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AN EVALUATION OF A RECENT MEETING WITH THE SUNSHINE COAST REGIONAL DISTRICT AND REGIONAL REPRESENTATIVES OF THE MINISTRIES OF ENVIRONMENT, LANDS AND FORESTS REGARDING THE GOVERNMENT'S INTEGRATED WATERSHED MANAGEMENT PLAN (IWMP),

THE HISTORY AND RECENT DEBATE ON WATERSHED RESERVES,

THE SUNSHINE COAST'S REFERENDUM ON THEIR COMMUNITY WATER SUPPLY SOURCE

Written and researched by
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April 23, 1998.

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***Reserved (forest land)**: Forest land that, by law or policy, is not available for the harvesting of forest crops.* (*Forest Inventory Terms in Canada*. Canadian Forest Inventory Committee, Forestry Canada, Canadian Forest Ministers. 3rd Edition, 1988, page 70.)

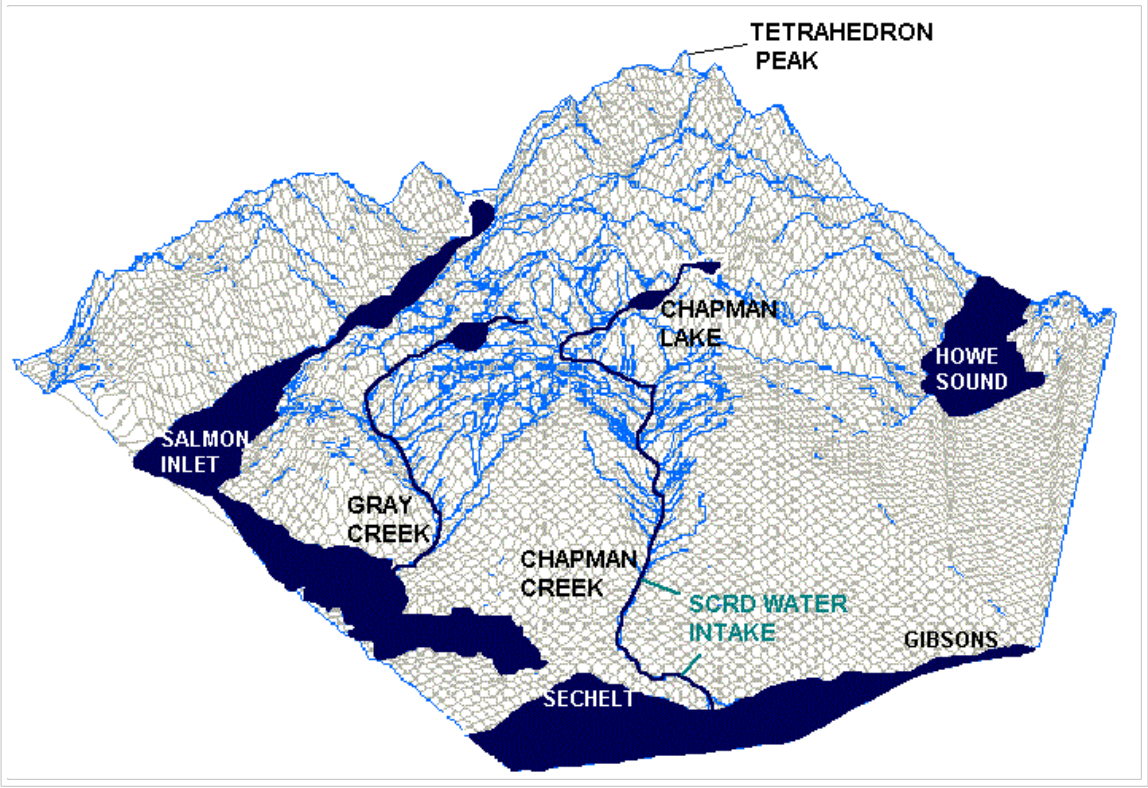
INTRODUCTION

The following commentary follows from a public meeting on the afternoon of Thursday April 2, 1998 which the Sunshine Coast Regional District (SCRD) had with:

- Regional manager Jim McCracken and regional watershed management section head Valerie Cameron from the Ministry of Environment, Lands, and Parks (MOELP);
- and Regional Manager Ken Collingwood and District forester Greg Hemphill from the Ministry of Forests (MoF);

They had come to the Sunshine Coast Regional District regarding the Integrated Watershed Management Plan (IWMP) for Chapman and Gray Creeks, and the upcoming May 2 public referendum on the SCRD's water supply watersheds. There were three important issues raised during the meeting:

1. The MOELP and MoF's insistence on the multiple, or integrated uses, of the community water supply Watershed Reserves.
2. Concerns about liability from resource users.
3. Mineral exploration and development.



1. PUSHING MULTIPLE USE

There are two important statements by government representatives at this meeting. Firstly, Jim McCracken made it very clear in his opening comments to elected representatives and public observers that the SCRD and other B.C. community watersheds (with the exception of a very few, which were not named by McCracken) are subject to an inter-ministerial policy he called multiple use, and not single use:

> There are two things important in this plan from our perspective - it is intended to be a guide for multiple use of the watersheds. The mandate that we entered into this with and that we currently have is integrated use of these watersheds, not single use. (audio transcript)

When Jim McCracken stated that his Ministry's policy of multiple use did not include single use, it was misleading on two counts. First of all, there is no policy on "multiple use". There is, however, a Ministry of Forests policy on "Integrated Resource Management", which states:

> Integrated Resource Management is defined by this Ministry as a process which identifies and considers all resource values, along with social, economic and environmental needs. This process assigns resource use and management emphasis based on present uses, the mix of benefits produced, the continued capability of the land to produce benefits, and social preference.
>
> Integrated resource management produces a mosaic of single, concurrent or sequential uses which may be few or many, and which meet agreed-upon management objectives without necessarily impairing the productivity of the land. The approved pattern or sequence of use(s) provides a desired mix of benefits and may not necessarily provide the greatest financial return or the greatest unit output from any individual use. (Integrated Resource Management on Provincial Forest Lands, Policy, Executive, Ministry of Forests, July 11, 1990.)

The most important policy statement about the IWMP planning process, discusses the "best use" as an option, which can be translated as "single use":

> ... an Integrated Watershed Management Plan must provide a basis for deciding the **best use** or combination of uses for lands within a Community Watershed and how best to manage for those identified uses. This may involve presenting alternative land use patterns that exclude one or more uses on all or a portion of the planning area. (Guidelines for Watershed Management of Crown Lands Used as Community Water Supplies, October 1980, Appendix H, Policy and Procedures for Community Watershed Planning, November 26, 1984. Appendix H was included in the February 1994 Draft IWMP document as Appendix 2, the above quote on page 4, section 2.)

Secondly, both regional heads Jim McCracken and Ken Collingwood repeatedly stated that unless the SCRD accepts the IWMP, which Collingwood emphasized was at the "leading edge" of similar processes for community watersheds in the province, the SCRD's Community Watershed would revert to the status quo under the Forest Practices Code guidelines, guidelines which have been recently altered. The government representatives also implied that continued Forest Renewal B.C. funding, for things like water quality monitoring, may no longer be available should the IWMP plan not be approved.

Many observers at this meeting felt that the SCRD was being threatened into accepting the IWMP. No other options were presented as alternatives to the SCRD.

Chapman and Gray Creeks community watersheds have been severely degraded by extensive logging, poor road construction and maintenance since the late 1960's. The situation will undoubtedly take many more decades to stabilize, and may never properly recover. Controversial forestry practices and related disturbances occurred despite the serious concerns expressed by the SCRD from the early 1970's onwards, and despite the observations and recommendations from a special study on the Chapman watershed (Experimental Project #732). In light of this history, the fact that government agencies are insisting on removing what little timber

remains in the Chapman Creek drainage is odd, particularly after hearing Mr. McCracken state in his opening remarks that the primary goal of his Ministry was to protect the water supply.

Photo of Chapman Creek at mid valley, showing isolated islands of forest amid a denuded landscape. The watershed is scarred with a network of logging roads and numerous landslides.

- How can water quality be "protected", and at whose expense, in Chapman and Gray Creek watersheds as Mr. McCracken stated, in light of this history, while logging is proposed to continue, and the MOELP's promotion of mineral exploration for the first time in the Chapman drainage?
- What is the government's policy on integrated watershed management planning, and why is their policy definition not included in the present IWMP document?
- Why is the Ministry of Environment, Lands, and Parks, the agency that is supposedly there to protectively administer water resources, advocating multiple use of community water supplies?
- Why was there no reference made by government staff to Chapman and Gray Creeks being "watershed reserves", either in IWMP documents, or during the regional representatives' presentation during the April 2nd meeting?

1(a) THE CREATION AND FUNCTION OF WATERSHED RESERVES

One of the key issues of the present debate about the IWMP process for Chapman and Gray Creeks is their status as designated "Watershed Reserves". It is important to understand why and how these Watershed Reserves were created.

In February of 1972 a provincial inter-ministerial Task Force was established by the Environment and Land Use Technical Committee (Deputy Ministers) to address and resolve controversial issues - primarily to do with logging - in the larger community water supply watersheds in British Columbia. The *Task Force on the Multiple Use of Watersheds of Community Water Supplies* was the only committee of its kind and scope in North America.

By 1976, after consulting with affected water users, the Task Force created almost 300 *Land Act* Watershed Reserves throughout the province. In 1980, after three years of reviewing draft reports, the Task Force published the *Guidelines for Watershed Management of Crown Lands Used as Community Water Supplies* (otherwise referred to as the 'Blue Book'), which was sent to all the respective provincial water users. The Blue Book

included a list and six maps denoting all the province's Watershed Reserves. In 1984 an additional document called *Appendix H, Policy and Procedures for Community Watershed Planning* was added to the Blue Book.

The Task Force was created in 1972 because of evolving and persistent objections about logging in community water supply watersheds. One of the most controversial community watershed issues in the very early 1970's was none other than the Chapman Creek drainage, which became the subject of a special review by the Task Force, called Experiment Project Number 732, the Chapman Integrated Resource Management Study. The study identified that there were serious problems affecting the Regional District's water supply as a result of the government permitting Jackson Brothers Logging Co. to log in the Chapman Creek drainage (late 1967 onwards). Despite the concerns, and strong objections of the SCRD and the public, and even after the creation of the Chapman Creek Watershed Reserve in 1975, the Ministries of Forests and Environment permitted the continued degradation of the SCRD's community watershed, a matter which the SCRD related to the Supreme Court in November 1992.

This should not have happened because under the *Land Act*, the legislative policy for Crown lands in B.C., Watershed Reserves are supposed to be withheld from use in favour of water supply. The Ministry of Environment Lands and Parks is the administrative authority over most Watershed Reserves. Since the mid-1970's, this Ministry has gone through a series of name changes, from Lands, Forests, and Water Resources, to the Ministry of Lands, Parks, and Housing, to Lands and Forests, and to the present ministry. Prior to recent changes to the numeric order of the *Land Act*, the function of Watershed Reserves were originally referred to in Sections 11, 12, and 13 of the Act. According to Ministry of Lands, Parks, and Housing's May 1983 policy definitions on community Watershed Reserves, which have continued to the present day, there are three classifications:

> (a) "Order in Council (O.I.C.) Reserve" means a reserve established by authority of the Lieutenant Governor in Council to withdraw Crown land from alienation in recognition of a special value. It is established pursuant to Section 11 of the Land Act and can be canceled or amended only by another order in council.
>
> (b) "Map Reserve" means a reserve, established by the Ministry on behalf of the Minister, to temporarily withdraw or hold Crown land from disposition. It is established pursuant to Section 12 of the Land Act, and places a formal reserve on the records of the Ministry.
>
> (c) "Land Act Designation" means withdrawal of Crown Land from all dispositions under the Land Act except for a designated use(s) and any associated uses(s). It is established pursuant to Section 13 of the Land Act when the Minister considers it advisable in the public interest to designate the most desirable use of an area of Crown Land.

Community water supply watersheds were initially classified according to size:

> Category I - an area less than 1,554 hectares (6 square miles)
> Category II - an area between 1,554 hectares and 9,065 hectares
> Category III - an area between 9,065 and 51,800 hectares

Both Chapman (6450 hectares) and Gray (4030 hectares) are Category II community watersheds.

Each of the three categories has specific legislated protections, which are most recently reinforced and described in the Ministry of Lands 1994 policy on Land Use Programs.

> (d) The following types of administrative instruments can be used in addition to an initial notation of interest for the protection of Crown land within identified community water supply areas:
> (i) Category I Watersheds may be protected by an Order In Council reserve, a map reserve, or by a transfer of administration.
> (ii) Category II Watersheds may be protected by the establishment of map reserves or Crown Land

designations over the entire watershed, or by the use of reserves or Land Act designations over critical or sensitive areas.
(iii) Category III Watersheds may be protected by the use of map reserves over critical or sensitive areas. (Administrative Instruments, Section 1.4.0101-d, May 1, 1983)

In addition to these classifications, designations under the *Land Act* were used to provide various levels of protection depending upon the sensitivity of the watersheds to use. The Chapman Creek watershed became Section 12 Watershed Reserve on July 22, 1975, and Gray Creek watershed a Section 12 Watershed Reserve on March 3, 1987.

Applications for all resource uses within Section 11 Order-in-Councils and Section 12 Watershed Map Reserves are to be immediately rejected by the Ministry of Environment, as they are to be processed in accordance with the administrative instruments in place. Under the policy governing Community Watershed Reserves it is specifically stated that:

> Applications are not accepted in watersheds which have been reserved from alienation under Section 11 or 12 of the Land Act, with the exception of those for temporary occupations (Section 10) an statutory rights of way or easements (Section 37), provided that such uses are considered compatible with the primary purpose of watersheds. (Section 1.4.0101, 3.3b, Administrative Instruments, May 1, 1983; ibid., B.C. Lands policy, volume 3, chapter 3.8, March 3, 1994)

1(b) THE APPARENT ABROGATION OF WATERSHED RESERVES

When inquiries about the legal status and administrative requirements about the SCRD's Watershed Reserves were raised by members of the public to the Ministry of Forests during the Tetrahedron Local Resource Use Plan in 1992 (see below), ministry staff incorrectly stated that a Watershed Reserve was merely a "red flag" to alert ministry representatives about its relative importance. According to members of the public, local ministry of Environment staff were not even aware of what a Watershed Reserve was and what their Ministry's primary responsibilities associated with them were. Why *Land Act* Section 12 (now 16) Watershed Reserves were not known by ministry staff, who are responsible for their management, is at the heart of an inter-ministerial cover-up apparently meant to quietly extinguish the history and purpose of Watershed Reserves.

1(b)-1. The 1992 Community Watershed Guidelines Committee

What we do know about this transition process - from Watershed Reserves actively administrated to one of neglect, ignorance, and denial - is that sometime during late 1992 the *Community Watershed Guidelines Committee* was established to examine issues relating to community water supply watersheds. This Committee coordinated a list of some 600 community watersheds to be governed under the guidelines of the 1994 *Forest Practices Code*.

Without formal consultation with communities in British Columbia (such as the Sunshine Coast Regional District), and without publicly announcing its intentions, government representatives quietly 'integrated' the *Land Act* Watershed Reserves with the remaining and newly designated Forest Practices Code community watersheds. Intriguingly, and in sync with this process, there is not one passing reference to "Watershed Reserves" in the October 1996 Forest Practices Code Community Watershed Guidebook. This is also confirmed by comparing the 1980 Blue Book Watershed Reserves list (noted above) with the Ministry of Environment's list of Forest Practices Code community watersheds available on the internet, wherein there is also no mention of Watershed Reserves. This is substantiated by the Crown's submission to Supreme Court Justice Paris on June 23, 1997, where the Crown states that the Bartlett Creek Watershed Reserve is "considered a community watershed" "pursuant to s.41 of the *Forest Practices Code Act*".

1(b)-2. Where did those words go?

With regard to the Chapman and Gray Creek drainages, one of the few recent references by government regarding the existence of Watershed Reserves is contained in a MoF Chapman Creek cutting permit:

> This permit lies within the Chapman Creek **Watershed Reserve**, and the permittee shall observe all laws and regulations ... respecting sanitation and the protection of the purity of waters which are applicable to the lands covered by this permit and also comply with any requirements which may be made by the Minister of Health. (Richard Brouwer, InterFor forester, affidavit to the Supreme Court, May 17, 1993, Exhibit B, Forest Licence A19220, Cutting Permit 417, July 23, 1992, section 10.02j.)

In the SCRD's October 30, 1992 *Statement of Claim* to the Supreme Court of Canada, wherein the SCRD intended to sue the Ministry of Forests and Interfor for ruining the Chapman watershed, they also make similar reference:

> 4. The Regional District holds a valid and lawful water license issued pursuant to the laws of the Province of British Columbia by the Crown Provincial and a **watershed reserve** on Chapman and Gray Creeks....

As part of the government's responsibility for Section 12 Watershed Reserves, the SCRD noted in its Statement of Claim that:

> 6. Since approximately 1974, the Crown Provincial has represented to the Regional District, which representations the Regional District has relied on to its detriment in establishing and extending its water system, that an integrated watershed management plan ("I.W.M.P.") would be established .... Those representations have not been complied with or honoured by the Crown Provincial.

There have been two recent and separate planning processes regarding the Chapman and Gray Creek watersheds. One, a planning process, the Tetrahedron Land Resource Use Plan (LRUP), was focused on the upper watershed of Chapman and Gray Creeks, in the Mountain Hemlock and alpine areas. Initially, the impetus for the LRUP was local recreation, but local participants expanded the scope to include water supply, among other resource values.

The second planning process is the Chapman/Gray Integrated Watershed Management Plan (IWMP), which began in 1990. During the IWMP process, members of the public were excluded from observing the meetings, despite an open meeting commitment in the LRUP Terms of Reference. The IWMP documents provide a brief history of the SCRD's water supply, yet there is oddly no account of the establishment of the two Watershed Reserves. In the 1994 Draft document, not only is there no mention or definition of "Watershed Reserves" on Chapman and Gray Creeks, there is also no reference to the Tetrahedron Water Sub-Committee final report, wherein the Watershed Reserves are discussed. This is also the case in the second IWMP draft report of 1996. Although there is recognition of the 1980 Community Watersheds Guidelines document, which describes Watershed Reserves, there is no mention of those two words, even though the 1980 Guidelines document lists Chapman Creek as one.

1(b)-3. The Paris decision

On July 8, 1997, Supreme Court Justice Paris ruled on the Valhalla Wilderness Society's Petition, by dismissing the existence of two Category I Watershed Reserves in the Slocan Valley near New Denver. The Valhalla Society submitted the Petition after learning about logging proposals scheduled for these Watershed Reserves, to argue that the Ministry of Forests had no prior right to log in these areas without a proper consultation process with the affected public users. Based upon a government submission and affidavits, Justice Paris ruled that:

(a) the two Watershed Reserves **were never formally created;** and
(b) because these watersheds are located within designated Provincial Forests, the Ministry of Forests has jurisdiction.

It seems as though Justice Paris was provided only partial evidence on the formal establishment of these two Watershed Reserves. The Surveyor General stated in his affidavit of June 19, 1997 that there was no documentation to indicate that they had been established as Watershed Reserves. The Surveyor General failed to file subsequent records which show that the reserves had been established:

> The government Respondents rely on the Affidavit of Charles Salmon, who is the Surveyor General of British Columbia pursuant to the *Land Act*. (Her Majesty the Queen, et al., June 23, 1997, page 32)
>
> The evidence is clear that such a reserve from disposition did not occur. (Ibid.)

If such was truly the case, and the Task Force did not reserve Mt. Chief and Bartlett Creek, then why are the two Category I Watershed Reserves, which are reserved for "maximum protective measures", clearly registered in three locations:

(1) on the 1980 Guidelines Appendix F Map Sheets;
(2) clearly notated in Appendix G computer print-out sheets of all September 1, 1979 registered Watershed Reserves, as #3d-Mountain Chief Creek, and #4-Bartlett Creek, both 100% Crown Reserved, in the Nelson Water District;
(3) on the present Ministry of Crown Lands reference map sheet 82F.094 as Watershed Reserve # 0193763 (Mt. Chief Ck.) and #0320932 (Bartlett Ck.).

The Surveyor General stated to Justice Paris in sections 5, 6d, and 8 of his affidavit, that in his opinion Watershed Reserves shown on the Ministry of Crown Lands reference maps, "have neither been reserved nor withdrawn from disposition pursuant to provisions of the Land Act". The MOF affidavits acknowledge Watershed Reserve boundaries, but state categorically that they weren't placed pursuant to the *Land Act*:

> ...the Forest Atlas Reference Map does contain on it a notation with regard to watershed reserves in the area around Bartlett Creek and Mountain Chief Creek. These reserves however were not placed pursuant to the Land Act. (Her Majesty the Queen, et al., June 23, 1997, page 17)

Though there is an acknowledgement that the Watershed Reserves are delineated on official governmental maps, both the Surveyor General and the Attorney General provided opinions that they weren't reserved under the *Land Act.* This, however, gives rise to the question, why are the Watershed Reserves listed with all the other *Land Act* reserves in Appendix G of the 1980 Blue Book? The following seven excerpts suggest that the opinions provided to Justice Paris are ill-founded:

> We acknowledge your memo ... regarding the requests you made for Map Reserves for community watersheds within gazetted Forest Reserves.... you will be receiving advice that they have been noted in our maps and records. (R.W. Robbins, Timber Division, to J.D. Watts, Chairman, Task Force on Community Watersheds, May 2, 1975)
>
> **Progress Report.** A) Map Reserves. Requests for map reserves were sent to the Lands Service by the Water Resources Service by August of 1973 covering about 300 watershed areas serving about 215 water users throughout the Province. Virtually all the reserve requests, including those areas located in Provincial Forests, have now been established.... The establishment of the map reserves has been the most effective administrative procedure regarding proposals for Crown land use that has been adopted as a result of the Task Force activities. (Task Force meeting Agenda, Appendix A, Background Information and Progress Report, August 16, 1976)

> During the period over which this task has been carried out, much protective work within community watersheds has been initiated along the lines set out in the report, through the cooperation of the Lands Management Branch, the Forest Service and the Department of Agriculture.... In order to meet the Terms of Reference ("1. To investigate the practicality of obtaining wholesome water supply from streams ...."), map reserves were placed on all community watersheds. (J.D. Watts, chair of the Task Force, to the Chairman of the Evironmental and Land Use Committee, May 11, 1978)
>
> In the management of forest and range lands, the Ministry of Forests should be fully aware of the constraints set out for "community" watersheds. These areas have all been defined and placed in Forests records as map reserves. The Ministry of Forests is also aware of the constraints of the Guidelines prepared by the Task Force on Multiple Use of Community Water Supplies, being a member of the Task Force. (Water Investigations Branch submission to the Ministry of Forests Forest Resource Analysis Report, 1979, page 5)
>
> While the study was under way, the Task Force considered it prudent to place reserves on all known community watersheds in order to give some protection to the areas until final recommendations could be developed.... Individual files were set up for each watershed and the boundaries of the watersheds were recorded on our reference maps. These reserve files are now in our regional offices. When I telephoned Mr. Keenan on the 25th of November he advised me that 285 watershed reserves were established during approximately an 18 month period in 1973-74... (Ministry of Lands, Parks and Housing, Memorandum, to the Director of Surveys and Land Records, November 29, 1982)
>
> Map Reserves or Notations of Interest are in place for about 300 community water supply watersheds as listed in Appendix G of the "Guidelines for Watershed Management of Crown Lands Used as Community Water Supplies", October 1980. (Ministry of Environment, Water Management Branch, Memorandum, June 28, 1990)
>
> Community Watersheds are areas that organized groups or individuals utilize for their domestic water supply. As such these areas are to be protected, where possible, from development that would adversely impact the water quality. Currently there are approximately 300 community watersheds protected under the Land Act. (Ministry of Environment, Water Management Branch, Memorandum, July 17, 1990)

Justice Paris ruled that, even if the two New Denver area Watershed Reserves had been established under the appropriate sections of the Land Act, they would not prevent the Ministry of Forests from granting forest harvesting permits within the reserves. Justice Paris argued that the Minister of the Environment (Crown Lands Ministry) has no jurisdiction within designated Provincial Forests.

Contradicting Justice Paris' argument, a protocol policy between the Ministry of Environment, Lands, and Parks and the Ministry clearly demonstrates the authority which the Minister of Environment, Lands, and Parks has on this issue:

> 5.9. "Land Act Reserve" means a map reserve, established by BC Lands to temporarily withdraw or withold Crown land from disposition under the Land Act. It is established pursuant to Section 12 of the Land Act, and is placed on the official records of both ministries. (Protocol on Crown Land Adminstration and Forestry Activity between BC Forests Service and BC Lands, June 16, 1993)

This information does not appear to have been submitted as evidence to Justice Paris.

Furthermore, Justice Paris was unable to understand the hierarchy of Crown Land administration and governing legislation over *Land Act* reserves in Provincial Forests:

> The reason that the watersheds in question were not reserved or withdrawn from disposition pursuant to the Land Act becomes apparent if one tracks the legislative scheme relating to the administration of the

> harvesting of timber on Crown lands and the relationship between the Land Act, the Forest Act and the Ministry of Forests Act. (Paris, Section 12.)

Justice Paris based his opinion solely upon the Attorney General Department's "interpretation" of the *Land Act*, which questioned the authority of the *Land Act* over other provincial Acts by including "mights", "ifs", and "could haves" in its argument:

> Other statutes however **might allow** the Crown.... **If** s.15 of the Land Act **had been intended** ... **it could have**.... (Her Majesty the Queen, et al., June 23, 1997, p.33)

Justice Paris, in sections 13 to 19 of his Judgment, simply recites from the *Land Act*, the *Forest Act*, and back to the *Land Act*, without supportive commentary or explanation, and concludes:

> Section 16, therefore, clearly does not supercede the provisions of the Forest Act and the Ministry of Forests Act nor permit the Minister under the Land Act to withdraw lands from disposition under the Forest Act, dispositions such as forest licences and cutting and road permits. (Paris, Section 19)

Justice Paris then summarizes by stating that "that is probably sufficient to dispose of the issue", and comes to the unprecedented conclusion, that:

> The result of the above is that the Minister acting under the Land Act has no administrative power over lands in Provincial forests .... Only the Minister of Forests has that power. Specifically, there is no power under s.16 of the Land Act to withdraw Crown land from disposition by way of forest harvesting licences or cutting or road permits, even for the purpose of water reserves. Accordingly, the letter of Mr. Marr of June 26, 1973 did not have that effect legally. (Paris, Section 22)

It is quite evident from Justice Paris' decision, that he was unaware of the legislative foundation of the Forest Act and its relationship to the *Land Act*. For many decades the Department of Lands, Forests, and Water Resources was administered by one Minister, not two or three. It was the Deputy Minister of Lands, the Deputy Minister of Forests, and the Deputy Minister of Water Resources who headed the various divisions of 'the Department'. The "Minister", was responsible for all three divisions and it is illogical to assume, as Justice Paris does in his reference to Section 33 of the Forest Act, that the administration of those separate mandates remained with a Minister of Forests, when 'the Department' was dissolved into various components. The Minister, then, obviously had more than one mandate. Justice Paris' misunderstanding of this is significant in two respects.

Firstly, when Justice Paris quotes from section 33(1-5) of the 1948/1958 *Forest Act*:

> (1). The Minister shall cause an examination of Crown lands to be made by the Forest Service for the purpose of delimitating the area of such lands that is desirable to reserve for the perpetual growing of timber, and as a result of the examination the Lieutenant Governor in Council may, by proclamation, constitute any such area a permanent forest reserve.
> (2). Upon such Proclamation all Crown land included within boundaries of the area, including land that becomes Crown land subsequent to the date of the Proclamation, shall be withdrawn from sale, settlement, and occupancy under the provisions of the Land Act or Taxation Act, in respect of the Mineral Act, Placer-mining Act, Coal Act, and Petroleum and Natural Gas Act shall be subject to such conditions as the Lieutenant Governor in Council imposes.
> (3). After such Proclamation no Crown land within the boundaries of the forest reserve shall be sold, leased or otherwise disposed of, or be located or settled upon, an no person shall use or occupy any part of the land except under the provisions of this Act or of the Regulations.
> (4) Forest reserves except lands included in a tree-farm licence shall be under the control and management of the Minster for the maintenance of the timber growing thereon, for the protection of the water-supply, and for the prevention of tresspass thereon. (**Emphasis by underlining** as added by Justice Paris)

Paris fails to understand that the same Minister and ministry which presided over Crown Lands, also presided over the province's forests.

The ministerial correspondence from the early 1970's, submitted by the Surveyor General to Justice Paris, does not refer to separate Minister of Forests as Justice Paris claims in Section 22 of his Judgment, it refers to the Minister of Lands, Forests, and Water Resources. Justice Paris is mistaken in his assumption:

> that the Minister acting under the Land Act has no administrative power over lands in Provincial forests .... Only the Minister of Forests has that power .... Accordingly, the letter of Mr. Marr of June 26, 1973 did not have that effect legally.

He was unaware of the powers of the Minister of Lands, Forests, and Water Resources, who presided over three ministries at that time. Very clearly, one and the same Minister withdrew Crown Lands from disposition in Provincial Forests to be reserved for community water supply purposes.

Finally, there is a clear difference, in what Justice Paris refers to in section 21 of his ruling, between the administration of *Forest Practices Code* community watersheds by District forest managers, and the administration of *Land Act* Watershed Reserves under the Minister of the Environment, Lands, and Parks, which he failed to distinguish. Justice Paris incorrectly assumes that there are no *Land Act* Watershed Reserves within Provincial Forests, and that the *Forest Practices Code* of British Columbia Act provides District Forest Managers with discretionary powers to decide issues for **ALL** community watershed water supplies:

> ...concerns about community watersheds be dealt with by persons applying for harvesting licenses to the satisfaction of the District Forest Managers.

Both of Justice Paris' conclusions, which are based upon insufficient evidence and a rather bold interpretation of the legislative scheme, are incorrect and are both unfortunately being interpreted by our government, et. al., as a precedent, a matter which could:

> **1.** create profound repercussions for the Ministry of Environment, Lands, and Parks, and their legitimate jurisdiction within Provincial Forests;
> **2.** create considerable legal difficulties.

1(b)-4. Citizens become informed.

In the middle of March 1998, citizens from the Sunshine Coast area began distributing information to the larger public on the upcoming referendum on the IWMP process, scheduled for May 2, 1998. Part of the information in the *Chapman and Gray Creeks Watershed Referendum Briefing Documents*, prepared by a local group called the Water First Committee, contained much information on the status of Chapman and Gray Creeks as Watershed Reserves:

> The unstable nature of our watersheds has been understood since the completion of the Chapman Creek Integrated Resource Management Study in 1974. In 1975, a Watershed Reserve under Section 12 of the Land Act was placed over the Chapman drainage. In 1987 a Section 12 Watershed Reserve was placed over Gray Creek. The intent of these designations is to protect water quality, quantity and timing of flows for the communities of the lower Sunshine Coast. This intent has been circumvented by the Ministry of Forests.
>
> The current Integrated Watershed Management Plan (IWMP) was developed behind closed doors, without public participation. The document offers no explanation of how the watershed reserves came to be in their current degraded state and assigns no authority of any kind to the communities that depend on them.

It has been argued that without the approval of the IWMP, the community watersheds will be managed to the "lesser" standards of the Forest Practices Code (FPC). Although this rationale does acknowledge serious limitations in the FPC, it does not recognize the rules governing Section 12 Watershed Reserve designations which can only be changed by higher level plans. This does not include the FPC, but would include the IWMP if approved. (Page 1 of 10)

It is currently provincial policy to log in designated community watersheds. Period. No exceptions. The power of Watershed Reserves to protect water values in British Columbia has been systematically circumvented by the MOF to allow community watersheds to be used for short-term timber supply relief. This conflict has made the Chapman/Gray Creeks IWMP dysfunctional. (Page 2 of 10)

The above Tenure Inquiry document, from Crown Lands Branch of the Ministry of Environment, Lands and Parks (MELP), describes the formal status of the land in the Chapman drainage. Essentially translated, it records that these lands are reserved under Section 12 (renumbered Section 16) of the *Land Act* for use as a community watershed, and that the file is active and will remain so until July 22, 9999. As well, it shows that the "owner" of the Watershed Reserve is MELP and that administrative authority is vested in Watershed Management Branch of MELP. Also note that cutting licences and clearing activities are not allowed. Various policy of the Ministries of Forests and Environment, Lands and Parks and their agencies confirm the existence and ownership of the Land Act watershed reserves.

This raises the question, by what right did the Ministry of Forests continue to approve road building and logging within the Watershed Reserves? During the spring and winter of 1994, members of the Tetrahedron Alliance and the Tetrahedron LRUP used Freedom of Information Act to try to find answers to this perplexing question. No explanation was forthcoming and the MOF decided to formally "neither confirm nor deny the existence of the documentation" which the LRUP sought. This strongly suggests that the activities of the MOF in the Watershed Reserves, since 1975 in Chapman Creek and 1987 in Gray Creek, have not been in compliance with the Land Act. Adoption of the Chapman/Gray IWMP would eliminate the existing terms and conditions of the original Watershed Reserve designations and replace them with industrial-use guidelines under the authority of the Ministry of Forests. (Page 4 of 10)

1(b)-5. Ministry of Environment Regional staff defend the Paris Decision

At the first and second of three SCRD scheduled public 'open house' meetings in Gibsons on April 4, 1998, and in Sechelt on April 14, 1998, meetings which were designed to allow members of the public some last minute opportunity to discuss and review aspects of the IWMP before the May 2nd referendum, there was a debate by government representatives about the status of the two watersheds as Watershed Reserves.

A question asked by a member of the public at the April 4 meeting, was "what was the mechanism that allowed for clearcutting in the Watershed Reserve?" Valerie Cameron, the Section Head for Watershed Management, with the Ministry of Environment, Lands, and Parks (the only government representative at the April 4 meeting), responded to the question by quickly referring to the July 8, 1997 Justice Paris decision, described above, and commented that the Ministry of Forests had every right to log in the Watershed Reserves. What prompted Cameron to immediately refer to the Paris Decision? Why did Cameron not simply discuss the legislation and her ministry's administrative responsibilities for Watershed Reserves rather than cite the Paris decision?

Valerie Cameron repeated her interpretation of Justice Paris' decision about Watershed Reserves and the *Land Act* at the second open house meeting in Sechelt on April 14th. Cameron volunteered the information that the *Land Act* has no power over logging and mining in designated Watershed Reserves, that there was no constraint on the Ministry of Forests or the Ministry of Mines, within the *Land Act* Section 16 Reserves.

It seems increasingly obvious, especially after the Water First Committee's strong public statements about Watershed Reserves, which government staff no doubt carefully reviewed, that the Ministry of Environment is becoming defensive about the existence of Watershed Reserves on Chapman and Gray Creeks.

2. PROTECTING COMMUNITY WATERSHEDS FROM MINING DEVELOPMENT.

The regional ministerial representatives provided no alternatives to the SCRD on April 2nd about the possibility of mining in their water supply watersheds, a matter which should be of serious concern to the public.

The most important precedent about mining in a community water supply watershed was established by the Greater Vancouver Water District in 1930. As an extension of their initial policy of "single use" protection, the provincial government agreed to pass legislation to outlaw mineral exploration in the Greater Vancouver watersheds.

> His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:
> 1. This Act may be cited as the "Greater Vancouver Watershed Mineral Reserve Act."
> 3. The watershed area is reserved from location and acquisition under the "Mineral Act" and the "Placer-mining Act." (B.C. Statutes, Chapter 23, 1930)

3. LIABILITY

During the April 2nd meeting, SCRD Board members repeatedly asked the Regional Ministry representatives about liability and future industrial use in the two watersheds. Both Jim McCracken and Valerie Cameron discussed how bonds would be mandatory for future proposed mineral exploration and development, but repeatedly avoided extending the discussion on liability related to logging. When pressed on how quickly mitigation efforts and payment would be conducted by those responsible for an accident related to impacts on water quality and to the water intake and distribution system, the ministry officials could offer no guarantees.

Concerns about liability from water users in British Columbia have come up for discussion for many decades, but without proper resolution. These matters have been repeatedly raised through presentations and resolutions of frustrated municipalities and water users at annual meetings of the Union of B.C. Municipalities, particularly in the late 1980's. Those discussions always revolved around liability associated with logging. This matter became so pressing in 1989 that the Social Credit government formed the *Inter-Agency Watershed Planning Committee* in 1990, to deal specifically with community watersheds. The Inter-Agency Committee was succeeded by the 1992 *Community Watershed Guidelines Committee*, mentioned above.

The review of liability related to logging began in August 1989 and was examined through a number of drafts by the Ministry of Forests Integrated Resources Branch called *Reparation of Damage to Water Supplies and Delivery Systems*:

> **PURPOSE**: The purpose of this policy is to clarify responsibilities and to identify mechanisms for reparation of damage to water supplies or delivery systems necessitated as a result of timber harvesting or range or recreation activities.
>
> **SCOPE OF APPLICATION**: This policy expands upon the management precepts stated in the publication "Guidelines For Watershed Management of Crown Lands Used As Community Water Supplies", Ministry of Environment and Parks, 1980, or any subsequent revision.

RESPONSIBILITIES:
Forest Licensee/Range Tenure Holder:
3.0 - The forest licensee or range tenure holder is responsible for rectifying or compensating, as outlined in the associated contingency plan.

4.0 - In the absence of other forms of funding the forest licensee or range tenure holder will be required to post bonds to cover, in whole or in part, the costs of remedial action to water supplies and water delivery systems required during the term of the forest licence cutting authority, or range tenure document. In the case of the forest license and cutting authority this provision will extend past the term of the license to include the period of time required for the next crop of trees to reach the "free growing" stage. (Ministry Of Forests Policy, 3rd Draft Proposal, Integrated Resources Branch, December 18, 1989)

Chapman Creek watershed. One of hundreds of landslides from forestry practices.
Chapman Creek channel at bottom of photo.

The Ministry of Environment, Lands, and Parks, as the landlord agency of B.C.'s Watershed Reserves, needs to be honest about all the available options for protection of water supplies, not only for the SCRD, but for all water supply users.