B. C. TAP WATER ALLIANCE

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PROFESSIONAL RELIANCE:
THE SIDE-KICK OF BRITISH COLUMBIA'S RECENT (2001-2018?) DEREGULATORY REGIME

Submission to the BC Government's Review of "Professional Reliance in Natural Resources"

By Will Koop,
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It is not a "given" that the public has, or will continue to have, sufficient confidence to support the professional reliance paradigm in the long term. Although the Legislature has passed Acts designed to enable (in fact require) professional reliance, ultimately the public must be satisfied that the regime is meeting their interests.

Quote from Professional Reliance Task Force report, *Concept to Practise: Professional Reliance in Forest and Range Management in British Columbia.*, April 2006, page 16.

We thank the BC government for conducting a public review of the Professional Reliance regime's performance, the outcome of mean-spirited devolutionary laws and regulations established under the previous BC Liberal Party administration. Despite a narrowly defined Terms of Reference for this review, government should make the necessary changes to remove and reverse the 'results-based' statutory regimes which have brought us disappointingly, egregiously backwards, not forwards.

In our submission, we provide three component sections, and some final thoughts:

1. *BC Tap Water Alliance Involvement*, examples from our published documents (found on our website);
2. *How Did WE Get Here*, a short history of what led to Professional Reliance;
3. *The Dissatisfied Public and its Watchdogs*, a summary of the 2006 Professional Reliance Task Force report and public dissatisfaction with the evolving manifestations of Professional Reliance;
4. *How Do WE Fix What's Broken?*

1. BC Tap Water Alliance Involvement

Since the BC Liberal Party Administration initiated (2001-2017) a new set of laws and regulations on a controversial path of deregulation and devolution with management oversight transferred through its partner instrument of Professional Reliance, the BC Tap Water Alliance published a series of reports, documents, and videos on three resource use sectors: forestry (logging in community watersheds), mining, and petroleum (fracking). We have witnessed various outcomes of the inter-ministerial deregulation agenda, noting, and documenting related systemic failures during this period. For instance:

1.a.

In the May 1, 2017 report, The Glade Creek Watershed Reserve: No "Misnomer" / Not "Just a Name", we provide evidence, a critique, and concerns about Professional Foresters operating under the Professional Reliance regime. Under Appendix D (page 139) we provide a lengthy reference list of articles (2003-2016) published in the Association of BC Forest Professional's magazine sourcing discussions and critiques on the topic of Professional Reliance (provided at the end of this submission). Since the abdication of government's resource ministerial staff from presiding at public meetings, conditionally and traditionally held for community stakeholder involvement in community watershed resource planning issues, this absence removes direct and fundamentally necessary government accountability with the public on the sensitive arena of drinking water resources. As related in this report, this lack of accountability is further complicated by our numerous investigations unravelling twisted scandals related to legal issues concerning government's establishment, for BC's Water Purveyors, of Community Watershed Reserves under the *Land Act*.

1.b.

In the December 1, 2014 report, The Scene of the Crime: A Preliminary Analysis and History of the Mount Polley Mine Tailings Storage Facility, it provides a lengthy analysis, from preliminary information, on the Mount Polley Mine catastrophe that occurred in early August, 2014. Released two months in advance of the Mount Polley Expert Review Panel's report of January 30, 2015, our accompanying media release provides the following summary:

The findings of this preliminary / interim report provide important clues and disturbing insights for this crucial question [why did the Mount Polley Mining Corporation fail to build its toxic tailings facility "in perpetuity"], and for other related questions, findings that reveal a long-held trail of company carelessness, stupidity and incompetence, as randomly catalogued from 2008 to 2010 by its former Engineer of Record in only three among many annual TSF inspection reports that have been published for public review from 1998 to 2013.

In association are implications that the provincial mining regulator may have failed to properly implement its "duty of care" to British Columbians in preventing this tragedy, those public lands and waters which have been entrusted through legislation to the regulator's legal service and administrative jurisdiction.

The findings in this preliminary report help stimulate an inevitable and sobering conclusion - that the Mount Polley mine tailings storage catastrophe could have been, and should have been, preventable. And, therefore the big questions: was this an environmental crime scene, and was there a previous and subsequent cover-up?

1.c.

From 2010 until more recently we investigated some of the vast operations and performances of the unconventional petroleum industry in northeast British Columbia. These developments began and occurred during the BC Liberal administration, during the period of the deregulatory and devolutionary regime.

In our November 9, 2010 report, EnCana's Cabin Not So Homey: Cumulative Environmental Effects, An Unfolding and Emerging Crisis in Northeastern British Columbia's Shale Gas Plays. An Introductory Journey into BC's Dirty Domino Zone, we document government's failure to conduct cumulative environmental impact assessment reporting. The requirements are noted for at least 30 years ago. A 1986 government document, *A Report on the Requirements of the Ministry of Environment for Management of Petroleum Activity in Northeast British Columbia*, provides the government's legacy for proper environmental planning:

> Ideally, strategic planning precedes the sale of petroleum rights. This ensures all parties involved are aware of the concerns and constraints associated with development in an area before development is proposed.

Another government document published in October 1991, *Environmental Impacts Associated with Gas Field Development Activity in British Columbia: Issues and Recommendations*, concerns the same issue which is discussed at greater length:

> BCE (B.C. Environment) staff have identified the need to address the cumulative environmental effects of industrial development in Northeastern British Columbia. The Ministry is most concerned with the impact of gas field development on environmental resources. Ministry staff want to ensure that environmental resources, and the wilderness values upon which some resource components depend, are not compromised by gas field development.
>
> Current ministerial legislation provides for considerable stronger management than is currently undertaken. ... An attitudinal change is needed that indicates a higher level of management to be undertaken on petroleum industry activity. If stronger management is desired, the MOE [Ministry of Environment] will require a considerable increase in manpower and support.
>
> The high degree of "rubber stamping" of approvals and the lack of monitoring compliance with guidelines is diminishing the credibility of the Ministry while providing little environmental protection.

Following the creation of the BC Oil and Gas Commission (OGC) in 1997 by the NDP administration, in 2003 the BC Liberal administration, through the OGC, released a two-volume report on Cumulative Environmental Effects. The Volume One report, *A Cumulative Effects Assessment and Management Framework (CEAMF) for Northeast British Columbia*, was completed just prior to the BC Liberal administration granting vast tracks of public land lease sales in northeast BC to private petroleum interests over successive years, states the following:

> This report was done as a response to concerns in the region about the possibility of worsening environmental effects due to multiple land and resource use activities. Some mechanism was needed to address these concerns; (specifically, those related to the potential contributions of oil and gas projects to the cumulative effects), and the Oil and Gas Commission's (OGC) process that reviews project applications.
>
> The life-cycle impacts of fracking, from cradle to grave (from drilling waste to well integrity dormancy and long-term problems), feature a list of environmental harms and catastrophes, and are why the practice of fracking is increasingly banned throughout the world. The practice of unconventional fracking for oil, gas and liquids includes the clearing of extensive areas of forest lands, and the release of greenhouse gases, both activities which contribute to increased global warming, or climate change.

Professionals involved in the promotion, undertakings, and activities of fracking need public scrutiny and accountability, including those under the employ and directives of the BC OGC. Over a period of recent years, numerous accounts of controversies with both the BC OGC and the fracking industry have been reported on, such as those published in the Tyee by it's contributing reporter and author, Andrew Nikiforuk.

A minor example of the removal of accountable and proper monitoring over the vast fracking operations in northeast BC is documented in our June 17, 2010 report, The World's Biggest Experimental Frack Job!, where an OGC official states on June 2, 2010, "it's all about trust" (Page 10). The statement was made during a field inspection near Two Island Lake northeast of Fort Nelson where, from videotape sourcing, an OGC supervisor discovered that Apache Canada, a U.S. based petroleum company, had installed bypass pipes so that large volumes of fresh water pumped from a nearby lake to a nearby fracking operation would escape being registered on a water meter, bypassing a requirement to do so by the OGC. It was later revealed that an OGC field inspector had discovered the bypass piping in March 2010, yet nothing was enforced to remedy the matter.

2. How Did WE Get Here?

With the evolution of federal and state governments and institutions in North America (focussing on Canada and the United States) since the late 1800s, the struggles and debates over physical resource extractions and developments on public and private lands continue. Applicable laws, generated through public concerns and from resource studies, which have been presented to and debated by political structures and institutions, have fundamentally shaped this history complex.

The late 1960s and early 1970s witnessed a revolution toward the first comprehensive implementations of land use planning, with the Canadian federal and provincial governments establishing their own Ministry of Environments. These initiatives in Canada blossomed as similar revolutionary land use planning initiatives took shape in the United States, particularly a law under the 1969 *National Environmental Policy Act* requiring Environmental Impact Statements and Assessments which subsequently triggered hundreds of resource study reports and planning processes, through which government agencies hired reams of resource professionals.

The first elaborate and meaningful structure for public accountability by the BC government for land use planning and public involvement came about in April 1971 through the enactment of the *Environment and Land Use Act* by the Social Credit government (1952-1972). Hansard (March 23, 1971) records that Social Credit MLA George Mussallem heralded the revolutionary *Act* as the "Magna Carta of the ecology."

On January 27, 1971, R.G. Williston, Minister of Lands, Forests and Water Resources, stated the following (in Hansard):

> *This is the first time in Canada that an attempt has been made to bring together all of the responsible administrative areas and agencies within the Provincial administration to assist in the development of co-ordinated Crown land use policies.*
>
> *This* [Environment and Land Use Committee] *is the strongest committee of Government and its representation encompasses the resource managers and human disciplines, which, in total, control the quality of the environment.*
>
> *This Environment and Land Use Act …* [is] *designed to bring about public interest and a degree of public involvement because, as already has been stated in the House, both of them are matters of actual concern and actual operation at the present time. To indicate the serious intention of the Government concerning these matters, it was decided to codify them in*

Statutes, and the activities and the functions of the Environmental and Land Use Committee are contained in the Environment and Land Use Act. Really, Mr. Speaker, this spells out the basic philosophy that, if we are going to have an environment in British Columbia of which we'll all be proud, it's going to involve the act of participation of just about everyone who lives in the Province of British Columbia. … Unless you do this and unless we, as individuals in British Columbia, as a people and as individuals, make this a matter of our everyday life, then, we're never going to have the type of environment that we would wish in the future.

The main feature of this act is that before lands are alienated and before projects are developed, they shall be subject to public scrutiny to see if in fact, they can be established without basic detriment to the environment. For the first time, public hearings are called for and, if you will notice, at those public hearings, prior to the public hearing, an overall investigation of the effects of the proposed development will have been the subject of study, and that expert opinion provision is made for providing expert opinion for carrying out research in advance of the hearing to make that evidence available at the public hearing, so the people will have, not only their own opinions, but expert opinions, at the same time, by which they may indicate whether they are in favour or not in favour of a development proceeding and, if this development does proceed, of the basic precautions which have to be taken by that development as it is carried out.

The Environment and Land Use Committee of Deputy Ministers, and a Secretariat, "a standing committee of Cabinet," [1] authorized environmental processes, reviews, and studies. The legislation was applied to a prominent issue at that time, the Tsitika watershed on northeast Vancouver Island, where 288,261 acres of forest lands were placed under immediate moratorium against forest licensing, while resource professionals conducted wildlife, fish, water and ecology resource studies. Amongst the hiring of research scientists, the incoming NDP administration (1972-1975) had resource staff engage in widespread committee planning structures, involving the participations of regional governments, local governments, and stakeholders.

It was during this initial operational phase of the *Environment and Land Use Act* that a review of BC's community watersheds was created, and is when the Deputy Ministers authorized this Task Force (1972-1980) to implement legal protections over community watersheds as former Section 12 Map Reserves under the *Land Act*.

With the return of the Social Credit Party administration (December 1976 - September 1991), it began to dissolve or water down the *Environment and Land Use Act*, as well as removing the moratorium and ignoring research reports for the Tsitika watershed. Under a new Cabinet Committee structure, the Economic Development Committee supplanted the coordination and policy roles of the Environment and Land Use Committee. In September 1980 the Social Credit administration disbanded the ELUC Secretariat. In other words, the ELUC prize stallion, the "Magna Carta," was not only 'put out to pasture,' but was then locked inside a sound-proof barn stall.

In 1978, Council of Forests Industry's vice-chairman, Mike Apsey, was appointed Deputy Minister of Forests for the newly formed Ministry of Forests. Under Apsey's controversial captainship, came

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[1] *Review of the BC Crown Land Allocation and Management Planning Process*, by Dorli M. Duffy, page 8: "The power of this Act lay in its supremacy over all previous acts and regulations."

a host of controversial episodes. During this period, Cabinet introduced British Columbia's first Ministry of Deregulation, headed by car salesman MLA Evan Wolfe.

Under a new sympathetic regime headed by the Ministry of Forests, which became the lead agency over other resource Ministries, came great public criticism and opposition. Despite warnings from international climate scientists to the world's governments against large-scale removal of forest lands to aid in limiting the steady annual increased rates of atmospheric carbon dioxide emissions, vast tracks of BC's public lands were clearcut and roaded, [2] while government downsized ministerial resource staff.

After about the first term in office (post-1980), the public's reliance upon resource professionals within government became subjugated, controlled and curtailed for the financial benefits of the private resource sector. It was linked to an elaborate scheme by the BC's forest industry collective (the Council of Forest Industries, the Cariboo Lumber Manufacturers Association, the Interior Lumber Manufacturers Association, the Northern Interior Lumber Sector), to reorganize forest resource laws and regulations. The scheme was presented in a "confidential" 12-page submission to Premier Bill Bennett in July 1983, *Forest Industry Proposals for Cost-Effective Forest Management*. The submission included 21 recommendations. In a cover letter by D.L. McInnes, Chairman of the Council of Forest Industry's Special Committee on Cost-Effective Administration, it recommended government "decentralize the decision-making authority for forest management more effectively, and structure the Ministry [of Forests] to make it smaller and more cost-effective," and to "delegate responsibility and accountability fully to licensees in line with their existing and suggested additional contractual obligations, subject to government audit of results." [3]

By 1987, with the Social Credit administration's quasi-privatization proposal for the large-scale "rollover" of Tree Farm Licenses, came unprecedented public protests (including the IWA union, other trade unions, First Nations, etc.) and the resultant formation of the Forest Resources Commission. In April 1991, during the dying days of the Social Credit's second lengthy administration, the Forest Resource Commission recommended the implementation of widespread formal land use planning and the adoption of a new forest stewardship path or "code" [4] for resource laws.

> *This shift from managing primarily for timber values to managing for all values requires significant change in how we plan, manage, and finance the activities that are carried out in our forests.*
>
> *The process envisaged for the Land Use Plan must be open, neutral, and balanced. High quality land stewardship is possible only if it is kept arms-length from the influence of short term economic or political aspirations*.

[2] By the mid-1990s, there were about 500,000 kilometers of forest roads throughout the province.

[3] The Working Forest: "End of the Commons," The New Corporate Forest Management Plan for British Columbia, A Response to the Provincial Government's Re-proposal, Through the Ministry of Sustainable Resource Management, for the Creation of a "Working Forest" Reserve on Public Lands, BC Tap Water Alliance submission, April 30, 2003, page 29.

[4] "One of the major recommendations contained in this [Forest Resources Commission] report was that a single, all encompassing code of forest practices be developed. Following this recommendation, the Ministry of Forests released a discussion paper titled "A Forest Practices Code" to solicit public input on the scope, content and structure of the Code." Quote from the May 20, 1992 report, *Forest Practices Code Background Papers*.

As a result, the incoming NDP administration (1991-2001) formed the Commission on Resources and Environment (CORE), along with the Land Use Coordination Office (LUCO), to systematically implement regional and local resource plans for most of British Columbia. However, the powers of the 1971 *Environment and Land Use Act* prize stallion, though dormant, were not released from barn captivity back into government as it ought to have been. During the NDP administration, resource professionals within government gained more prominence and freedom, though downsizing of government employee professionals occurred over time.

In June 1995, the government enshrined the *Forest Practices Code Act*, BC's first prescriptive law to regulate the logging of public forestlands. The new *Forest Act* included a *Preamble*, the first more inclusive and visionary statement enacted in BC's forest law history:

> WHEREAS British Columbians desire sustainable use of the forests they hold in trust for future generations;
> AND WHEREAS sustainable use includes:
> (a) managing forests to meet present needs without compromising the needs of future generations,
> (b) providing stewardship of forests based on an ethic of respect for the land,
> (c) balancing economic, productive, spiritual, ecological and recreational values of forests to meet the economic, social and cultural needs of peoples and communities, including First Nations,
> (d) conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources, and
> (e) restoring damaged ecologies;
>
> THEREFORE, HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows: …

The forest industry's central lobby organization, the BC Council of Forests Industries, and other forest industry lobby groups, criticized and aggressively attacked the attendant regulations and guidelines as unnecessary constraints and financial burdens. Also, hard at work was the Council of Forest Industries' public relations puppet, the BC Forest Alliance, which, since 1992, countered the provincial land use planning initiatives and reforms underway. [5]

The BC Liberal Party administration (2001-2017) quickly launched a Red Tape Task Force to help referee its deregulatory strategies, and introduced devolutionary reforms to BC's resource laws, regulations, and tampered with Land Use Plans which had taken years to negotiate with public stakeholders. [6] Private industry became the major behind-the-scenes stakeholder in shaping the new laws, shutting out public stakeholders. As one of the major reforms, the *BC Forest Practices Act* was gutted and trashed, replaced by directives which emphasized profiteering as the main criteria, later implemented under the "not unduly" clause revisions.

Of significant note, the government removed the visionary, underpinning objectives from the *BC Forest Practices Act's Preamble* section:

[5] When the BC Liberal Party administration became government in May 2001, BC Forest Alliance chair Michael Morton became Premier Gordon Campbell's personal entourage secretary.

[6] E.g., our August 9, 2004 media release, Campbell Government Tampers with Community Watershed Objectives in Lillooet LRMP.

> On November 20, 2002 the provincial Liberals passed *Bill 74*, the *Forest and Range Practices Act*, following third reading in the legislature. The new and controversial self-regulation legislation, which becomes law in the Spring of 2003, will replace the *Forest Practices Code Act* introduced in the Spring of 1994. During the debate of *Bill 74* on November 18, 2002, Forests Minister De Jong repeatedly dodged questions about why the Preamble was removed from the former *Forest Practices Code Act* and who was responsible for its removal (Hansard, pages 4488 ff.).
>
> Without the Preamble, which establishes the spirit and intent of the legislation, actions and decisions taken under the authority of the Act cannot be evaluated. Since 1996, the Preamble has been cited in several major Forest Practices Board investigations, six Supreme Court judgements, and three Supreme Court appeal cases. The Preamble was invoked as a benchmark for evaluating decisions affecting biodiversity and First Nation's rights. In addition, the Liberals made significant changes to the *Forest Practices Code Act* in *Bill 74*. [7]

We also correctly criticized the government's removal of the Ministry of Environment as "watchdog" over the public's drinking watershed sources in its passage of *Bill 35*:

> *Bill 35*, repeals Sections 13, 24, 28(2), 32, 40(2), 41(6, 6.1, 7), 42(3), 43(2), 72, and amends parts of Sections 22 (7-c), 96(1), and 143(3) of the *Forest Practices Code Act*, removing all references to, and intercessory powers of, the designated "environment official". These changes were executed through the new Ministry of Deregulation. The April 16th legislative transcripts state that Deregulation Minister Kevin Falcon concluded that the Environment Ministry's role in community watersheds was "nonessential", "red tape", and an "unnecessary requirement". He argued that an environment agency "diminishes the province's economic competitiveness and stands in the way of job creation or wastes taxpayers' time and money" and blamed the 1985 Social Credit protocol agreement on "NDP Socialism". By removing the ministry accountable for environmental protection, Falcon felt the changes would "protect the important values of public health, safety and the environment." Falcon also promised government would be "consulting with interested stakeholders".
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> When the Campbell government took office in May 2001, it immediately severed the functions of the former Ministry of Environment, Lands and Parks into two ministries. Instead of sanctioning community watersheds under Joyce Murray's new Ministry of Water, Land and Air Protection, the management of drinking watersheds was quietly transferred to Stan Hagen's new Ministry of Sustainable Resource Management, whose mandate is exploitation of Crown land resources. This maneuver, which occurred months before the second public review of the *Drinking Water Protection Act* in September 2001, circumvented the Drinking Water Review Panel's recommendations for the protection of drinking water sources, and led to the final cuts in *Bill 35*. In fact, when the B.C. Tap Water Alliance sought clarification from senior administrators in the late summer of 2001, they were "unable" to tell us to which Ministry the authority for drinking watersheds had been transferred to. By axing the protocol agreements on joint sign-off and authority over public planning processes, the government is evidently censoring internal debate and ministerial dissent about future logging developments and cattle farming in drinking water sources.

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[7] BC Liberals Strip Key Legal Principles from Forest Laws, BC Tap Water Alliance Media Release, November 26, 2002.

"The actions of this government on the issue of drinking water source protection are utterly disgraceful. We now have a clear picture of why the government stalled legislating the *Drinking Water Protection Act*. Forestry activity in drinking watersheds, and who knows what else, can now proceed without interference. With the removal of former legislative provisions by *Bill 35*, this government has made it clear they are not interested in protecting drinking watersheds, and are catering to the special interest lobby associated with the forest industry", says Koop. "Premier Campbell and 16 of his 27 Cabinet ministers represent Greater Vancouver and Victoria residents whose drinking watersheds are now protected. They do not have a mandate in their own ridings to degrade drinking watersheds. So why are they discriminating against the remainder of B.C.'s residents?" [8]

In our April 30, 2003 submission report, The Working Forest: "End of the Commons," The New Corporate Forest Management Plan for British Columbia, A Response to the Provincial Government's Re-proposal, Through the Ministry of Sustainable Resource Management, for the Creation of a "Working Forest" Reserve on Public Lands, we critiqued the government's diabolical proposal that would have, amongst numerous significant changes to laws and regulations, legally re-assigned and converted all 140 provincial forest land reserves into a single reserve entity to be dubbed the Working Forest under re-defined resource development objectives:

The reasons for the rapid rate in which the government has proceeded to alter, redefine, create and weaken legislation regarding British Columbia's Public and private forest land base since June 2001, seem to be based to a great extent on "unfinished business" from the 1980s. This unfinished business clearly relates to arrangements between former Social Credit Premier Bill Bennett outlined in a July 1983 "confidential" document by the Council of Forest Industries. The document contained recommendations for many changes to the administration of public forestlands. These included: proposals for the dramatic "downsizing" of ministry agencies; for the creation of a new super ministry (perhaps the main inspiration for the recently formed Ministry of Sustainable Resource Management); for the relaxation of government monitoring, public scrutiny, enforcement programs and for industry self-regulation (see Appendix K for a list of submissions in November 2001 by the commercial/industry sector to the Red Tape Task Force); and the move towards privatization or securing the Public forest lands for private interests. (Pages 8-9)

Due to widespread public criticism and outrage, the Working Forest proposal was dropped. [9]

When was the results-based initiative first considered? We perused Hansard and discovered that in April 2000, the NDP administration began a process, in response to the forest industry's "suggestions," that "we consider what a results-based Forest Practices Code might look like." [10] BC Liberal MLA, and legislative forests critic, George Abbott responded to the Forest Minister:

I'm pleased to hear the minister acknowledge that the government is pursuing a results-based code and has some pilots out there to try to deal with that. We'll certainly welcome the discussion around that.

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[8] Campbell Government Cuts Drinking Water "Watchdog" with Bill 35 – Calling it "Red Tape", BC Tap Water Alliance media release, May 22, 2002.

[9] Alliance Calls on Cabinet Ministers Hagen and De Jong to Resign, BC Tap Water Alliance media release, October 31, 2003.

[10] Forest Minister J. Doyle, April 18, 2000, Hansard, 36th Parliament, 4th Session, Volume 18, No. 25.

I recall very clearly -- I think it was 1998 -- a press conference held down in the press theatre here in the Legislature. The former Minister of Forests was there, and the former Minister of Environment was there. They had quite an elaborate press conference surrounded by great masses of stacks of paper. The press conference was all about how the province was going to move to a results-based code, and all the paper that was sitting behind the ministers was going to be eliminated. They were reducing the number of plans, and so on and so forth.

Forest Minister Doyle then responded:

I would like to say that what we're doing now, with the code pilots, is finding new ways of doing business in the province. We're working with the sector -- government and the forest sector working together -- to identify savings but still protect the Forest Practices Code.

…. the concern and the problem is that as far as government, people are telling us that they don't always trust the work that might happen out there. I talked some weeks ago to the professional foresters in Prince George. No doubt they are a professional group. But the public out there is still demanding a very high standard in the Forests Practices Code.

Evidently, some sort of "pilot" review process into a results-based forest code was underway in 2000. We recently learned that a Professional Reliance Action Team (PRAT), comprised of two planning groups, was formed around this time. However, we were unable to find any information about PRAT, [11] when and why it was formed, only that it continued in some capacity after the provincial election of May 2001, albeit under a new devolutionary directive. It was later renamed the Professional Reliance Task Force (PRTF). According to the BC Association of Forest Professionals, the PRTF was "reactivated in July 2005," [12] after which it produced a final report to government in April 2006, *From Concept to Practice: Professional Reliance in Forest and Range Management in British Columbia*.

As part of the provincial government's review of Professional Reliance, we recommend that a document tracing the history and developments of PRAT and PRTF be provided as an appendix to the final report, which, if possible, would include a list, and/or website links, to their meeting agendas and report documents, including a list of participants/stakeholders in these two meeting bodies. According to the April 2006 PRTF final report, members were "made up of representatives of the Association of BC Forest Professionals, Association of Engineers and Geoscientists of BC, BC Institute of Agrology and the College of Applied Biology, supported by staff professionals from the Government of British Columbia, Ministry of Environment, Ministry of Forests and Oil and Gas Commission."

The systematic devolution of resource laws and the gutting of resource ministries and staff led to the creation of the Professional Reliance regime, trading away and exporting public decision making to the private sector.

Thirty years after the enactment of the *Environment and Land Use Act*, along with the refinement of many other resource laws, British Columbia's vision and legal provisions for environmental and ecological integrity and 'public interest' accountability seriously collapsed, heading in a downward spiral.

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[11] The BC Legislative Library was unable to find any documentation references.
[12] Professional Reliance Task Force Update, December 2005.

3. The Dissatisfied Public and its Watchdogs

> *Public access to information and review and comment opportunities for all forest harvesting or development plans on Crown land are fundamental rights extended to all British Columbians. By decreasing, hindering or restricting public access, review, and comments about these activities, government is significantly reducing the public's rights and freedoms.*
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> *The fact that government is abrogating its long-held responsibility to oversee development plans on Crown land is shocking. To put the matter into historical context, this is the first occasion in over 90 years (since the first Royal Commission on Forest Resources in 1910) that government has contemplated legislating significant supervisory control and decision-making authority on Crown land over to the private sector*. (Letter to Minister of Forests Michael DeJong, Regarding the Significant Diminishment of Public Scrutiny Over Harvesting Plans Under *Bill 74*, from the BC Tap Water Alliance, November 18, 2002)
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> *About 10 years ago, the approach to regulating forest planning and practices in BC changed substantially. The Forest and Range Practices Act (FRPA), introduced in 2004, was intended to streamline administration, reduce costs, and encourage innovative practices, in part by giving forest licensees much of the discretion previously held by government officials. ... The* [Forest Practices] *Board frequently hears concerns that professional reliance is not meeting expectations. The concerns come not just from the public, but from professionals themselves*. (Professional Reliance in BC Forests: Is it Really the Issue?, Forest Practices Board Bulletin 14, June 2013)
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> ***It is not a "given" that the public has, or will continue to have, sufficient confidence to support the professional reliance paradigm in the long term. Although the Legislature has passed Acts designed to enable (in fact require) professional reliance, ultimately the public must be satisfied that the regime is meeting their interests*.** (From Concept to Practice: Professional Reliance in Forest and Range Management in British Columbia, Professional Reliance Task Force report, April 2006, page 16.)

The final quotation above, sourced from the Professional Reliance Task Force's final report of April 2006, aptly summarizes the overarching reason for the current review of the BC Liberal administration's (2001-2017) implementation of controversial statutory land resource deregulations and accompanying transitionary application of "Professional Reliance." As stated above, the Task Force intimated its inherent problems and nature due to conflict against 'public interests.'

From the perspective of BC's legislative and administrative history, Professional Reliance is an aberration, what the 2006 Task Force document (*Introduction*) simply describes as a "transition:"

> *In British Columbia's **transition from a prescriptive to a more "results based" regulatory regime** for natural resource management, the principle of professional reliance has become a key quality assurance strategy. ... The recent regulatory changes, particularly the Forest and Range Practices Act are leading to an increased level of reliance on professionals, not only to competently plan, advise, carry out and take accountability for complex tasks, but also to achieve an appropriate balance between the interests of their employers and the public – all while operating within the law.*

> *The introduction in 2002 of new legislation governing forest and range management in British Columbia* ***has resulted in a significant shift away from a highly detailed and prescriptive statutory planning framework*** *to one in which government establishes broad objectives and* ***industry is held accountable for results****. The public and the government have been clear that this change, intended to provide for innovation and efficiency in the industry, must not be made at the expense of high standards for forest practices and environmental protection.* ***This reduction in direct government oversight*** *brings about a need for quality assurance and protection of the publics' interests through a combination of legal requirements in the resource laws (e.g. the Forest and Range Practices Act) and those of the professions (e.g. the Foresters Act).* [Bold and underline emphases]

Contrary to what the Task Force states about "the public" making "clear" about "this change," the deregulatory legislations and regulations were primarily planned, negotiated and forged behind closed doors. 'Professional' consultants were to be trusted, usually without the public and its second and third level government administrators being granted intercessory rights for the review of information and reports, the careful checks and balances.

Since its implementation, the Professional Reliance 'model' has significantly expanded, applied throughout second and third level governments, encompassing a wider gamut of planning hierarchies not limited to those professional bodies identified under the 2006 Professional Reliance Task Force definitions. A January 2014 government document, *Use of Qualified Persons in the Provincial Administration and Management of Natural Resources in British Columbia, Inventory and Analysis*, summarized that government was now extending the same powers and privileges to encompass the "Qualified Person," spanning into a wide range of government decision making bodies and functions. The document states that the reporting process was the outcome of "an inventory conducted by the Professional Reliance Cross-Ministry Working Group in 2011 and updated by the Qualified Persons Cross-Ministry Working Group in 2013."

The Professional Reliance Task Force summarized the essential function of Professional Reliance in its April 2006 final report, what Tim Sheldan, former Assistant Deputy Minister of Operations and Timber Sales with the Ministry of Forests, had referred to in 2003 as a "pillar" [13] supporting the foundation of the new *Forest and Range Practices Act*:

> *Professional reliance is an important aspect of the legal framework for forest and range management. The shift from a focus and dependence on government approval of several types of detailed plans to a more results-based, tenure holder driven approach is* ***predicated on the assumption that society can and should rely on the resource management professions****. In making this shift, the Legislature's expectations are centered on rigorous standards of conduct, competence and accountability, as demonstrated by compliance with a strict ethical code, dedication to professional principles, and the requisite expertise to carry out the work.* [Bold emphasis, page 6]

As later evidenced by public watchdog agencies, the primary pillar was faulty, unable to provide a steady foundation for an ill-conceived and badly built structure meant to uphold the 'public interest,' a term that is not included the 2006 Task Force's report Glossary.

[13] FRPA Executive Communications, BC Government website.

The cumulative problems related to Professional Reliance self-regulation and conflicts with the 'public interest' is well summarized in Andrew Nikiforuk's February 21, 2017 Tyee article, Another Wild West Show? BC's Regulatory Experiment with Professional Reliance:

> This decade-old experiment with environmental regulation now dominates every aspect of resource development in the province, including contaminated landfill sites, forest assessments, dam safety and shale gas development.
>
> First introduced nearly a decade ago, the practice now dominates 27 different regulatory regimes in the province.
>
> To support PR [Professional Reliance], as it sometimes called, the B.C. government streamlined regulations, reduced the size of the public service, and gave industry proponents a greater role in monitoring their compliance with environmental rules.
>
> The government said the scheme would save money and result in better governance.
>
> But a growing body of critics, including B.C.'s Auditor General, the B.C. Ombudsperson, and the University of Victoria's Environmental Law Centre say that's not what is happening in practice. They say professional reliance has given industry too much control over public lands without addressing conflicts of interest. They also say it amounts to deregulation and less government oversight.
>
> In particular they are concerned about conflicts of interest. Given that most engineers or foresters are employed or retained by an industrial proponent, an inherent potential for conflict arises between duties to the client and the public interest in environmental protection.

Nikiforuk relates "the three-year-old controversy over contaminated landfill site at Shawnigan Lake on Vancouver Island," and states how "a damning judicial review of the whole process, released last month, concluded that conflict of interest biased the decision-making process and undermined the integrity of the approval process set out in the province's Environmental Management Act."

Nikiforuk quotes "Sonia Furstenau, regional director of the Cowichan Valley district leading the fight against the Shawnigan Lake landfill project," on her assessment of Professional Reliance:

> "It is creating huge mistrust in the process. Whenever a government hands over the environmental assessment to so-called qualified professionals hired by industry, it ultimately results in a situation where industry polices itself. It is a race to the bottom."

In his summary of indictments concerning Professional Reliance from interviews and recent reports generated by the University of Victoria's Environmental Law Centre Professional Reliance and Environmental Regulation in British Columbia (February 2015), the BC Office of the Ombudsperson Striking a Balance: the Challenges of Using a Professional Reliance Model in Environmental Protection – British Columbia's Riparian Area Protection (March 2014), and the BC Auditor General, An Audit of Compliance and Enforcement of the Mining Sector (May 2016), and the Professional Employees Association Systemic Challenges: The Public Service, Professional Reliance, and the Mount Polley Disaster (December 1, 2014), Nikiforuk writes:

> Professionals also noted that the poorly policed practice of relying on professionals working for industry ultimately reduced public involvement in resource management resulting in greater land use conflicts, such as the protests around Shawnigan Lake.
>
> PR frequently "became a rationale for less scrutiny of material submitted by proponents by government."
>
> "The [Forest Practices] Board frequently hears concerns that professional reliance is not meeting expectations. The concerns come not just from the public, but from professionals themselves," says a 2013 bulletin. "Where objectives are not clear, or where competing interests and values are in play, it is not realistic to expect professionals working for licensees to define the public interest."
>
> As the number of qualified staff needed to review information submitted by other industry hired professionals has declined, the [Professional Employees] association also found "that the ability of government science officers to review industry proposals" was "hampered by policies that give proponents the legal authority to withhold information."

In these public watchdog reports, with others perhaps yet to be conducted and finalized, the grandiose political Professional Reliance experiment has failed, as was expected, to meet the meaningful criterion of 'public interest.'

Related to the BC Tap Water Alliance's concerns about forest practices in drinking water sources, another example of the pitfalls of Professional Reliance is provided in the Forest Practices Board's December 20, 2017 Submission to Professional Reliance Review:

> A Board investigation, *Laird Creek Landslide* (2013) looked into a landslide that caused damage to the water supply of about 100 homes. The slide was caused by a combination of factors, including logging that occurred in the area some years earlier. The licensee met the legal requirements but the Board identified opportunities for improvement in the overall management framework in situations where significant resource values are potentially at risk. This is especially the case if there is a high level of interest by the public and where the risk is borne by the public and not the professional or licensee making the decision.
>
> The Board suggested that in such cases, prior to development, licensees should undertake a systematic, transparent and well-documented decision-making process that shows appropriate consideration of the potential impacts of harvesting, silviculture systems and roads to public and third-party interests. The process should include documentation of the professional advice received and how it was considered by the licensee. In order to build public confidence in the independence and objectivity of professionals, licensees need to be transparent about the way in which professional advice has been used in such situations. The rationale for these decisions should be made public.

4. How Can WE Fix What's Broken?

The implementation of Professional Reliance, with all its resultant tentacles, is not only rooted in unprecedented alterations and revisions to provincial laws, [14] but in the removal and replacement of provincial resource and administrative staff. Underpinning these unprecedented changes are political directives and forces that have undermined the ideal function of the public servant as honest broker, in weakening and wounding the good purposes of government.

How do we go about fixing these things? How do we go back in time to evaluate what is meaningful and good, and how can we then adopt those things while moving forward to make things better and stronger? Does an elected Party government make the necessary reforms, as perhaps with the present administration, and then another elected Party government simply removes them again as is the case time, and time again? How do we implement permanence to laws and governmental oversight that generate the public good, so that these laws and administrative instruments won't be easily quashed and manipulated in the future?

Bruce Fraser, the former Chair of the Forest Practices Board, correctly ascertains in his December 14, 2017 submission, Reforming the Professional Reliance Model, that to "fully recreate capacity in the public service," that is, to re-populate government resource ministries since removed by the BC Liberal administration, would be "expensive." A return to what used to work, he acknowledges, would hopefully "provide systematic monitoring of resource management practices and outcomes with a strict focus on the public interest."

What did the BC Liberal administration do? In 2001 it cut annual corporate taxes to the tune of $1.5 billion. How much revenue was lost to the public as a result over the last 16 years? Bring back the revenue and then bring back the staff!

In final, we concur with the central recommendation provided to this review process in the Speak Up for Wildlife's January 2018 submission, Professionals Qualified for What Role? "We Must Abolish Professional Reliance as a (Failed) Regulatory Tool, Who's Watching?:

> The complete elimination of "professional reliance" as a regulatory "tool" should be an immediate and first order of this government. This practice has to stop!

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[14] E.g.: "As a direct consequence of shifting reliance on professionals in the public sector to professionals in the private sector, the government amended resource statutes and regulations to shift statutory decision-making powers from field professionals in government to the Minister responsible allowing him/her to devolve decision-making authority to private-sector professionals." Quote from Anthony Britneff's January 3, 2018 submission, A Stakeholder's Submission to the Government's Review of the Province's Professional Reliance Model.