

Land Status and Preliminary Suitability Assessment Report

Proposed transfer of Crown lands DL 489, DL 4089, DL 4183 and an identified parcel of unsurveyed Crown land to Westbank First Nations

November 21, 2011

Background:

The Ministry of Transportation and Infrastructure (MoTI) requests a formal response from the Ministry of Forests, Lands and Natural Resource Operations (FLNRO) as to the availability and suitability of Crown lands proposed to be transferred to Westbank First Nation (WFN). MoTI as part of an Interim Westside Road Agreement reached in September 2009, committed to make reasonable best efforts to transfer 698 acres of undeveloped Crown land in exchange for WFN commercial lands required for the Westside Road Interchange Project.

These Crown lands, including all of District Lots 489, 4089, and 4183 as well as a parcel of unsurveyed Crown land, were proposed by WFN and were appraised to be of fair value in exchange for the WFN lands required for the Westside Road interchange. These lands are under the jurisdiction of FLNRO under the terms of the Land Act. Subsequent to reaching the Interim Westside Road Agreement, MoTI undertook a land status and preliminary suitability assessment as directed by FLNRO requirements. The results of this assessment are included in the following report.

The Westside Road Interchange Project is a much needed transportation improvement along the Highway 97 corridor that will improve both mobility and safety on Highway 97 in West Kelowna. This project runs directly through WFN Indian Reserve #10 and could not have proceeded without the acquisition of adjacent reserve lands. The Westbank First Nation Self-Government Agreement, brought into force in 2004, requires WFN to receive lands of equal or greater size or value in exchange for any lands to be removed from reserve status. The agreement also requires that exchange lands received by WFN be added to reserve.

Preparation of this report included consultation with all identified parties potentially affected by the transfer. MoTI requests a formal response from FLNRO as to the availability and suitability of these Crown lands for transfer to WFN under the Land Act. This report includes the following information in an effort to assist FLNRO in determining the availability of the proposed exchange lands and determining any required encumbrances or conditions of transfer.

- 1.0 Description of the Crown Lands
- 2.0 List of All Tenure Holders & Public Impacts
- 3.0 Assessment of Land Transfer Impacts and Potential Encumbrances
- 4.0 Summary

1.0 Description of the Crown Lands

The WFN proposed four undeveloped Crown land parcels, totalling 698 acres, for exchange as identified below in Figure 1.1: Identification of Crown Lands.

These parcels include three district lots; DL 489, DL 4089, DL 4183 and a parcel of Unsurveyed Crown Land.

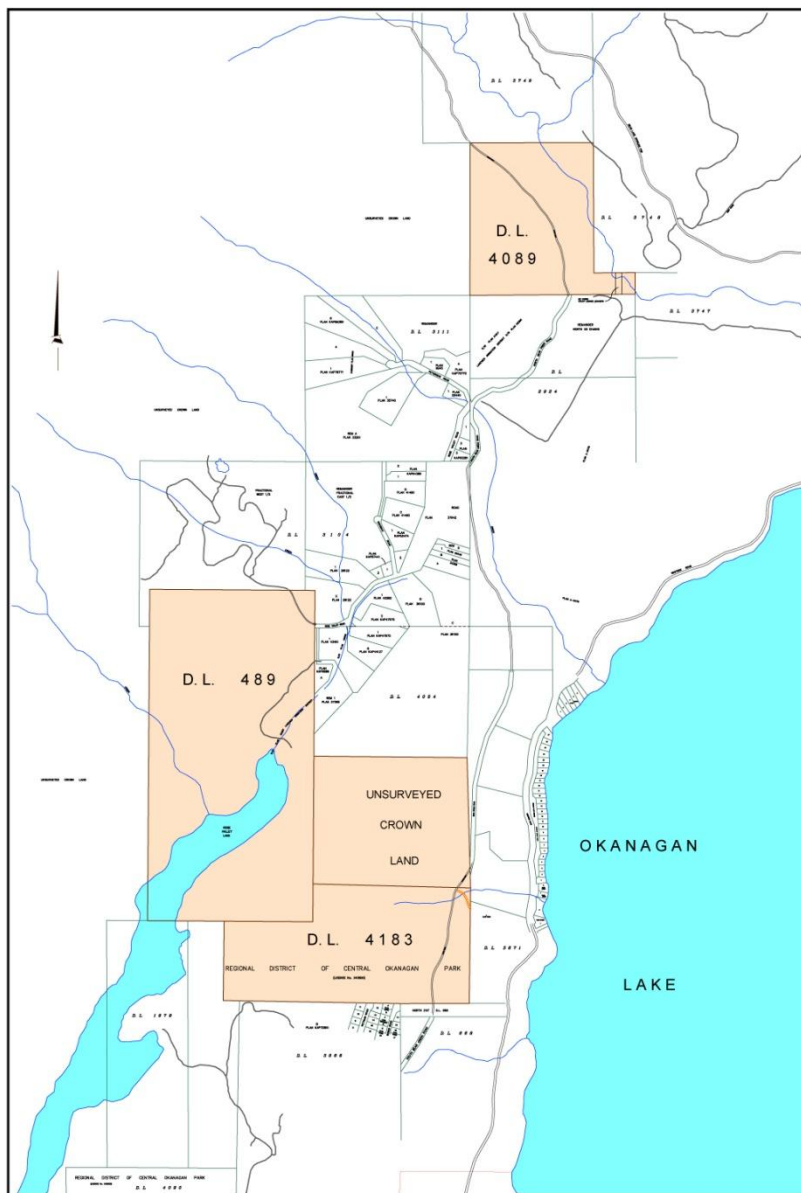


Figure 1.1: Identification of Crown Lands

1.1 Location:

The lands are located within the boundaries of the District Municipality of West Kelowna. The southernmost district lot is approximately 1.5 km north of Westbank First Nation Indian Reserve #10 (WFN IR10). Two of the district lots (DL 4183 & DL 489) and the unsurveyed parcel of land are located adjacent to each other in the Rose Valley area while DL 4089 is located approximately two kilometres north, on the south slope of Lambly Creek.



Figure 1.2: Rose Valley Reservoir looking north

1.2 Nature of the Lands:

DL 4183 is a 147 acre undeveloped parcel located closest to the WFN reserve lands. It has moderate to steep terrain with areas of flatter land in the south east and north east corners. The land rises to overlook the Rose Valley Reservoir and is crossed by walking trails from Rose Valley Regional Park.

DL 489 is a 316 acre undeveloped parcel. The land is generally treed with steep slopes rising west to more mountainous terrain. Lowland areas include wetlands around Rose Valley Reservoir. The reservoir and wetlands occupy approximately 41 acres of DL 489.

DL 4089 is a 115 acre undeveloped parcel that rises steeply from Lambly Creek to the south west with shallow bench lands and very little flat terrain.

The parcel of unsurveyed, undeveloped Crown Land lying north of DL 4183 covers 120 acres. It is entirely sloping with steep terrain, rocky outcrops and areas of shallow saddle lands.

The four parcels of land are currently undeveloped, high elevation lands with limited services and access. The parcels are crossed in locations by water lines and public road rights of way.

1.3 *Nature of the Interests:*

Fourteen parties have identified an interest in the lands. These interests include: public infrastructure, such as water lines, roads and power distribution lines; non-exclusive licenses, such as park use, grazing, trapping, guide outfitting and trail use.

Portions of the lands are designated for Community Forest while others are part of the Agricultural Land Reserve.

One of the largest interests in the land is the Rose Valley Reservoir and Rose Valley Community Watershed. The reservoir is the primary source of drinking water for over 11,000 users.

2.0 List of All Interest Holders

Below is a complete list of interest holders for the crown land parcels identified for transfer. MoTI has contacted all interest holders to obtain input and understanding of the potential impacts to interest in the event of a land transfer to WFN. Feedback from tenure holders is included in Section 3.0 Assessment of Land Transfer Impacts and Potential Mitigating Solutions.

Interest holders include specific license and tenure holders, local governments, first nations, provincial agencies and utilities. It should be noted that interests of these types are not uncommon on Crown lands located throughout the Southern Interior of British Columbia, especially when in close proximity to populated areas.

Ref	Interest Holder	Type of Interest	Nature of Interest
1	District of West Kelowna and Interior Health Authority	Drinking water reservoir	DL 489 – 41 acres, or 16%, of Rose Valley Reservoir are contained within the district lot. The reservoir provides drinking water to residents of West Kelowna
2	District of West Kelowna	Statutory right of way containing water diversion pipes	DL 489 & DL 4089 – diversion pipes within the statutory right of way to supply water from Lambly Creek to the Rose Valley Reservoir
3	District of West Kelowna and Interior Health Authority	Community Watershed	DL489, DL4183 & Unsurveyed Crown Land – the community watershed is protected by provincial order
4	District of West Kelowna	Bear Creek & Rose Valley Roads	DL4183, DL4089 & Unsurveyed Crown Lands – Bear Creek Road DL489 - Rose Valley Road
5	Regional District of Central Okanagan	License of Occupation	DL 4183 - 10 year tenure for park purposes – Rose Valley Regional Park Expires in 2016. The park was first established by license of occupation in 1997
6	BC Hydro	License of Occupation covering two distribution lines	DL 489 –hydro distribution line adjacent to Rose Valley Road in the north east corner of the lot DL 4089 – hydro distribution line crosses the south east corner of the lot
7	Casorso Family	Water License with one pipe	DL4089 – diversion pipe from Lambly Creek to provide water to the northern portion of DL2924
8	FLNRO	Community Forest Agreement with WFN	DL4089 – part of a 115,000 acre forest created for WFN. License expires in 2034

Ref	Interest Holder	Type of Interest	Nature of Interest
9	Agricultural Land Commission	Designated ALR land	DL489 – ALR designation on lands north of Rose Valley Reservoir covering about 50% of the District Lot
10	FLNRO	Forest Map Notation & Fuel Break Notation	DL 4183 – notation that the parcels are part of the Crown Forest Land Reserve DL 489 and Unsurveyed Crown Land - Fuel breaks are in place to protect homes in West Kelowna Estates and to the north of the reservoir
11	Lars Jensen	Mineral Claim	DL 4089 – approximately 29 acres in the south east corner and north east corner around Lambly Creek
12	Bruce Fenton	Trap Line	DL489, DL4089, DL4183 & Unsurveyed Crown Land – part of a trap line tenure which extends over 331 sq km. No expiration on tenure
13	Marcella Hubbard	Guide & outfitter	DL 489, DL 4089, DL 4183 & Unsurveyed Crown Land –part of a guide and outfitter area which extends over 2633 sq km. No expiration on tenure
14	Ken Regher	Grazing License	DL 4089 – part of an active grazing operation covering thousands of acres. 115 acres are within the transfer lands. Expires 2012
15	Brian Casorso	Grazing License	DL4089 – part of an active grazing operation covering thousands of acres. 115 acres are within the transfer lands. Expires 2012
16	Mandy & Me Trail Riding	Trail Use Permit	DL 489 & DL 4089 – specific trails used for a trail riding business Expires 2014
17	Regional District of Central Okanagan and District of West Kelowna	Community Development Impacts	DL 489, DL 4089, DL 4183, Unsurveyed Crown Land – concern about access through these lands to other crown land within the regional district
18	Ministry of Aboriginal Relations (MARR)	Statement of intent on lands	DL 489, DL 4089, DL 4183, Unsurveyed Crown Land – notation covering all crown lands stating there may be aboriginal interest

Ref	Interest Holder	Type of Interest	Nature of Interest
19	FLNRO	Forest Recreation Tenure	DL 489 – the recreation site was closed in 1984 however, the notation was not cleared
20	Knights Gate Property	Request for alternate access to adjacent properties	DL 4183 – request is to provide an access road to the upper portion of DL3871
21	FLNRO	Okanagan Provincial Forest	All of the lands are part of the provincial forest
22	FLNRO	Ungulate Winter Range	The lands contain important winter ungulate habitat that could be affected by human settlement
23	FLNRO	Species at risk	The lands potentially contain species at risk habitat and sensitive ecosystems
24	FLNRO	Okanagan LRMP objectives	LRMP objectives have been established to manage various resource values including water, timber, wildlife and visual impact
25	FLNRO	Timber Values	There is a public value to timber resources on the lands
26	FLNRO	Gravel Resource	There is a public value to gravel resources on the lands

Plans showing the extent of individual interests are appended to this report.

First Nations Bands and organizations listed below were identified as having traditional territories which cover the crown land parcels identified for transfer. They have been contacted in writing regarding any concerns they have with the potential land transfer.

First Nations:	
Cook's Ferry IB	Okanagan Nation Alliance
Lower Similkameen IB	Penticton IB
Lytton FN	Oregon Jack Creek Band
Siska Indian Band	Coldwater IB
Lower Nicola IB	Okanagan Indian Band
Esh-kn-am CRMS	Nicola Tribal Association

Responses have been received from the Lytton, Coldwater, Cook's Ferry and Siska Indian Bands and the Esh-kn-am Cultural Resource Management Service stating they have no concerns. Consultations continue with the remaining bands. Given the proximity to WFN's IR10, we don't envision objections.

Initial consultation has occurred with Aboriginal Affairs and Northern Development Canada regarding the transfer of the lands. Although they will require a similar process

of assessment prior to agreeing to add lands ot reserve, initial indications are supportive of the transfer.

A copy of the consultation record will be sent under separate cover

3.0 Assessment of Land Transfer Impacts and Potential Encumbrances

Transfer of the lands will have differing degrees of impact on the interests identified. Working with staff from FLNRO, Environment, and the Interior Health Authority, an assessment of the interest and identification of potential encumbrances was undertaken. A summary is provided for consideration.

Ref	Interest	Assessment of Interest	Potential Encumbrance
1	Drinking water reservoir	The reservoir provides 4.8 million m ³ of water annually to 11,000 users. Drinking water quality and quantity is governed by provincial statutes such as the Drinking Water Protection Act.	Exclude the maximum flood area for the reservoir from the transfer, which is an area of about 41 acres
2	Statutory right of way to contain water diversion pipes	The existing statutory right of way, in favour of the Lake View Irrigation District, contains infrastructure which carries water from Lambly Creek to the Rose Valley Reservoir. This diversion is the primary source for replenishment of the reservoir and is critical to its successful operation.	<p>Option 1: Exclude the statutory rights of way area from the transfer and leave it as crown land under provincial control.</p> <p>Option 2: Request WFN provide a statutory right of way under the WFN land system, at no cost</p>
3	Community Watershed	The lands surrounding the Rose Valley Reservoir are largely undeveloped and provide a buffer between the reservoir and adjacent activities. These lands are protected through Ministerial Order in a Resource Management Zone (RMZ) under the Okanagan Shuswap Land Resource Management Plan	<p>Option 1: Create a buffer around the reservoir and creeks equivalent to the setbacks contained in the RMZ and exclude the approximately 118 acres from transfer.</p> <p>Option 2: Create a modified setback per AMEC's Terrain Characterization report</p> <p>And, create regulations under the First Nations Commercial and Industrial Development Act to allow provincial laws and regulations governing water quality to apply to reserve lands within the watershed</p> <p>And, establish a Watershed Protection Plan (WPP) Committee to develop and implement a protection plan</p>

Ref	Interest	Assessment of Interest	Potential Encumbrance
			whole watershed, to protect against the cumulative effects of development within watershed
4	Bear Creek & Rose Valley Roads	Bear Creek Road and Rose Valley Road are municipal streets that provide access to the subject lands and to lands beyond	Exclude a minimum 20m right of way as per the Land Act Sec 13. Given the terrain in the area, additional right of way may be needed to contain fills and back slopes. 16 acres total
5	License of Occupation for Rose Valley Regional Park	DL 4183 forms part of Rose Valley Regional Park. The park exists on a series of 10 year non-exclusive tenures	Option 1: Request WFN issue a license or occupation to RDCO the length of the existing tenure - 2016. Request WFN negotiate a co-management agreement for the park with an aim to provide a longer term lease Option 2: Exclude Rose Valley Park from transfer.
6	License of Occupation covering two hydro distribution lines	Within DL489 , the hydro lines are adjacent to Rose Valley Road and provide power to the west portion of DL 3104 Within DL4089, the hydro lines cross the south east corner and provide power to DL3748	Option 1: Exclude the areas from transfer and establish Statutory rights of way across DL489 and DL4089 to cover existing infrastructure. 1.4 acres total. Option 2: For DL489 only, broaden the road right of way contemplated for Rose Valley Road to include the existing power lines and issue a permit to Hydro. Option 3: Request WFN provide a statutory right of way under the WFN land system at no cost
7	Water License with one pipe	This is a second pipe from Lambly Creek which provides irrigations water to the northern part of DL2924.	Option 1: Exclude the area containing the pipe from the transfer and allow the pipe to remain under its existing tenure. Option 2: Request WFN provide a statutory right of way under the WFN land system at no cost
8	Community Forest Agreement with WFN	The community forest covers 115,000 acres. Approximately 115 acres is contained within DL4089	Request WFN confirm they will not require replacement of the 115 acres of community forest land or the trees contained on the land
9	Designated ALR	The ALR land north of the	ALC have no objections to the

Ref	Interest	Assessment of Interest	Potential Encumbrance
	land	reservoir is in its natural state and not being used for any agricultural activity	transfer
10	Forest Map Notation & Fuel Break Notation	The lands are part of the forest land reserve Fuel break is a part of the community protection in an area that has seen forest fires over the last number of years	Remove from forest land reserve For the fuel break, require WFN maintain the fuel breaks for public safety
11	Mineral Claim	The mineral claim covers about 29 acres around Lambly Creek. Mineral Titles Branch indicate no Placer Mining will be allowed	Negotiate with the claim holder abandonment of a part of his claim and place a no staking reserve
12	Trap Line	The trap line is part of a tenure covering over 331 km ² . The operator is concerned about loss of trap area and wants compensation	Option 1: Negotiate reduced rights for the area covering the transfer lands. Owner has suggested \$35,000 Option 2: Request WFN extend the tenure
13	Guide & outfitter	Guide outfit is part of a tenure which extends across 2 wildlife management units covering approximately 2633 km ² . Tenure expires in 2019	Option 1: Negotiate reduced rights for the area covering the transfer lands. Settlement is likely in the \$25,000 range Option 2: Request WFN extend the tenure
14	Regher Grazing License	Grazing license area is shared with Casorso The license covers thousands of acres north of the lands. Approximately 112 acres are contained on DL 4089 The license holders have 243 cows, 178 calves and 10 bulls using the area Primary interest is access to a watering hole in the south eastern part of the DL 4089 License holders are concerned with cattle drifting onto Bear Creek Park and want to ensure cattle guards and fences are replaced	Investigate additional sources of water outside the transfer lands Cancel license over DL 4089 and relocate fences and cattle guards
15	Casorso Grazing License	Grazing license area is shared with Regher. The license covers	Investigate additional sources of

Ref	Interest	Assessment of Interest	Potential Encumbrance
		<p>thousands of acres north of the lands. Approximates 112 acres are contained on DL4089</p> <p>The license holders have 75 cows and 3 bulls using the area</p> <p>Primary interest is access to a watering hole in the south eastern part of DL 4089</p> <p>License holders are concerned with cattle drifting onto Bear Creek Park and want to ensure cattle guards and fences are replaced</p>	<p>water outside the transfer lands</p> <p>Cancel license over DL 4089 and relocate fences and cattle guards</p>
16	Trail Use Permit	Permit allows trail use over four crown parcels and the unsurveyed crown land to the west of DL489	<p>Option 1: Amend permit to exclude trails that are on the transfer lands</p> <p>Option 2: Request WFN agree to carry the current tenure through 2014. Future tenures would be negotiated between the tenure holders and WFN</p>
17	Community Development Impacts	The concerns are with the ability to service and access “lands beyond”	Protection of existing road rights of way for Bear Creek Rd and Rose Valley Road could also contain municipal services for municipal lands and lands beyond
18	Statement of intent on lands	MARR’s statement of intent flags the properties as potentially having an aboriginal interest. In this case, consultation with all bands whose traditional territory covers the lands will clarify those interests	Consultation with first nations is being undertaken as part of the assessment of the lands. A copy will be provided under separate cover
19	Forest Recreation Tenure	This is a housekeeping measure. The forest recreation site was partially flooded when the dam was raised and is no longer required	This is a housekeeping matter. The tenure has expired and will be removed
20	Request for alternate access	DL 3871 has legal access via Westside Road, however, the terrain would make it more costly to construct. RDCO is opposed to the access as it	Provide alternate access as previously committed

Ref	Interest	Assessment of Interest	Potential Encumbrance
		would cut through Rose Valley Regional Park. Research indicates FLNRO had previously agreed to the access and committed to including it in the next tenure	
21	Okanagan Provincial Forest	The land would have to be formally removed from the Provincial Forest prior to transfer	Remove the land from the Provincial Forest
22	Ungulate Winter Range	WFN recognizes ungulate values and the importance of managing this resource	Request WFN put processes in place to protect ungulate winter range
23	Species at risk	The province has adopted environmental guidelines for rural land development intended to protect species at risk	Request WFN adopt provincial best practices
24	Okanagan LRMP objectives	LRMP objectives are in place to guide decision makers in land use decisions.	Request WFN decision makers respect LRMP objectives when making land use decisions
25	Timber Values	The timber on the lands has a value to the province which should be considered	Preliminary estimates are in the range of \$400,000. Values are deemed nominal.
26	Gravel Resource	There is a public value to gravel resources on the lands	Preliminary estimate shows up to 1,850,000 m ³ on DL4089. Value dependant on quality & market values less processing costs. Option: Exclude some or all gravel deposits from land transfer

3.1 District of West Kelowna and Regional District of the Central Okanagan

The DWK and RDCO primarily identified concerns regarding potential impacts of water supply and protection of water quality as well as protection of existing road access to municipal lands and lands beyond and continued enjoyment of the Rose Valley Regional Park.

3.1.1 Rose Valley Watershed and Reservoir

Transfer of DL 489, DL 4089, DL 4183 and the unsurveyed lands will transfer land use, management, development and operation of those lands to the WFN. As three of the proposed parcels of land are within the Rose Valley Watershed, the management of those lands will have an impact on all users of the watershed, which includes the District of West Kelowna (DWK). These three parcels of land account for 16% of the overall size of the watershed. DL 489 sits at the head of Rose Valley Reservoir and is 99% within the watershed, 24% of DL 4183 is within the watershed and 10% of the Unsurveyed Crown Land lying north of DL 4183 is within the watershed. DL 4089 is entirely outside the watershed area.

Rose Valley Watershed provides approximately 4.8 million m³ of water annually to approximately 11,000 users.

The Resource Management Zone (RMZ) creates a 30m no disturbance zone on either side of the tributaries feeding the reservoir and a buffer of 210m of restricted land disturbance exists around the reservoir. Once transferred to WFN, provincial and regional legislation and policy will no longer apply. However, the Westbank First Nations Self Government Act requires that WFN laws and regulations created to protect the environment be designed to be at least equivalent in standard to those set out under federal law and provincial laws of general application

Concerns have been raised by the community about relinquishing provincial control over portions of lands that affect water quality for the watershed users.

Mitigation solutions include retaining the reservoir and the area identified by the Resource Management Zones, or creating a modified setback per AMEC's Terrain Characterization report.

This would keep the reservoir and the sensitive areas around the reservoir under Provincial control to ensure long term protection. MoTI has commissioned a terrain characterization report which could be used to adjust the protection area boundaries to reflect terrain considerations. A copy of the report is appended to this report

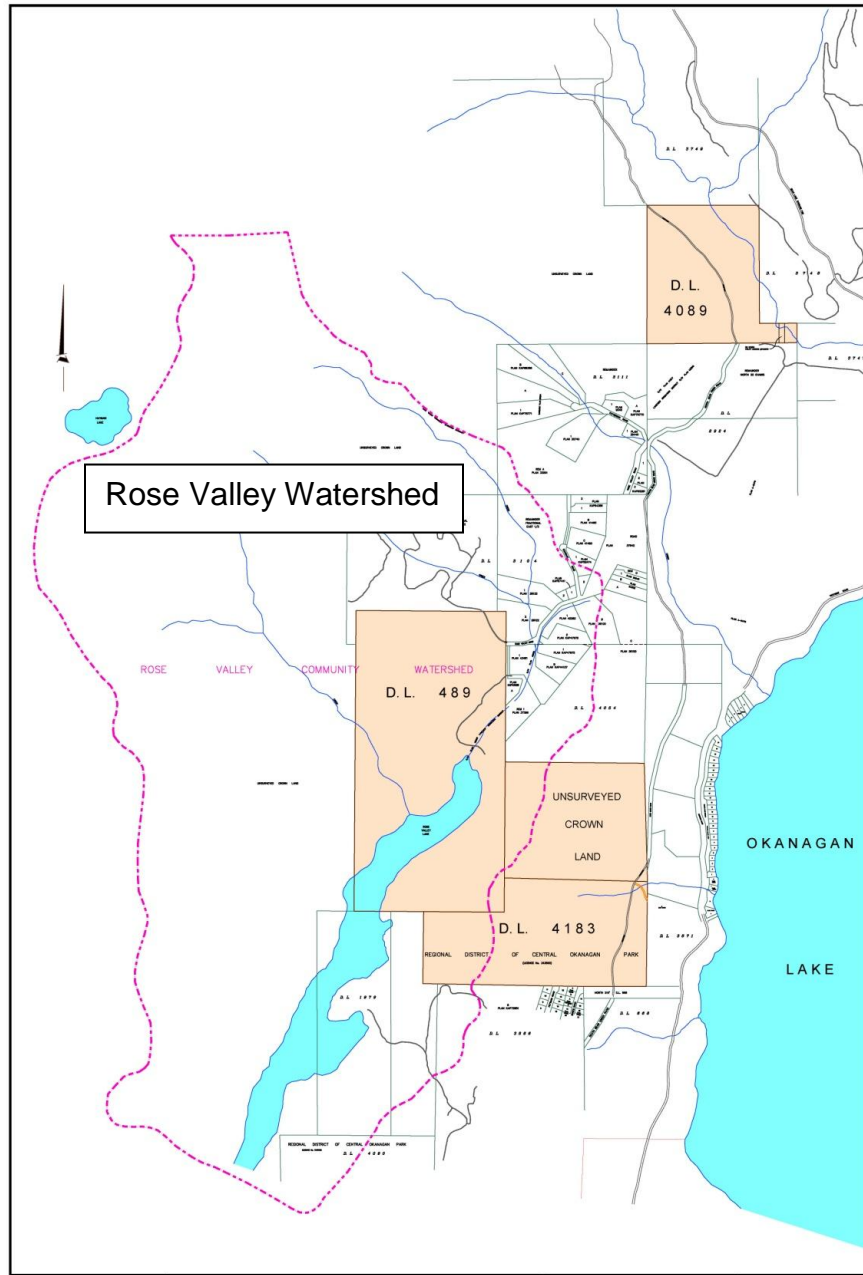


Figure 3.1: Rose Valley Watershed

Development and land use within the Rose Valley Watershed is governed by Provincial legislation and specifically by the Resource Management Zones (RMZ) under the Okanagan Shuswap Land Resource Management Plan.

For the remainder of the watershed, the federal First Nations Commercial and Industrial Development Act (FNCIDA) provides a vehicle under which provincial legislation can be applied to reserve land via an agreement between the federal government, the First Nation and the province. Provincial laws and regulations related to protection of water quality from development impacts could be made

applicable to the proposed replacement lands through this process. Regulations made under FNCIDA would allow the province to carry out the monitoring and enforcement of a regulatory regime similar to provincial law. This approach would require both federal and WFN agreement.

Establish a Watershed Protection Plan (WPP) Committee for the Rose Valley Community Watershed with representation from the WFN, Interior Health Authority and District of West Kelowna. The committee would be responsible for developing, implementing and monitoring a joint watershed protection plan.

3.1.2 Lambly Creek & Water Diversion Pipes

Lambly Creek crosses DL 4089 and is a primary upstream water feed for the Rose Valley Reservoir (which is a man made reservoir circa 1949), supplied by a diversion pipe contained in a statutory right of way that also crosses DL 4089 and DL 489. The diversion pipes connect to Lambly Creek upstream of DL 4089.

Concern has been expressed about the operation of the water diversion pipe and ownership of that pipe as a primary supplier of water to the reservoir. As portions of this pipe cross DL 4089 and DL 489, operation of those pipes would fall under the authority of WFN unless otherwise established.

Mitigation solutions include maintaining the existing statutory right of way by excluding the land from transfer. The land would remain Crown land with a separate title, under provincial control, encumbered by the existing statutory right of way.

Another mitigation solution would involve creating a new statutory right of way for the diversion pipes under the WFN land system. The land would be under WFN control but be encumbered by the statutory right of way that would give the District of West Kelowna the right to keep and maintain the lines.

3.1.3 Bear Creek Road and Rose Valley Road and access to lands beyond

Bear Creek Road is a municipal street that intersects with Westside Road near the north end of WFN IR10 and runs in a northern direction exiting the municipality near Bear Creek Provincial Park. It provides access to existing development on the lands adjacent to the proposed transfer lands as well as lands beyond the municipality. The road crosses DL 4183, the south east portion of the Unsurveyed Crown land and DL 4089. The right of way is unsurveyed through the Crown lands however the roadway is paved and contains utilities.

Rose Valley Road is a municipal street within the Rose Valley Watershed. It provides access to residential properties in the northern part of the watershed. The road crosses the northeast corner of DL 489 and like Bear Creek Road, is unsurveyed through the crown lands.

Mitigation is provided under Section 13 of the Land Act which requires a minimum 20m right of way be established for any road included in a land disposition. Given the terrain, additional right of way may be required in specific areas.

Road corridors can also be used by the RDCO and DWK to provide services to other municipal lands in the area and to lands beyond

3.1.4 *Rose Valley Regional Park*

Rose Valley Regional Park, established in 1996, is a 620 acre area of land left in its natural state for conservation of the unique Okanagan ecosystems. It was established in 1996 via a non-exclusive license of occupation which is renewed in 10 year increments.

The park is kept in a natural state and has a trail system used by hikers and cyclists

Mitigation solutions include requesting WFN include an equivalent tenure for the park through the existing license period, which expires in 2016. Future tenures could be negotiated directly between WFN and RDCO. An alternate would be to negotiate a long term tenure with WFN and RDCO co-managing the park. Additionally, the park could be excluded from the land transfer

3.2 *Private Tenure Holders*

The transfer of lands may limit the tenure rights held by a number of private individuals or companies. In transferring the lands to the reserve, changes to the tenure would be negotiated with the tenure holders or appropriate accommodation made with WFN to allow the activities to continue.

3.2.1 *BC Hydro*

BC Hydro has two licenses, one over the south east portion of DL 4089 which carries distribution lines to the properties to the north. This license was issued in 2010 and expires in 2020.

A second line crosses the north east corner of DL 489 and services the western portion of DL 3104.

Mitigation options are to exclude the areas and establish a statutory right of way for the distribution lines or establish a statutory right of way under the WFN system

The line that crosses DL 489 is close to the road right of way contemplated for Rose Valley Road. The road right of way could be extended to cover the hydro lines.

3.2.2 Casorso Water License

This water license crosses DL 4089 and provides from Lambly Creek to DL 2924.

Mitigation options include excluding the area from transfer and allowing the pipe to remain under its existing tenure or to request WFN provide a statutory right of way under the WFN land system at no cost.

3.2.3 Jensen Mineral Claim

The mineral claim covers 29 acres of DL 4089 around Lambly Creek. It is part of a larger staking which covers DL 2749 and DL 3748.

Mineral Titles Branch indicates it would not permit placer mining in the area and would likely require hard rock mining. Stakings are renewable annually with no option to cancel unless the holder misses the annual renewal

Mitigation solution is to negotiate with the claim holder to abandon a portion of his claim and then place a no staking reserve over the lands.

3.2.4 Fenton Trap Line

The trap line covers an extensive 331 km² area. The family has held the tenure since 1937 and they have been actively using and plan to continue with their next generation.

Mitigation solutions include negotiation of removal of the lands from the tenure area or requesting WFN provide a tenure.

3.2.5 Hubbard Guide and Outfitter

Guide and outfitter covers a 2633 km² area covering two management units. The area is rich in mule deer which attracts cougars.

Mitigation solutions include negotiation of removal of the lands from the tenure area or requesting WFN provide a tenure.

3.2.6 Regher and Casorso Grazing Licenses

Both Regher and Casorso have grazing licenses over the same area covering thousands of acres. The grazing license covers 112 acres of DL 4089.

The tenure holders are primarily concerned with loss of a watering hole in the south east corner of DL 4089. They also noted that the fencing currently on DL 4089 would have to be relocated to prevent cattle from drifting into Bear Creek Park

Mitigation solutions include developing additional sources of water, although this has not been investigated in detail, and to relocate the drift fencing to the northern boundary of the district lot.

3.2.7 Mandy and Me Trail Use Permit

This is a family owned business that conducts trail rides throughout the area. The trail system extends across four parcels, including DL 489 and DL 4089, as well as the unsurveyed crown land to the west of DL 489. This is not the unsurveyed crown land being considered for transfer. The tenure expires in 2014.

Mitigation solutions include amending the permit to exclude the trails on the transfer lands or to request WFN agree to carry the tenure through 2014. Future tenures would be negotiated between the trail company and WFN.

3.2.8 Knights Gate Access Request

While not a tenure, Knights Gate, owners of DL 3871 have requested a road through DL 4183 to provide alternate access to the upper portion of their property. RDCO does not support the request as it would create a road through Rose Valley Regional Park.

FLNRO staff gave Knights Gate assurances an alternate access would be included in future park tenure negotiations

3.3 MoFLNRO, MoAR & ALC

Government agencies have registered interests in the proposed transfer lands. The interests range from notice of specific uses to general notations and are discussed below.

3.3.1 FLNRO interests

The WFN Community Forest covers about 112 acres of DL 4089. The whole community forest is 115,000 acres located to the south and west of the district lot.

The mitigation solution is to remove the designation from the DL and request WFN confirm they would not request the area and timber be replaced elsewhere. The land would be under WFN control and they could continue to use it as part of the community forest at their discretion.

The lands are part of the Okanagan Provincial Forest. Mitigation is to remove the designation prior to transfer.

Portions of the lands may contain species at risk and winter ungulate habitat. Mitigation is to request WFN put protection measures in place and adopt provincial best practices.

The Okanagan Land and Resource Management plan has objectives in place to guide decision makers in land use decisions. Mitigation is to request WFN adopt the same objectives and use them to guide land development

There is a notation on DL 4183 which notes a fuel break has been constructed to protect homes in West Kelowna Estates and the north end of Rose Valley from wildfire. MoFLNRO has requested these fuel breaks be maintained.

The mitigation solution is to request WFN maintain the fuel breaks for public safety.

There is a notation on DL 489 regarding a Forest Recreation Tenure. The site was removed when the reservoir levels were raised and the tenure expired. The interest is no longer required and it is a house keeping measure to have it removed.

The lands have timber and gravel resources have market value which has been be considered. The timber value is fairly nominal given the quality and density of the timber in the area.

3.3.2 MARR Interests

MARR's notation is a statement of intent that the lands may be subject to first nation's interest.

Mitigation is underway. Consultation has been initiated with all bands that have identified the lands as being within their traditional territory. Given the proximity to WFN IR10, it is unlikely an objection will be raised

3.3.3 Agricultural Land Commission

An area within DL 489 north of Rose Valley Lake is within the Agricultural land Reserve. The land is in its natural state and there is no indication of any agricultural activity. The ALC has advised they have no objections to the transfer

3.3.4 *RDCO and District of West Kelowna*

RDCO and DWK are concerned about the ability to service lands with the municipality and lands beyond.

The mitigation solution is to protect the existing roads and create rights of way that could also be used for municipal services for municipal lands and lands beyond.

4.0 Summary of Potential Encumbrances

Below is a summary of the areas where a potential encumbrance is to exclude the area from transfer or to require a condition be placed on the land being transferred. The net area to be excluded accounts for overlap in the exclusion areas, for example, where the water diversion right of way is contained within the reservoir buffer but does not include the potential for full exclusion of the watershed or regional park as those are addressed below through conditions.

Encumbrance - Exclusions			
Type of Interest	Nature of Interest	Nature of Exclusion	Net Area Excluded (acres)
Reservoir	The portion of Rose Valley Lake within DL489	The lake bottom defined by the maximum flood area for the reservoir	41
Stream and Reservoir Buffer Zone	Protection areas around the reservoir and stream as defined in the Resource Management Zones (RMZ) in the Okanagan Shuswap LRMP	A 200m buffer area around the reservoir, which covers parts of DL489 and the Unsurveyed Crown Land. A 60m buffer around the creek in DL489. A 60m buffer around Lambly Creek through DL4089	124
Water Diversion Pipes	Statutory right of way area for the Lambly Creek diversion to Rose Valley Reservoir and the diversion pipe for a private water license pipe to serve the Casorso property.	Area to contain the 30m statutory right of way through DL489, outside the Stream and Reservoir Buffer Zone, and through DL4089 to contain the reservoir diversion pipes. A 20m wide right of way through DL4089 to contain the Casorso water diversion	11
Roads	Road rights of way for Bear Creek and Rose Valley Road	Sufficient right of way to contain the road and any slopes with a minimum of 20 m	10
Power lines	Statutory right of way for existing Hydro distribution lines	Area to contain the existing statutory rights of way across DL489 and DL4089	1

Total			187
Encumbrance - Conditions			
Type of Interest	Nature of Interest	Nature of Condition	
Watershed Protection	Protection of the watershed outside the buffer zones	<p>Create regulations under the Federal First Nations Commercial and Industrial Development Act to allow provincial laws and regulations governing drinking water quality and supply to apply to reserve lands within the watershed</p> <p>Also, establish a Watershed Protection Plan (WPP) Committee to develop and implement a protection plan for the whole watershed, to protect against the cumulative effects of development within watershed</p>	
Rose Valley Regional Park	Continued use of DL4183 for Rose Valley Regional Park	<p>Request WFN issue a license of occupation to RDCO for the length of the existing tenure - 2016.</p> <p>Request WFN negotiate a co-management agreement for the park with an aim to provide a longer term lease</p>	
Agricultural Land Commission	Portion of DL489 north of the reservoir is within the agricultural land reserve	The land is in its natural state, is within the RMZ buffer zone and is not being used for any agricultural activity. Agricultural Land Commission have no objection to the transfer	
Other Interests	There are other more minor interests over the lands, such as small portions of grazing licenses, trap lines, guide/outfitter operations and trail use permits that will require resolution	<p>Request WFN extend tenure to a trap line and guide / outfitter operation over all of the proposed lands; two grazing licenses on DL4089; and a trail permit over portions of DL489 and DL4089; or,</p> <p>Negotiate resolution of the tenure with the tenure holder</p>	

Appendix 1 Detail Plans of Interests and Licenses

Figure	Interest
A-1	Rose Valley Watershed and Lambly Creek Diversion
A-2	Bear Creek Road and Rose Valley Road
A-3	Rose Valley Regional Park
A-4	BC Hydro Distribution Lines and Casorso Water License
A-5	WFN Community Forest
A-6	Mineral Claim
A-7	Trap Line
A-8	Guide Outfitter
A-9	Casorso and Regher Grazing License
A-10	Trail Use Permit
A-11	Knights Gate Access

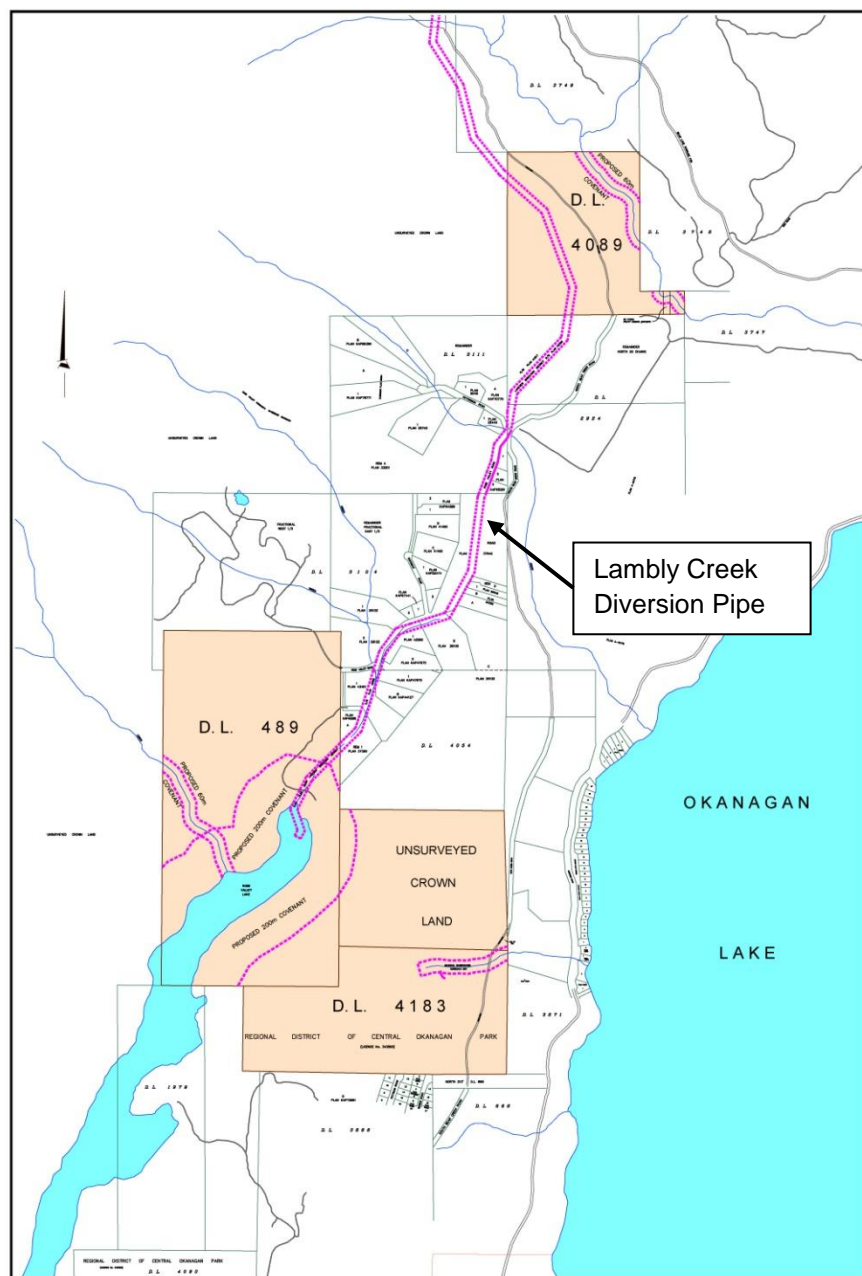


Figure A-1: Rose Valley Reservoir Watershed Protection and Lambly Creek Diversion Pipes

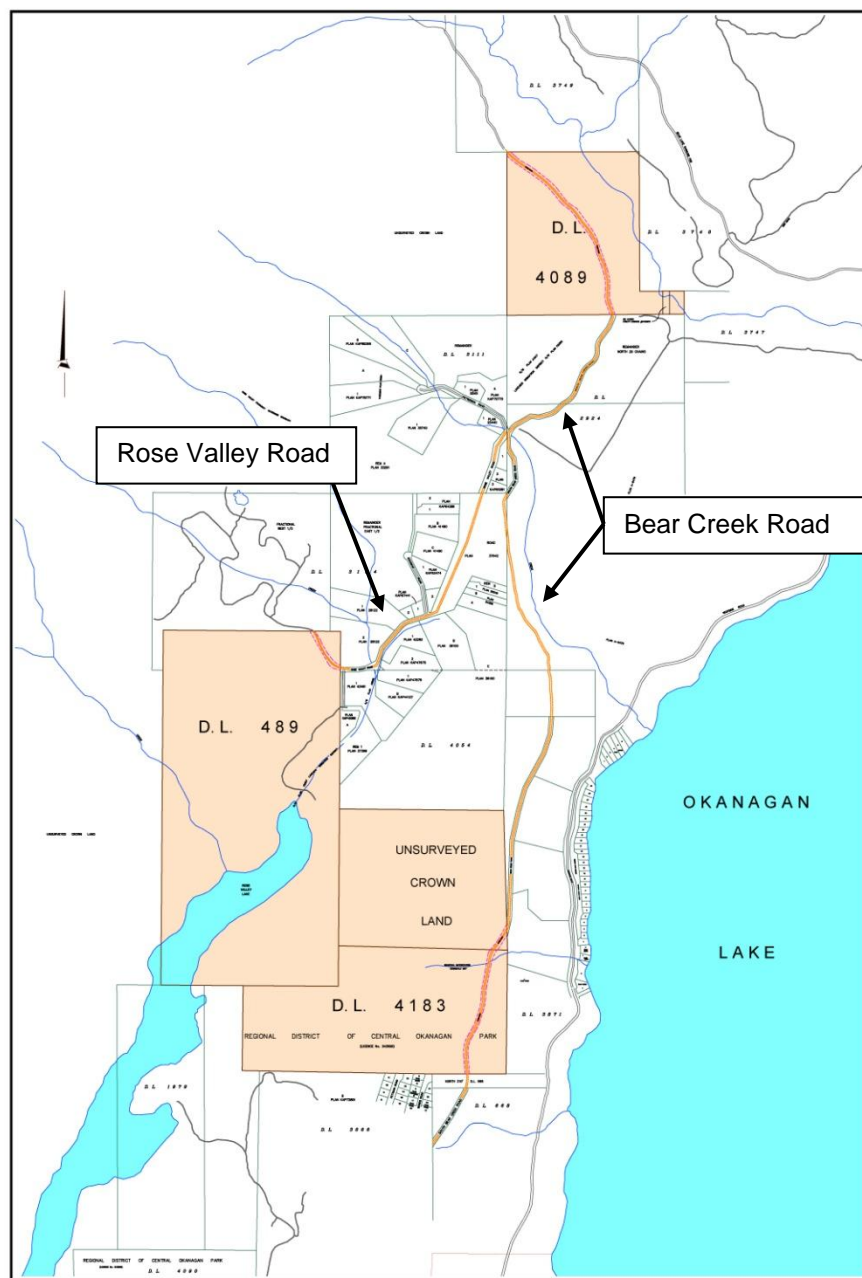


Figure A-2: Bear Creek Road and Rose Valley Road

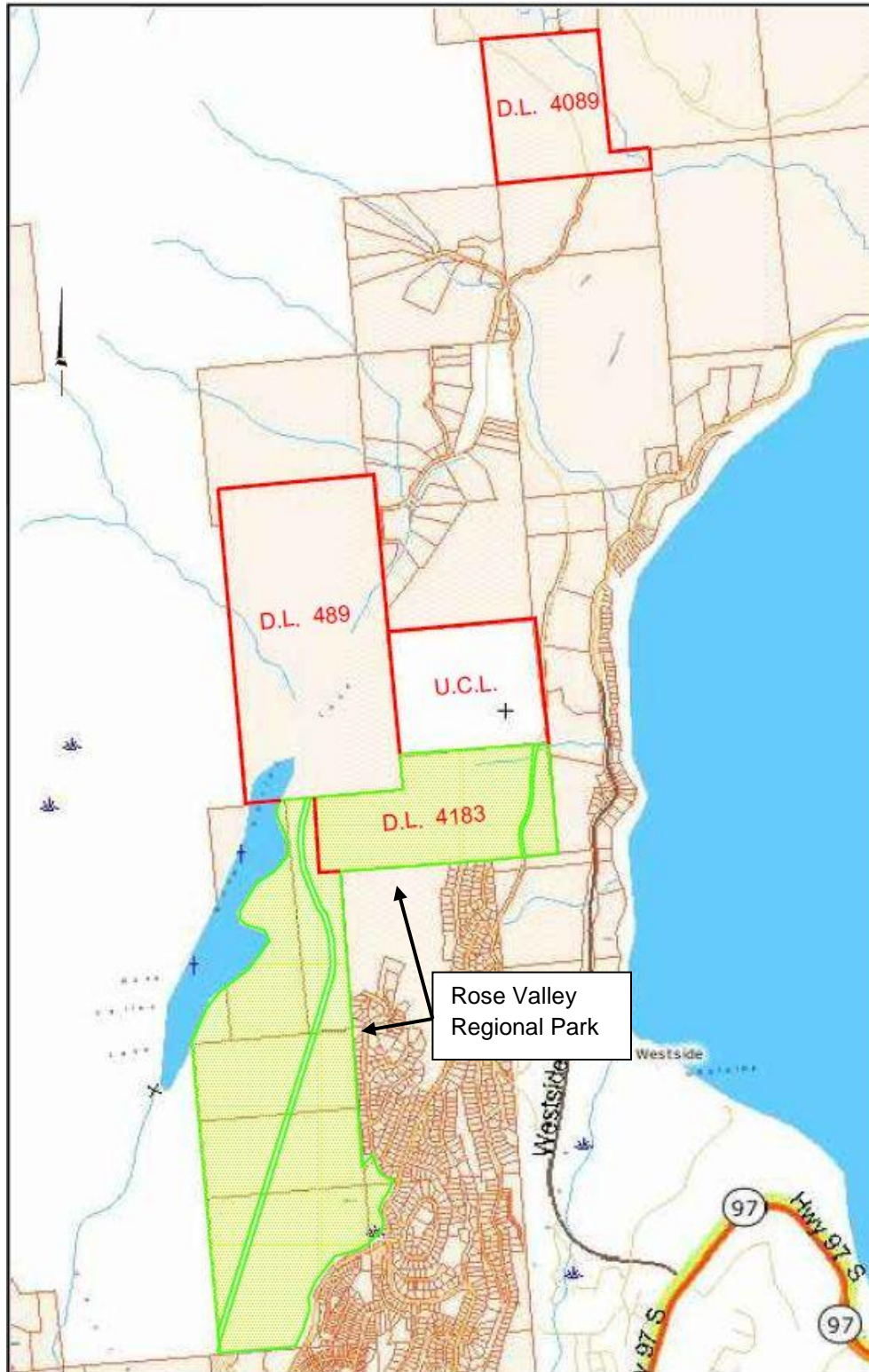


Figure A-3: Rose Valley Regional Park

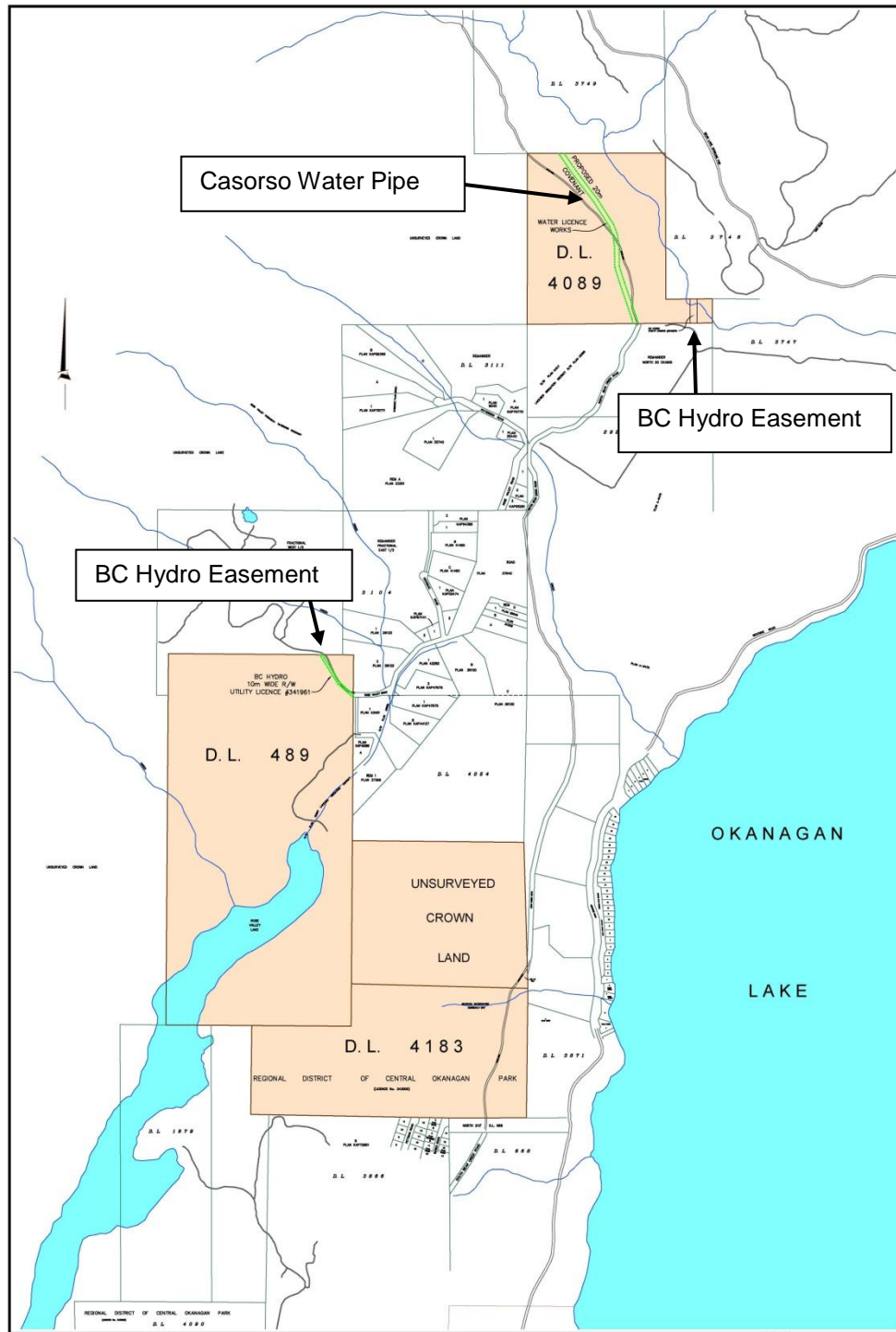


Figure A-4: BC Hydro Distribution Lines and Casorso Water License

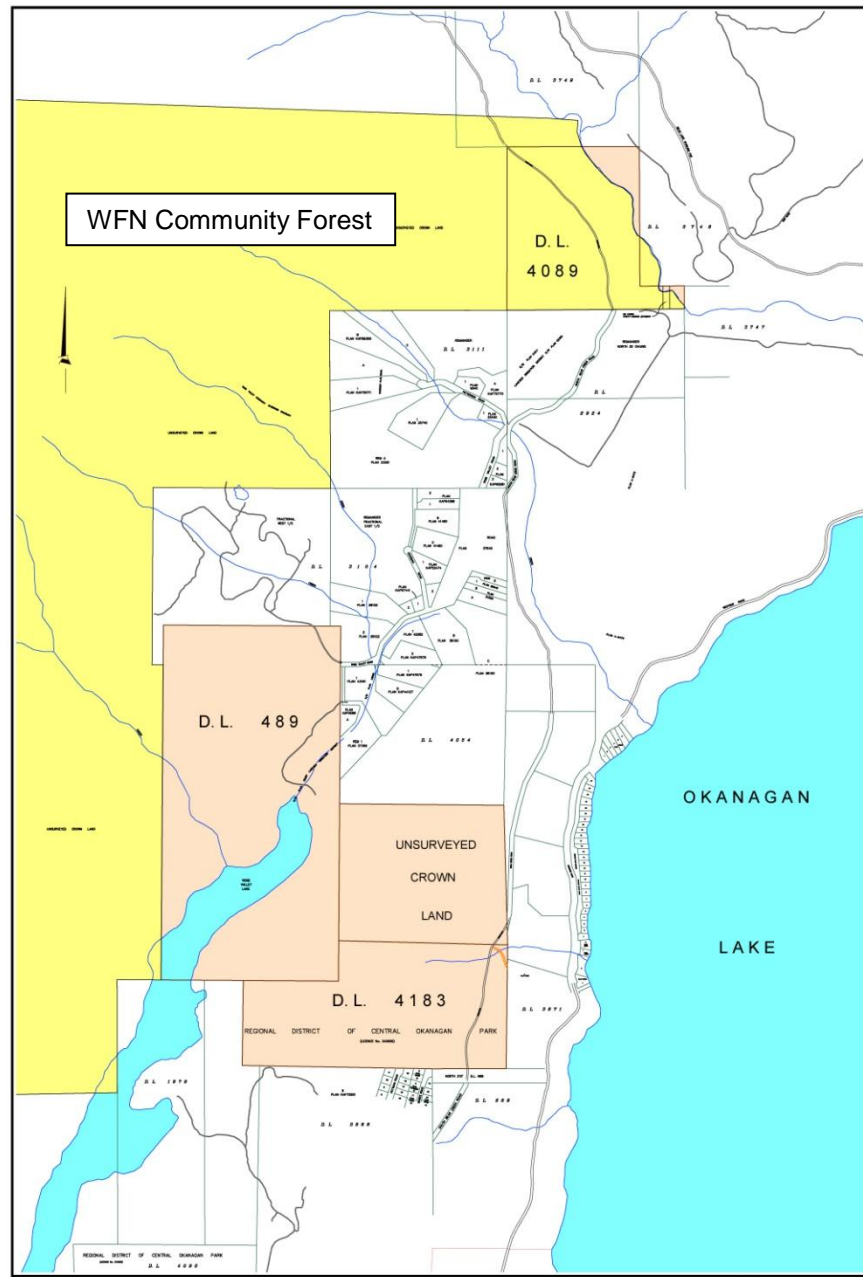


Figure A-5: WFN Community Forest

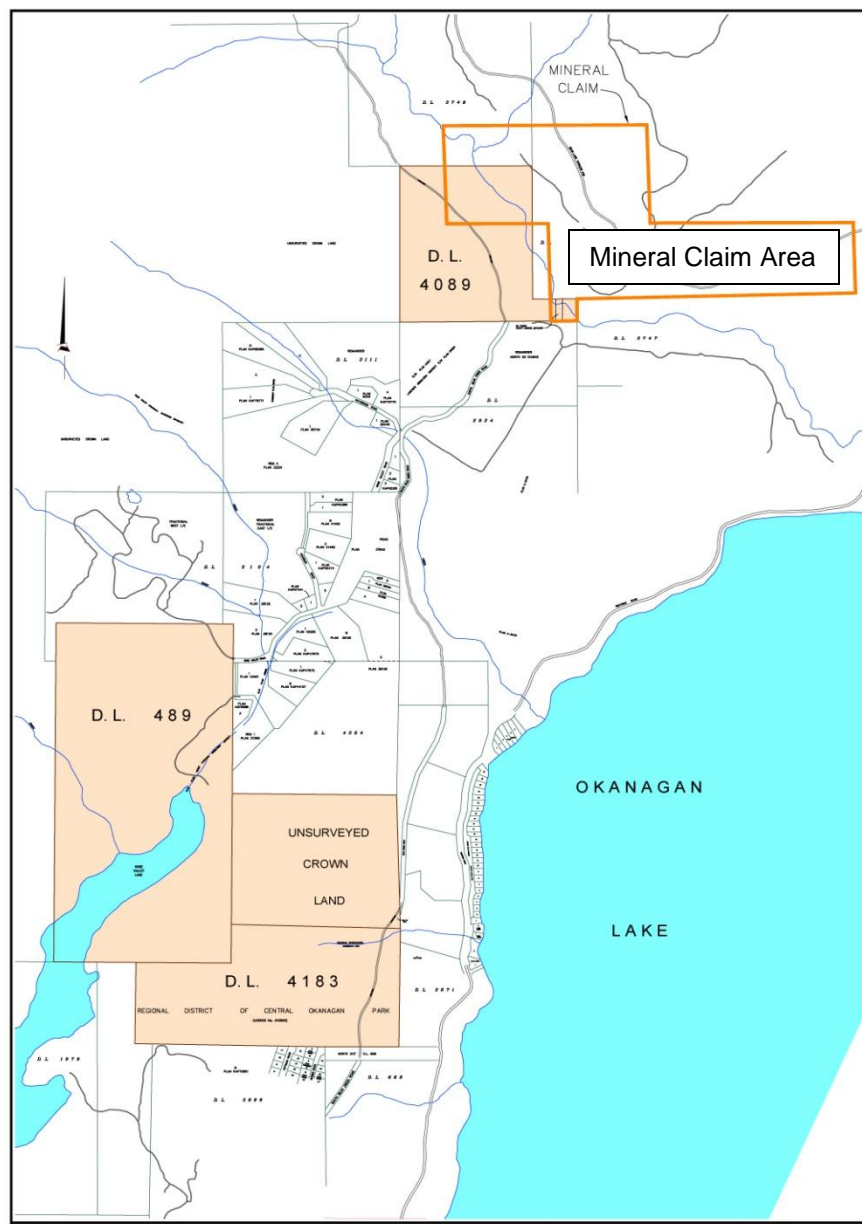


Figure A-6: Mineral Claim

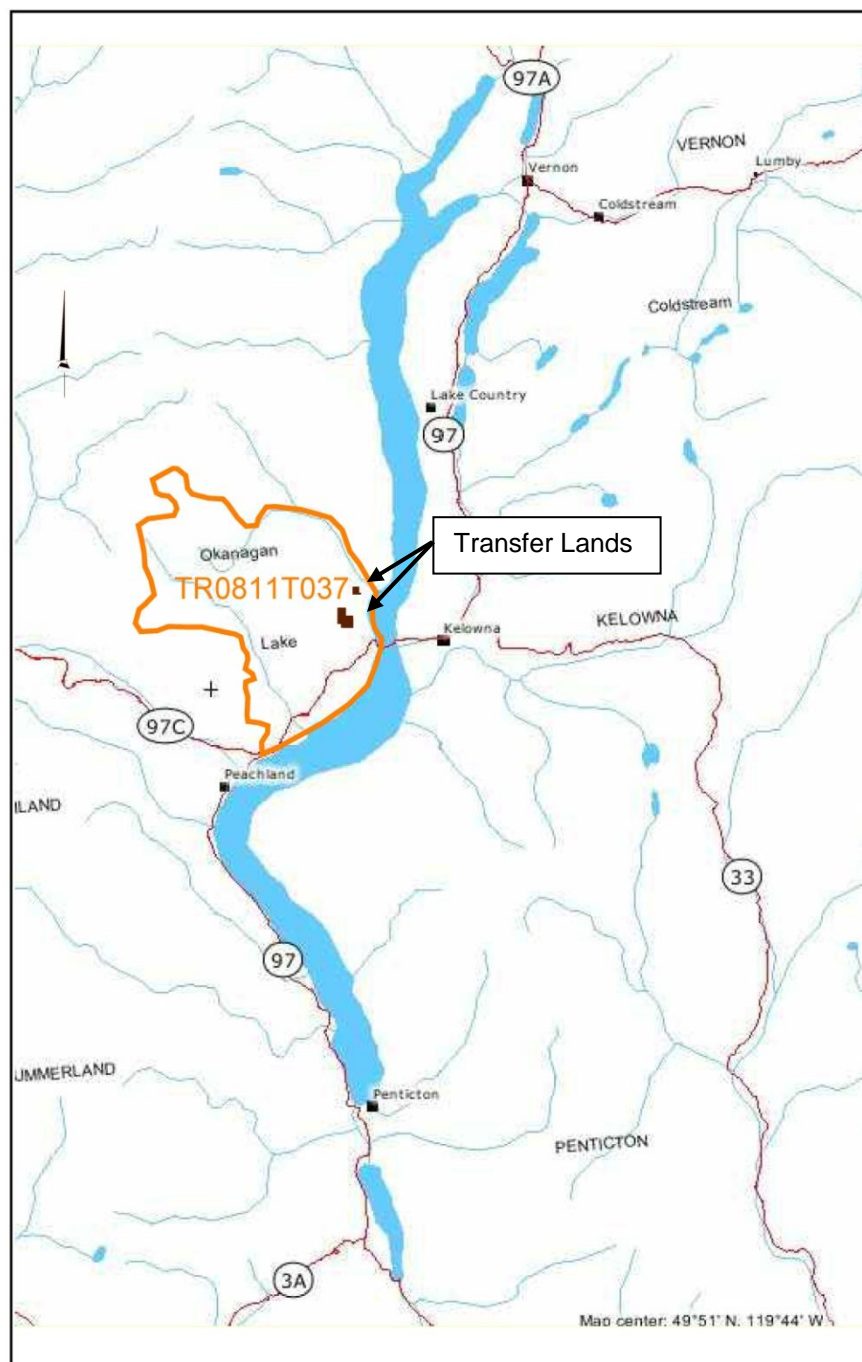


Figure A-7: Trap Line

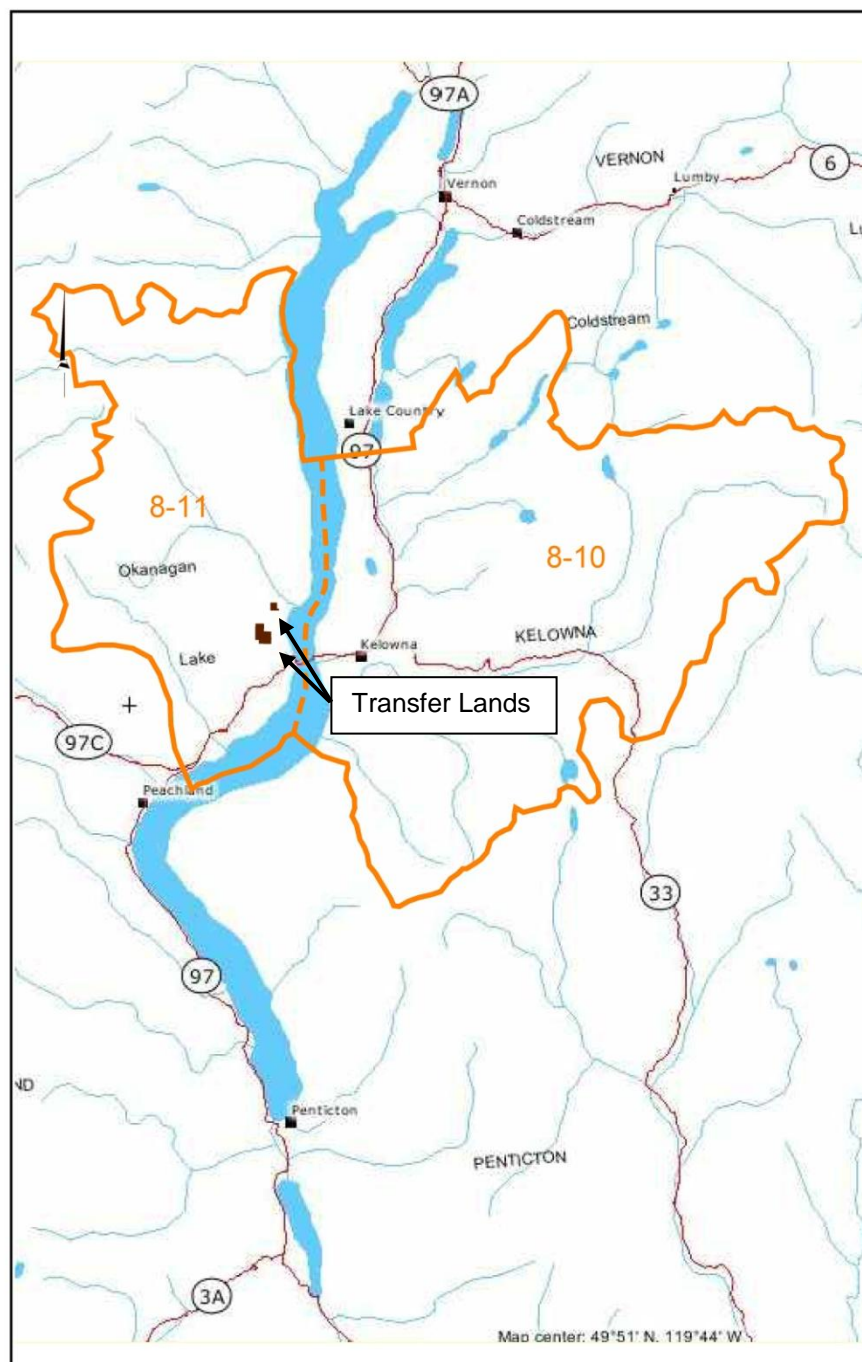


Figure A-8: Guide Outfitter

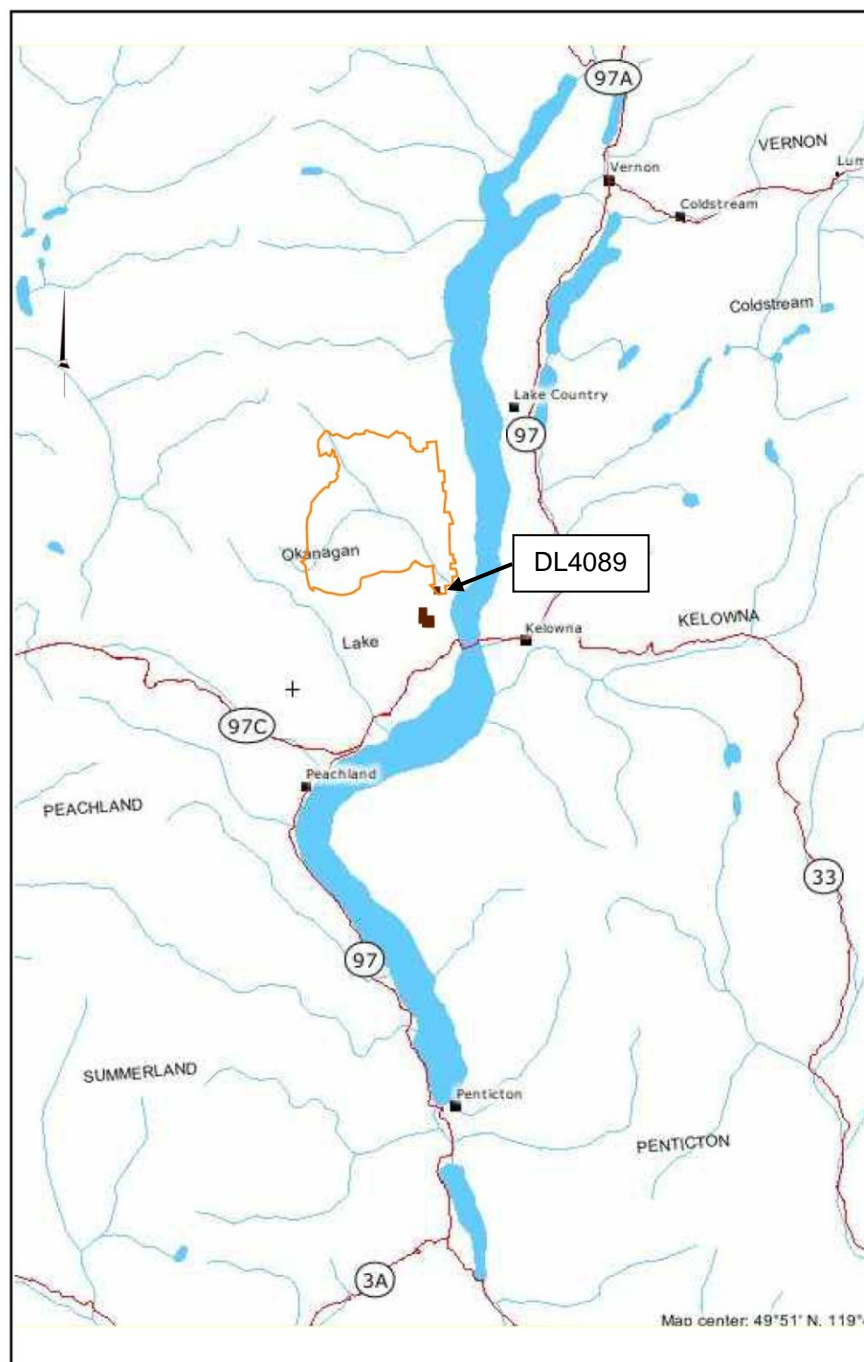


Figure A-9: Casorso and Regher Grazing License

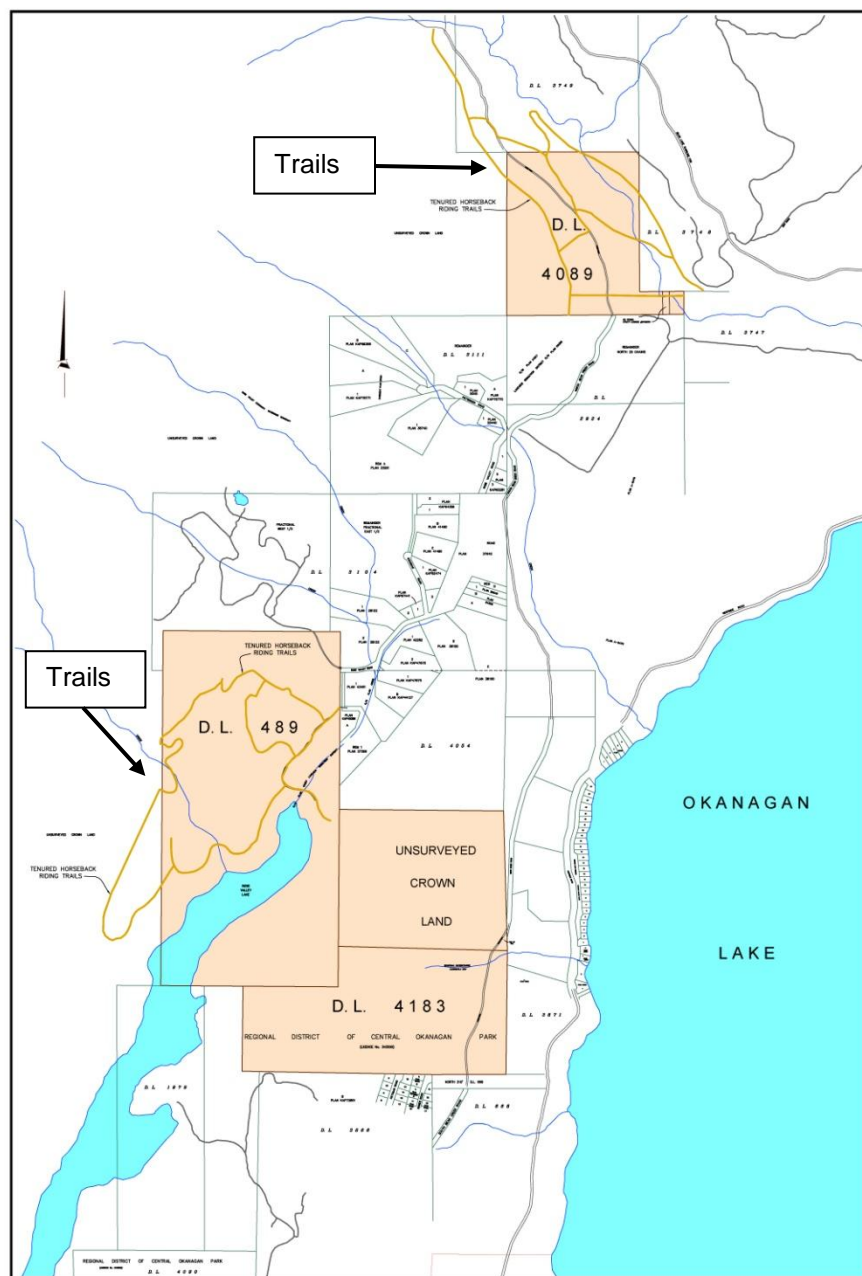


Figure A-10: Trail Use Permit

