

B. C. TAP WATER ALLIANCE

Caring for, Monitoring, and Protecting
British Columbia's Community Water Supply Sources

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March 6, 2019

Attn: Honourable John Horgan, Premier

Legal Mandate and Fiduciary Obligation of the BC Government Regarding the Glade Creek Community Watershed Map Reserve, and Community Watershed Map and Order-in-Council Reserves

The B.C. Tap Water Alliance believes it imperative that we intervene in the matter of the Glade Creek Watershed Protection Society (GCWPC) following the recent Court dismissal of the group's efforts since 2016 to protect the Glade Creek Community Watershed Reserve from road building and logging.

The injunction sought by the GCWPC against two forest licensees was heard in Rossland Provincial Court on February 4, 2019. The petitioners hoped to prevent the imminent logging scheduled for the Glade Creek watershed, but [Justice Tammen subsequently dismissed the application for an injunction](#).

Our concerns are easily explained:

The BC Tap Water Alliance book, *From Wisdom to Tyranny: A History of British Columbia's Drinking Watershed Reserves* (June, 2006), is a history and accounting of BC's Community Watershed Reserves. The book alleges unlawful management and uses of the community watershed reserves that had been set aside in the public interest. Copies of the book went to resource ministers Pat Bell (reply correspondence attached below), Barry Penner, Rich Coleman, as well as the Auditor General, along with copies to public libraries throughout BC. The book was reviewed by the Vancouver Sun and the Globe & Mail newspapers, and we published a media release on June 12, 2006: [Alliance Report Details Resource Crime of the Century](#).

Chapter 8.4 of the book included the discovery of a questionable legal decision made by government planners involved in Land Use Plans (LUPs) and Land Resource Management Plans (LRMPs) through CORE (Commission on Resources and Environment) and LUCO (Land Use Coordinating Office) in the 1990s. After reviewing all the provincial LUPs and LRMPs implemented up until 2005, plus interviewing government staff involved in these planning forums, we determined that the *Land Act* "Community Watershed Reserves" were omitted from scrutiny when Crown tenures were being examined at the planning tables. As summarized on page 121:

Government deliberately ignored *Land Act* Watershed Reserves in numerous provincial Higher Level Planning processes related to the development of the 1995 *Forest Practices Code Act*. Government also ignored the Reserves following the passage of the *Act*. Reserves and domestic water sources not reserved were then defined under a new program of Special Resource Management (SRM).

Land Act Community Watershed [OIC and Map] Reserves are legal, statutory entities. Because their status was not formally recognized and considered during the regional and sub-regional planning processes (and was, in fact, neglected and ignored), it can be argued that those processes were illegitimate.

And, on page 131:

The central questions remain: why were the Community Watershed Reserves never identified and who was responsible for deflecting their inclusion in the Higher Level Plans?

We cannot overemphasize the serious consequences to British Columbians and the ecosystems they must depend upon for clean water since assent of these misinformed land use planning processes and the subsequent implementation of unlawful resource objectives and activities within the Community Watershed Reserve tenures under a newly prescribed “Special Resource Management” framework.

Examples of problems abound including the following documented by us:

- The Sunshine Coast Regional District’s Board of Health public review Hearings in 2007 of logging by Western Forest Products in the Chapman Community watershed where we appeared [and spoke about the tenure history of the Chapman Reserve](#). (Government later repealed legislation concerning the establishment and authority for Board of Health Hearings by third order governments.¹)
- Our draft and final reports of Rossland City’s Community Watershed Reserve tenure wherein forest administrators permitted illegal activity.²
- The attempt by government to secretly demote the legal status of over 60 Community Watershed Reserves located in Southwest BC.³

Our sequel book (September, 2013), [The Big Eddy: A History of the Big Eddy Waterworks District and its Long-Standing Battles to Protect the Dolan Creek Watershed Reserve](#), elaborated upon the early origins and history of Community Watershed Reserves, emphasizing BC’s Interior watersheds. In Chapter 8 of the report we reviewed logging in the Duhamel Creek Watershed Reserve (near Nelson City) and concluded that by “the October 1994 Kootenay-Boundary Land Use Plan, *Land Act* Watershed Reserve tenures were all ignored by government.” One of the companies with a forest tenure in Glade Creek, Kalesnikoff Lumber Company, was also granted a forest tenure in Duhamel Creek by the Chief Forester.

The second revised report we produced for the GCWPC, published on May 1, 2017, [The Glade Creek Watershed Reserve: No “Misnomer”/Not “Just a Name,”](#) describes the history of the Glade Creek Reserve and government’s failure to protect it over the course of many years. It describes a history of intransigence, including:

- secret revisions of the Ministry of Environment’s October 1980 Community Watershed *Guidelines* document;
- the allocation of Allowable Annual Cut in “constrained” tenures;
- the misrepresentations by the Forest Service in hiding the Glade Reserve tenure during the Glade Creek Technical Committee meetings (1993-1995), and;
- the failure of the West Kootenay-Boundary Land Use document to acknowledge the status of Community Watershed Reserve tenures for the wrongful purpose of allocating logging tenures in the Glade Watershed Reserve.

Following royal assent of *Land Act* legislation in 1970, hundreds of Community Watershed Reserves were established (or re-established) under the authority of the Environment and Land Use Technical Committee of Deputy Ministers, established under the *Environment and Land Use Act* in 1971. The policy governing

¹ [BC Hansard, Monday May 26, 2008, Afternoon Sitting, Volume 34, Number 7, page 12902 ff.](#)

² [Good Servants / Bad Service: An Examination of Records and Reports Related to Rossland City’s Drinking Watershed Reserves \(1923 – 2002\)](#), December 2008.

³ [BC Liberals Caught Demoting Protected Status of Community Water Sources](#), media release, March 21, 2013, with Backgrounder.

Community Watershed Reserves from the Ministry of Lands was summarized in Appendix A of our Big Eddy report:

- 1970: Section 11 Order-in-Council Reserves, and Section 12 Map Reserves, lands “withdrawn from disposition,” and “in the public interest.” The Interpretation Section of the *Land Act* defined “reserved lands” as “Crown lands that have been withdrawn from disposition under this or any other Act.” (Underline emphasis).
- The Lands, Parks and Housing Manual, the September 1, 1980 sub-section 4.490, *Watersheds Used for Community Water Supplies*: “new dispositions may be made where the activity is compatible with the intent of the *Guidelines [for Watershed Management of Crown Lands Used as Community Water Supplies]* and not detrimental to the community water supplies and where the land is not affected by an Order-in-Council or Map Reserve.” (Underline emphasis)

The Reserve legislation and the accompanying policy are very clear. Also clear is that government not only failed to abide by this law and policy over a period of many decades, it also persisted in keeping these tenures and their significance completely unknown to the public: it was covered up. The unlawful omission of Community Watershed Reserve tenures from the Land Use planning tables occurred under the NDP’s previous watch.

Matters related to the legitimate concerns of the GCWPC are the result of ongoing government intransigence. As a result, you have the legal and fiduciary obligations to reimburse any planning costs incurred by the timber licensees (as revealed in the February Court hearing in Rossland) and to suspend logging scheduled for the Glade community watershed. Further you must exclude the Glade Creek community watershed from the AAC calculation.

The protection of drinking water sources from resource activities is fundamental to the public good. The protection of drinking water sources is a legislated right and was one of the cornerstones of public policy in British Columbia. The BC Tap Water Alliance calls on government to initiate a comprehensive Public Inquiry into the history and mismanagement of BC’s Community Watershed Reserves.

Sincerely,

Will Koop (Coordinator)

Cc. Hon. David Eby, BC Attorney General
Hon. Doug Donaldson, Minister of Forests, Lands and Natural Resource Operations
Hon. George Heyman, Minister of Environment
Andrew Weaver, Green Party Leader
Diane Nicholls, BC Chief Forester
Carol Bellringer, BC Auditor General
Jay Chalke, BC Ombudsperson
West Coast Environmental Law
Glade Creek Watershed Protection Society



JUN 28 2006

Reference: 141840

Will Koop, Coordinator
B.C. Tap Water Alliance
PO Box 39154
Vancouver BC V6R 1G0

Dear Mr. Koop:

Thank you for your letter of June 13, 2006, and your enclosed report "From Wisdom to Tyranny - A History of British Columbia's Drinking Watershed Reserves". The exhaustive amount of effort you have put into this work is admirable. I have forwarded it to staff in the ministry for their review and reference.

Thank you again for writing me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pat Bell".

Pat Bell
Minister