriate process for future meetings.

s.13, s.16

s.13, s.16

s.13, s.14, s.16

V CONCLUSION:

s.13, s.16

Yale has been recognized as a distinct band with its own reserves for over 110 years by the federal government and was accepted into the treaty process as an independent First Nation by the BCTC.

- All Final Agreements state that if the aboriginal rights of another First Nation are adversely impacted by a treaty provision, the provision is to be read so that those rights are not adversely affected.

s.13, s.16

s.13, s.16

- MARR remains willing to continue to consult with SXTA and STC to discuss their concerns and options for moving forward.

Dave Fern
Negotiator
250-356-5289

Heinz Dyck
Senior Negotiator
250-356-2395

Attachments: SXTA Correspondence and Meeting
SXTA's Two-Part Solution for the Yale Treaty

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Pages 5 through 6 redacted for the following reasons:

s.13, s.16

SXTA Correspondence and Meeting History

Correspondence Date	From	To	Topic
2008-01-29	BC and Canada	SXTA	Initial Overlap Consultation
2008-01-30	BC and Canada	SXTA	Enclosed AIP for review
2008-04-23	Chief Joe Hall, SXTA	Rhonda Chaput and Doug Bowen	Expresses concern with the Yale Agreement and requests a meeting to discuss issues. s.13, s.16
2008-06-09	Chief Joe Hall, SXTA	Rhonda Chaput and Doug Bowen	
2008-09-08	Chief Joe Hall, SXTA	Wendy Hutchinson and Heinz Dyck	Potential solutions to Yale overlap concerns
2008-10-22	Wendy Hutchinson	Chief Joe Hall, SXTA	Response to September 8 letter. Consider SXTA's proposals.
2008-11-04	Heinz Dyck	Chief Joe Hall, SXTA	Response to September 8 letter.
2008-12-10	Chief Joe Hall, SXTA	Wendy Hutchinson and Heinz Dyck	SXTA supporting documents supporting Sto:lo's assertion of title and rights in Fraser Canyon.
2008-12-12	Chief Joe Hall, SXTA	Wendy Hutchinson and Heinz Dyck	Yale First Nation "Understanding"
2009-02-02	Chief Joe Hall, SXTA	Mark Lofthouse	SXTA Consultation Expenses - Yale Treaty
2009-02-13	Chief Joe Hall, SXTA	Mark Lofthouse	SXTA Treaty-related Consultation Expenses - Yale Treaty
2009-03-23	Steve Munro	Chief Joe Hall, SXTA	Enclosed funding of s.16, s.17 for conducting overlap consultations
2009-07-08	BC and Canada	Chief Joe Hall, SXTA	Yale FA and Appendices mailed
2009-11-17	BC and Canada	Jean Teillet and Chief Joe Hall	Consultation between SXTA, Canada and BC - Response to SXTA Accommodatin Proposals
2010-01-28	BC and Canada	Jean Teillet and Chief Joe Hall	Yale FA and CD with Appendices
2010-01-29	Chief Joe Hall, SXTA	Mark Lofthouse	SXTA Consultation Expenses - Yale Treaty

2010-02-02	Chief Joe Hall, SXTA	Wendy Hutchinson, Heinz Dyck, Jim Barkwell, Mark Lofthouse	Yale FA being signed and their concerns
2010-03-04	Mark Lofthouse	Chief Joe Hall, SXTA	Enclosed funding of s.16, s.17 for conducting overlap consultations
2010-03-15	BC and Canada	Jean Teillet and Chief Joe Hall	Letter in response to SXTA's Feb. 2 letter
2011-03-24	Steve Munro	Chief Joe Hall, SXTA	Enclosed additional funding of s.16, s.17 for conducting overlap consultations
2011-05-03	Chief Joe Hall, SXTA	Wendy Hutchinson, Heinz Dyck, Jim Barkwell, Mark Lofthouse	Further to April 14, 2010 meeting - confirming information shared and requests made.
2011-07-19	BC and Canada	Chief Joe Hall, SXTA	Response to May 3, 2010 letter

SXTA Meeting Dates	Location	Date	Funding Provided by BC to SXTA for Consultation
July 11-08	Sto:lo Nation Government House	2009-03-30	s.16, s.17
Aug 13-08	Sto:lo Nation Government House	2009-01-28	
Dec 18-08	Vancouver	2010-03-22	
Nov 18-09	Sto:lo Nation Government House	Total	
Apr 14-10	Sto:lo Nation Government House		
Nov 29-10 (with Yale)	Vancouver		

Other Meeting Dates	First Nation	Location
Jul 11-10	Seabird Island Band	Seabird Island Band Office
Dec 8-10	Seabird Island Band	Seabird Island Band Office
	Not Responsive	
Apr 25-08	Chehalis Indian Band	Chehalis
Feb 17-09	Spuzzum First	Spuzzum

	Nation	
Oct 4-10	Sto:lo Tribal Council	Seabird Island Band Office

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MINISTRY OF ABORIGINAL RELATIONS
AND RECONCILIATION
BRIEFING NOTE

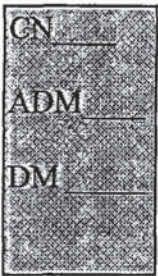
File:

Ref. 22366

- I Prepared for the **INFORMATION** of Deputy Minister Lorne Brownsey
- II **ISSUE:** Escalation of tension related to Sto:lo Nation overlap with Yale treaty land selection.
- III **BACKGROUND:**

Sto:lo are a collection of 20+ First Nations that are variously aligned on different issues, with alignments changing from time to time. The Sto:lo Nation (currently 8 of the 20 bands) are in Stage 4 of treaty negotiations with BC and Canada. The Sto:lo Tribal Council represents 9 other bands that withdrew from treaty in 2001, and who more commonly express their views publicly. In addition to these two groups sometimes being confused, Yale First Nation is viewed by Sto:lo as a family split from Sto:lo ancestry.

Sto:lo traditional practise includes areas of common use and residency subject to changes related to inter-marriage between the nations. Sto:lo Nation indicate that the initial establishment of Indian Reserves in the late 1800s/early 1900s reflected residency at that point in time. The federal government have responded to changes, in "ownership" of the reserves between Sto:lo Nations several times.



s.13, s.16

s.13, s.16

IV DISCUSSION:

s.13, s.16

V CONCLUSION

s.13, s.16

September 5, 2008
Margot Spence
Negotiator
250-387-6356

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s.14

MINISTRY OF ABORIGINAL RELATIONS
AND RECONCILIATION
BRIEFING NOTE

File: 280-20

Date: April 13, 2011
Ref. No. 27614

- I Prepared for the **INFORMATION** of Honourable Mary Polak, Minister
- II **ISSUE:** Yale Final Agreement and Sto:lo Overlaps
- III **BACKGROUND:**
The Yale First Nation, a small community of approximately 150 members in the Fraser Canyon near the town of Yale, entered the BC Treaty Commission (BCTC) treaty process in 1994.

CN/ED	✓
ADM	✓
DM	✗

s.13, s.16

The Yale Statement of Intent (SOI) area lies wholly or partially within the SOI areas of several of the 19 Sto:lo communities scattered along and near the Fraser River from Fort Langley to Hope.

The Sto:lo First Nations are generally grouped in two bodies:

- o Sto:lo Nation – 11 bands, of whom 7 are negotiating in the treaty process under the name of the Sto:lo Xwexwilmexw Treaty Association (SXTA); and
 - o Sto:lo Tribal Council (STC) – 8 bands, none of whom is in the treaty process.
- Together the two groups represent over 5000 members.

IV **DISCUSSION:**

s.13, s.16

s.13, s.16

From the outset of treaty negotiations with Yale, Stolo bands have been invited to participate in consultations and public meetings. In recent years, provincial staff have met with STC and SXTA on numerous occasions to discuss their concerns.

BCTC facilitated a meeting on November 30, 2010 between SXTA and Yale to address the overlap concerns. BCTC then liaised with both SXTA and STC about an appropriate process for future meetings.

s.13, s.16

s.13, s.16

s.14, s.13, s.16

V CONCLUSION:

Yale has been recognized as a distinct band with its own reserves for over 110 years by the federal government and was accepted into the treaty process as an independent First Nation by the BCTC.

All Final Agreements state that if the aboriginal rights of another First Nation are adversely impacted by a treaty provision, the provision is to be read so that those rights are not adversely affected.

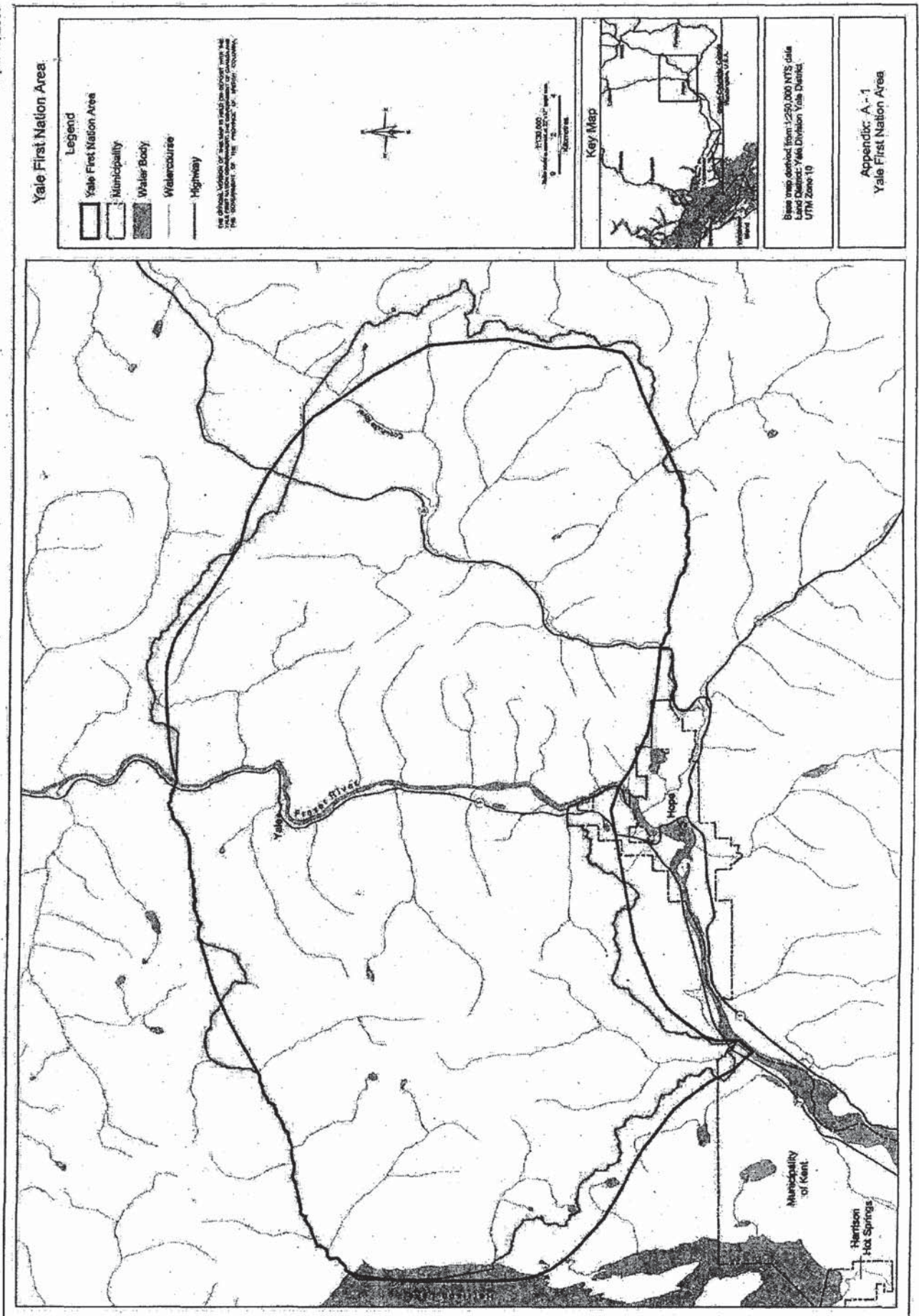
s.13, s.16

s.13, s.16

MARR remains willing to continue meeting with SXTA and STC to discuss their concerns.

Dave Fern
Negotiator
250-356-5289

Attachment: Map of Yale SOI
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MINISTRY OF ABORIGINAL RELATIONS
AND RECONCILIATION
BRIEFING NOTE

File:

Ref. 22366

- I Prepared for the **INFORMATION** of Deputy Minister Lorne Brownsey
- II **ISSUE:** Escalation of tension related to Sto:lo Nation overlap with Yale treaty land selection.
- III **BACKGROUND:**

Sto:lo are a collection of 20+ First Nations that are variously aligned on different issues, with alignments changing from time to time. The Sto:lo Nation (currently 8 of the 20 bands) are in Stage 4 of treaty negotiations with BC and Canada. The Sto:lo Tribal Council represents 9 other bands that withdrew from treaty in 2001, and who more commonly express their views publicly. In addition to these two groups sometimes being confused, Yale First Nation is viewed by Sto:lo as a family split from Sto:lo ancestry.

Sto:lo traditional practise includes areas of common use and residency subject to changes related to inter-marriage between the nations. Sto:lo Nation indicate that the initial establishment of Indian Reserves in the late 1800s/early 1900s reflected residency at that point in time. The federal government have responded to changes in "ownership" of the reserves between Sto:lo Nations several times.

s.13, s.16

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IV DISCUSSION:

s.13, s.16

V CONCLUSION

s.13, s.16

September 5, 2008
Margot Spence
Negotiator
250-387-6356

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TREATY NEGOTIATIONS OFFICE
BRIEFING NOTE

File: 280-20

- I Prepared for the **DECISION** of Honourable Geoff Plant, Attorney General and Minister Responsible for Treaty Negotiations.

II ISSUE:

Recommendations for a series of progressive options to manage treaty risks where First Nations' boundaries overlap.

Decisions Required:

1. *In what, if any circumstances should the Crown consult and seek to accommodate the potential aboriginal rights and title of an overlapping First Nation?*
2. *In what, if any circumstances should the language of Nisga'a General Provision 35 be changed to protect the treaty rights and settlement land of the treaty First Nation?*
3. *As a specific example, how should the Province proceed at the Yale First Nation (Yale) treaty table?*

III EXECUTIVE SUMMARY

Recent changes in case law, coupled with the inability of some First Nations to resolve their overlapping claims, have prompted a review of provincial strategy.

The paper recommends that First Nations retain the responsibility to resolve their overlapping claims. Where, at Final Agreement, they remain unresolved, British Columbia may undertake a case-specific analysis, subject to Ministerial approval, prior to moving ahead with a Final Agreement. Due to implications for the British Columbia Treaty Commission Process, it would be rare, if ever, that a Final Agreement would be signed in a situation where an overlapping First Nation appears to have a sound claim to Aboriginal title in the potential treaty settlement lands. There may, however, be special situations in which overlapping First Nations would be consulted by the Crown and potentially sound aboriginal rights addressed before proceeding to a Final Agreement.

III BACKGROUND:

In 1991, Canada, British Columbia and the First Nations Summit accepted the British Columbia Task Force recommendation that First Nations resolve their overlapping claims prior to treaty. This became accepted policy under the British Columbia Treaty Commission (BCTC) which remains available to assist First Nations by advising on dispute resolution services and providing research funding.

At Nisga'a Final Agreement, overlapping claims were less problematic. The Crown's obligations to First Nations were not triggered at common law until the First Nation had *proven* aboriginal title and, further, the Final Agreement itself:

1. did not affect the s. 35 rights of other First Nations (under General Provision (GP) 33 and 34); and
2. did not preclude the Crown from entering into subsequent treaties with other First Nations which adversely affected the s. 35 rights of the Nisga'a (under GP 35).

This approach is no longer adequate as a result of *Taku River* and *Haida I* which held that the Crown's obligations to First Nations may be triggered *prior* to the proof of aboriginal title. As a result, since the conversion of Crown land to treaty settlement land constitutes a disposition of Crown land, the Crown has a legal obligation to consult with and, where appropriate, to accommodate the *prima facie* cultural and economic interests in the land of affected – or overlapping – First Nations. Based on this requirement, unresolved overlapping claims may become an impediment to various treaty tables concluding a Final Agreement or may result in legal challenges to the Final Agreement. Therefore a series of progressive strategies may need to be considered.

IV DISCUSSION:

s.13, s.16

s.13, s.16

s.13, s.16

VI RECOMMENDATIONS -

s.13, s.16

s.13, s.16

Honourable Geoff Plant
Minister Responsible for Treaty Negotiations

Date

Approved/Not Approved

Cathy Mackin TNO, Policy and Implementation 356-7727	Stu Lewis TNO, Policy and Implementation 387-6330	Gordon Douglas TNO, Negotiations Divisions 356-8685	Mark Timmis AG, Aboriginal Law Group 953-4005
Date: 2011-10-03			

Appendix One

Nisga'a Final Agreement General Provisions (non derogation language)

33. Nothing in this Agreement affects, recognizes, or provides any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than the Nisga'a Nation.
34. If a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines that any aboriginal people, other than the Nisga'a Nation, has rights under section 35 of the *Constitution Act, 1982* that are adversely affected by a provision of this Agreement:
- a) the provision will operate and have effect to the extent that it does not adversely affect those rights; and
 - b) if the provision cannot operate and have effect in a way that it does not adversely affect those rights, the Parties will make best efforts to amend this Agreement to remedy or replace the provision.
35. If Canada or British Columbia enters into a treaty or a land claims agreement, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, with another aboriginal people, and that treaty or land claims agreement adversely affects Nisga'a section 35 rights as set out in this Agreement:
- a) Canada or British Columbia, or both, as the case may be, will provide the Nisga'a Nation with additional or replacement rights or other appropriate remedies;
 - b) At the request of the Nisga'a Nation, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies; and
 - c) If the Parties are unable to reach agreement on the provision of the additional or replacement rights or remedies will be determined in accordance with Stage Three of the Dispute Resolution Chapter.

Pages 107 through 110 redacted for the following reasons:

s.13, s.14

TREATY NEGOTIATIONS OFFICE
BRIEFING NOTE

File: 280-20

I Prepared for the **INFORMATION** of Philip Steenkamp, Deputy Minister

II ISSUE:

Addressing the overlap between Yale First Nation (YFN) and Sto:lo First Nation through alternate non-derogation language.

III BACKGROUND:

Sto:lo's asserted traditional territory encompasses the entire traditional territory of YFN.

One of YFN's primary objectives in treaty is to establish themselves as a separate and distinct First Nation, in particular, they wish to be separate and distinct from Sto:lo.

s.13, s.16

The boundary issue is manifested in many aspects of the Agreement in Principle (e.g. the fish chapter) and will need to be resolved if a deal is to be made.

s.13, s.16

s.13, s.16

IV DISCUSSION:

All AIPs to date have contained a standard clause (see Appendix A) which preserves the rights of other First nations, in the event a treaty right takes away (derogates) from an existing aboriginal or treaty right.

s.13, s.14, s.16

V CONCLUSION:

s.13, s.16

Terry Clark
Assistant Negotiator
250-356-5273
July 11, 2003

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Notes\Information Notes\YFN non-derogation and overlap 03July11

Appendix A

Standard AIP language on Non-derogation

If a court determines that a provision of the Final Agreement affects aboriginal or treaty rights of another aboriginal people, that provision will not operate to the extent of the adverse effect and the Parties will make best efforts to remedy or replace the provision.

Appendix B

s.13, s.16

Pages 114 through 121 redacted for the following reasons:

s.13, s.16

s.13, s.14, s.16

s.13, s.16

TREATY NEGOTIATIONS OFFICE
BRIEFING NOTE

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III BACKGROUND:

One of YFN's primary objectives in treaty is to establish themselves as a separate and distinct First Nation, in particular, they wish to be separate and distinct from Sto:lo.

CN	_____
ADM	_____
DM	_____

s.13, s.16

The boundary issue is manifested in many aspects of the Agreement in Principle (e.g. the fish chapter) and will need to be resolved if a deal is to be made.

s.13, s.16

IV DISCUSSION:

All AIPs to date have contained a standard clause (see Appendix A) which preserves the rights of other First nations, in the event a treaty right takes away (derogates) from an existing aboriginal or treaty right.

s.13, s.14, s.16

V CONCLUSION:

s.13, s.14, s.16

Terry Clark
Assistant Negotiator
250-356-5273
July 17, 2003

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Notes\Information Notes\YFN non-derogation and overlap 03-07-17

Appendix A

Standard AIP language on non-derogation

If a court determines that a provision of the Final Agreement affects aboriginal or treaty rights of another aboriginal people, that provision will not operate to the extent of the adverse effect and the Parties will make best efforts to remedy or replace the provision.

s.13, s.16

Pages 125 through 126 redacted for the following reasons:

s.13, s.16

s.13, s.16

TREATY NEGOTIATIONS OFFICE
BRIEFING NOTE

File: 280-20

- I Prepared for the **INFORMATION** of the Honourable Geoff Plant (or Philip Steenkamp, Deputy Minister).

II ISSUE:

Addressing the overlap between Yale First Nation and Sto:lo First Nation through alternate non-derogation language.

III BACKGROUND:

One of Yale's primary objectives in treaty is to establish themselves as a separate and distinct First Nation, i.e., not Sto:lo.

CN
ADM
DM

s.13, s.16

The boundary issue now permeates every aspect of the treaty negotiations with Yale and will need to be resolved to get to treaty.

s.13, s.16

IV DISCUSSION:

s.13, s.16

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s.13, s.14, s.16

TREATY NEGOTIATIONS OFFICE
BRIEFING NOTE

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CN	_____
ADM	_____
DM	_____

s.13, s.16

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s.13, s.16

Pages 133 through 139 redacted for the following reasons:

s.13, s.14, s.16