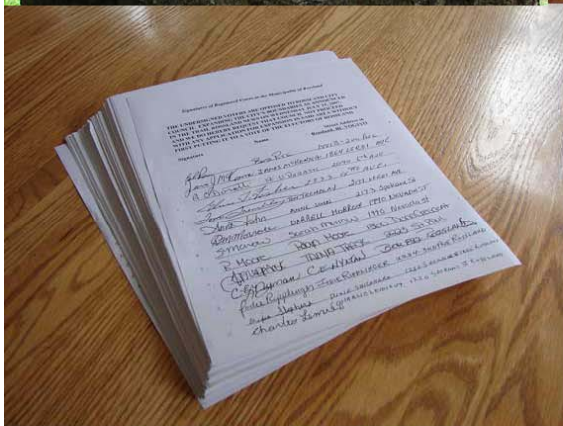


THE TOPPING CREEK CRISIS:

COMMUNITY RESISTANCE AGAINST RESORT RESIDENTIAL AND GOLF DEVELOPMENT PROPOSALS IN ROSSLAND CITY'S COMMUNITY WATERSHED RESERVE

A Preliminary Report, By Will Koop,
B.C. Tap Water Alliance, July 9, 2008



Cover page explanatory: photos and collage compilation by Will Koop

Top left: No Trespassing signage located immediately below the Topping Creek watershed drinking water intake.

Top right: Rossland City Council meeting, June 23, 2008. City Administrator, Ron Campbell to left, and Mayor Gordon Smith, to right. A photo of Her Majesty, Queen Elizabeth, presides over the Mayor, Administrator, and Councilors, watching over the debates and decisions by Council from her muted, framed vantage point. A June 17th email from the Mayor to Ron Campbell, six days prior to the meeting photo, was leaked to the Rossland Record electronic newspaper and its contents published on July 4, 2008, concerning directives from the Mayor to help control the public and Councilors, and to steer the proposed controversial developments in Topping Creek watershed forward.

Middle left: One of two recent petitions, each signed by over 900 Rossland City residents, opposed to the resort housing and golf course developments in the Topping Creek watershed reserve.

Middle right: June 23, 2008 photo of resort housing development, Creekside Condos, by developer Gideon Wiseman, located directly above the Topping Creek drinking water intake, and a few meters directly north and adjacent to Topping Creek and next to the Blues Eyes wetland. On June 26, 2008, the City of Rossland issued a *Stop Work Order* to Wiseman's housing development extension plans. According to Rosslanders, Wiseman had been conducting yet another excavation operation in the area without an authorized permit by Rossland City.

Bottom left: lower portion of Topping Creek, June 23, 2008.

Bottom right: 7 p.m, June 24, 2008. Rossland citizens march and protest against the resort and golf development along Columbia Street to the location of a public information session held at the Prestige Inn by Red Mountain Ventures.

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PREFACE

The release of this preliminary report by the B.C. Tap Water Alliance arrives at a critical moment. It constitutes an informational response and hopefully helpful aid to an imminent decision scheduled for July 14, 2008 by Rossland City Council to perhaps grant approval for the initiation of highly controversial resort and golf course development proposals within a significant portion of Rossland's primary drinking watershed, the Topping Creek Category One *Land Act* Watershed Reserve. Such a decision would, among other related matters, effectively impair and remove much, or ultimately all, of Rossland's critical drinking water and distribution needs within the licensed and reserved boundary of the Topping Creek watershed, a source of drinking water for over one hundred years.

The writing of this report occurred intermittently and intensely over a period of nine holiday days, the quickest report ever written by the author. Though a foreboding and challenging task, amidst the temptations of summer weather, the information and more critical issues were carefully analyzed, summarized, and documented.

From Monday, June 23, to Friday June 27, 2008, the author visited Rossland on his (supposed) holidays to learn and witness events about this controversy. An invitation to do so came about after Rosslanders heard the author on a CBC radio program during the early afternoon of June 4. There, he was heard criticizing the Minister of Environment's new provincial Water Plan vision announced the previous day, restating again the B.C. Tap Water Alliance's concerns about drinking watershed protection, in the continued, disappointing contrary absence of provincial government support. During this short tour to Rossland, reams of information were collected, and many relevant and probing questions were asked and many answered during a number of interviews.

There was the most fortunate opportunity to meet and chew the fat with Andre Carrel, a former administrator with the City of Rossland (1984-2000, and briefly in 2006). Carrel is the author of *Citizens' Hall – Making Local Democracy Work*, in which is described his lasting achievement, the adoption of his report that led the City of Rossland to adopt revolutionary change of its Municipal governance community accountability structure (Constitution Bylaw No. 1728, December 10, 1990), powers which were, unfortunately, rescinded by a later Council in 2004 ultimately forcing the present confrontational issue discussed in this report.

The philosophy on which Rossland's constitution is built is that the owner of the municipal corporation is the citizenry, and that politicians are accountable to their citizenry for their actions (or lack thereof). (Page 32)

After perusing through relevant sections of Carrel's book, I discovered the strange and lamentable irony behind the present day crisis in Topping Creek, a conflict which may in some way help kindle and incite communities throughout British Columbia to revisit and implement the spirit of Rossland's lost Constitution (binding referendum) Bylaw.

According to three separate accounts from long-term residents, this is the first occasion in recent memory (forty years, or longer) that Rosslanders have united to speak out and demonstrate about a critical issue for their community – a significant fact in and of itself – and in opposition to City Council which has seemingly sought to bypass public disapproval in favor of the developer.

OPENING QUOTATIONS

The city's primary concern is the protection of its water supply.

(Rossland City policy, July 14, 1971)

City Council has decided to take whatever steps are necessary to protect the water supply to the City.

(Correspondence from Rossland City to the Department of Highways, April 15, 1977)

Our primary concern is the protection of the City of Rossland's domestic water supply.... From a public health point of view we would thus recommend against development of a residential subdivision.

(W.D. Koberstein, C.P.H.I, Public Health Inspector, West Kootenay Health Unit, May 17, 1977)

Since no agencies in the referral process appear to be in accord with the proposed development, it would seem appropriate that it should not be approved.

(Correspondence to Associate Deputy Minister of Public Health Programs K.I.G. Benson, Ministry of Health, re Topping Creek subdivision proposal, from Associate Deputy Minister of Environment, G.E. Simmons, July 27, 1977)

I think everyone is in agreement here, is that we don't want a golf course resort in our watershed If we don't say NO to this development, what will we say NO to?

(Shannon Plamondon, Rossland mother, moments before an organized march down Columbia Street against resort and golf course development in Topping Creek watershed, June 24, 2008)

If a big company had bought the ski hill, you would have a faster pace on the mountain. But, in my opinion, you would have a lot of unhappy (local) people in terms of lack of respect for the community's heritage. There has to be a balance. Sustainable real estate sales have to be built on sustainable investment in the mountain.

(Howard Katkov quote, *Rossland approves more condos at Red after Katkov visit*, Trail Daily Times, February 1, 2006)

We have to ask ourselves: Are we communicating effectively? Are we listening and paying attention to the needs of Rosslanders? We really need to reach out and ensure that we are involved and in touch with the broad spectrum of the community.... The current Official Community Plan dates from a time when there wasn't much growth. We have to look at where we want to be in 10 or 15 years. What are our core values and how do we preserve those? (Mayoral candidate Gordon Smith, *Unite behind City's Vision*, Trail Daily Times, November 10, 2005)

EXECUTIVE SUMMARY

In the present public controversy over development proposals in Rossland City's Topping Creek drinking Watershed Reserve, there is, oddly, no perspective provided on the history of Rossland City's strong and consistent policy against such developments. In this sense, there is the real possibility that the City's watershed protection policy is being sidelined in order to manage public concerns in favor of development.

This preliminary report by the B.C. Tap Water Alliance makes a number of critical findings:

1. From limited documents discovered at this time, Topping Creek is a Crown community watershed Reserve, referred to in Rossland City correspondence as early as 1971. The significance of this fact, which was also documented in reports with the City of Rossland up until 1993, and indexed in an October 1980 provincial government document, is that Crown Reserves are legislative entities, mechanisms established under the *Land Act* to protect Crown lands from dispositions and alienations within established Reserve boundaries. The Crown Map Reserve over Topping Creek is unaccounted for in the present day development application reports by the proponent, unaccounted for in recent Rossland City reports, and unaccounted for in the Ministry of Tourism's status records responsible for coordinating the present development application.

As described in the author's 2006 book, *From Wisdom to Tyranny: A History of British Columbia's Drinking Watershed Reserves*, provincial government agencies, primarily the Ministry of Forests, were responsible for ignoring the Reserves and their legislative provisions in Crown land use planning, as well as quietly extinguishing or demoting some. As stated in an October, 1980 Guidelines document, specifically written for the provincial Reserves, the Category One Reserves, such as Topping Creek, were to be provided with "maximum protection" as agreed to by all provincial agencies involved in a provincial review task force.

2. From limited documents discovered, Rossland City Council established a formal policy as early as 1971, which it addressed to government agencies, against any and all commercial developments in its drinking watersheds, specifically Topping Creek. Furthermore, City Council had considered the purchase of the much contended private lands above the Topping Creek domestic intake to secure such protection. Unfortunately, those lands somehow remained in private hands, forcing the City to have "the area be zoned to prevent construction or access without the permission of the City of Rossland."

3. In 1975 and 1977, two separate proposals were made for residential development within the private lands in the lower Topping Creek Watershed. Both Rossland City Council and provincial agencies strongly opposed the development proposals.

4. Following the 1980 release of the *Red Mountain Resort Area Master Plan*, proposals for ski-related and resort developments within Topping Creek were put aside.

5. Rossland's former Constitution Bylaw, which empowered its citizenry with a democratic tool to make referendums binding, was repealed about four years ago because of two legal opinions to the City which found the bylaw in contravention of provincial municipal legislation. Had the Bylaw been in force today, the present development issue, and its relationship with OCP and zoning amendments, opposed by Rossland residents, would be challenged and put to referendum. New provincial legislation should be tabled and enacted to provide its citizenry with constitutional clout that reflects the spirit and intent of Rossland City Constitutional Bylaw number 1728 (December 10, 1990). In its sorry absence, Rossland Council must be held to account and listen to its constituents and forego development proposals in Topping Creek.

6. Because of the implications of public records not reviewed or provided for public scrutiny, as some of those, for example, provided in this report, it is critical that all City and provincial records pertaining to the Topping Creek watershed, and its Reserve status, over time be thoroughly retrieved and provided for public review, and that City Council provide a sufficient period of time for such public review, as a necessary requirement before City Council convenes to make a decision about the proponent's application.

1. INTRODUCTION

In the history of drinking water protection in British Columbia (since the late 1800s), this is, apparently, the first instance that a local B.C. government authority is on the eve of approving a complex residential and golf course development in its drinking watershed source.

Though the B.C. provincial government has over the last forty years, through its Forests Ministry, waged many controversial and sometimes illegal pitched battles against local governments and the public to permit logging and related road access into formerly protected drinking watersheds, a consideration for permanent resort and golf course development within a critical community watershed stands in complete contrast – no other council, seemingly, has even dared to openly consider such nonsense.

The reasons behind this strange anomaly are most likely linked to a number of inter-related matters:

- successive provincial governments have failed to protect drinking watersheds against the advice of professionals and its own concerned citizenry;
- two-term B.C. Liberal Party government which has relaxed and removed environmental regulations, and alterations and amendments to critical legislations (i.e. municipal legislation), to permit provincial, Canadian and foreign developers to advance developments in sensitive areas (numerous examples);
- a concurrent trend within third-order governments (townships, municipalities, regional districts, etc.) to introduce controversial developments against the concerns of local citizens, part of a disturbing pattern in governance issues;
- the dramatic and escalating increase in property values;
- the failure of Rossland City to acquire private lands in Topping Creek, and temptations by Red Mountain developers to take advantage of this status for their own private interests.

1.1. TOPPING CREEK WATERSHED HISTORY

Of the few early reports about Rossland's drinking watersheds and water supply history, two stand out: *Report on Rossland City Waterworks*, by Fire, Water and Light Committee Chairman, W. Wadeson, October 26, 1959; and J.D. Mitchell's, *A Report on the City's Watershed and the Need for Additional Reservoir Capacity*, October, 1981.

The City water supply comes from the easterly drainage of a ridge in the Rossland Range which may be roughly described as lying between Granite Mountain in the south, and an unnamed height of land situated about $\frac{3}{4}$ mile north of Mt. Plewman in the north. The topography is rugged and includes several peaks which rise above elevation 6,500 feet. It is well forested and virtually uninhabited except for a small part of the ski area on Red Mountain which may be tributary to the reservoir. Its watercourses, lying at the bottom of narrow, V-shaped valleys have characteristically steep gradients, 1,000 feet of fall in the course of a mile being not uncommon.

Specifically, the three creeks that have been developed for municipal service are: South Fork Murphy Creek (1.2 square miles in area), Hanna (also called Rock Creek, 3.8 square miles in area), and Topping Creek (also called Stoney Creek, 2.8 square miles in area).

Rossland lies in a region that is popularly described as the Interior Wet Belt, to distinguish it from more arid country to the west. The principal features that influence climatic conditions are the prevailing westerly winds and the Monashee and Columbia Mountains.

The three streams which drain the City's watershed exhibit the normal characteristics of small tributaries fed by snowmelt. The run-off pattern can be divided roughly into phases:

1. A slow rise, starting in April which accelerates rapidly, culminating in a sharp peak in May or early June;
2. A fast recession from peak flows which decelerates in July and approaches base flow in August, and;
3. The base flow period from September to March which usually yields minimum flows in February.

Rossland is singularly fortunate, inasmuch as its watershed is virtually uninhabited and only minor corrective measures would be necessary to make the water safe at all seasons of the year. (W. Wadeson, October 26, 1959)



Photo of the “undeveloped” Topping Creek, the view that travelers can see from the highway immediately north of Rossland City center. Buildings at the bottom center are the condos and hotel area for Red Mountain ski resort. The Topping water intake is immediately to the right of the resort area.



I have the honour to submit herewith my report on the City's watershed and the adequacy of our present storage capacity.

In compiling a report of this nature, the first and greatest obstacle one encounters is the extreme scarcity of our records of stream flows in our watershed.

For a City situated at the elevation that it is, Rossland is exceedingly fortunate in its water supply. The supply is all by gravity flow from clean mountain creeks within a few kilometers of the City. No wells and no pumping are required, resulting in low operating and maintenance costs. (J.D. Mitchell, October, 1981)

Photo of J.D. Mitchell. Source: *75 Years On Skis in Rossland*, Jack Mitchell.

According to a recent 51-page document, *Rossland's Water Resources – A 'White Paper' for Rossland's Council and Citizens Summarizing Our Water Supply Situation*, written and presented by Rossland resident and Professional Engineer Bill Micklethwaite on June 9, 2008, Rossland City's early watershed records have largely been forgotten and overlooked. Micklethwaite was a former four-term Rossland City Alderman (Councilor) from 1976-1984 and defacto City Planner, who had taken an active interest in the City's water supply. After his departure to civilian life in late 1984, his private collection of City reports and correspondence records were put away in storage. Because of the recent controversies, after some 24 years the old reports and files were dusted off and were brought to light in his, and this, report.

Rossland's water supply has a 113 year history supplying populations from as few as 2,500 to as many as 6,000 from the same watersheds but we have NO useful data on the actual water yields of our source creeks. This is a dangerous omission.

Our raw water comes from three mountain creeks having their headwaters at about 2,100m. In spring, snow melts from these mountainsides in a very large rush of water that lasts about three months then subsides to a low, sustaining flow for 9 months of the year. The variable sustaining flow is what limits our water supply. Global warming is upon us bringing hotter, drier, less predictable weather; this foretells coming trouble using our present supply.

At the present date (May, 2008) it is apparent that the City of Rossland does not have all of the available information generated to date. Much of the water supply information generated before 1990 has apparently been discarded or lost. Fortunately the author has copies of many of these missing documents in his own files and has reproduced them here.

Two major reports were prepared under contract by Urban Systems that did not have, or chose not to use, key information contained in these missing documents. As a result, the author believes that some of the conclusions reached in those reports are flawed. This document is an attempt to meld information available from all sources (in concert with City

Engineer, Mike Thomas and others, see Acknowledgements), collate all data relevant to water supply, (re)analyze this information to better establish present supply circumstances and make some recommendations for future work.

Out-of-sight tends to be out-of-mind, so consigning watershed documents to the archives leads to an evident loss of perspective and understanding. New Councilors and staff members have not had access to missing water supply documents. This is particularly disadvantageous in the context of approved and proposed major developments which will challenge existing water supply capacity while simultaneously threatening quantity or quality. At these times, there is a crucial need for careful decisions by fully informed Council, staff and citizens. Now is one of those times.



Topping Creek intake area, with “Watershed Area, No Trespassing Notice”.

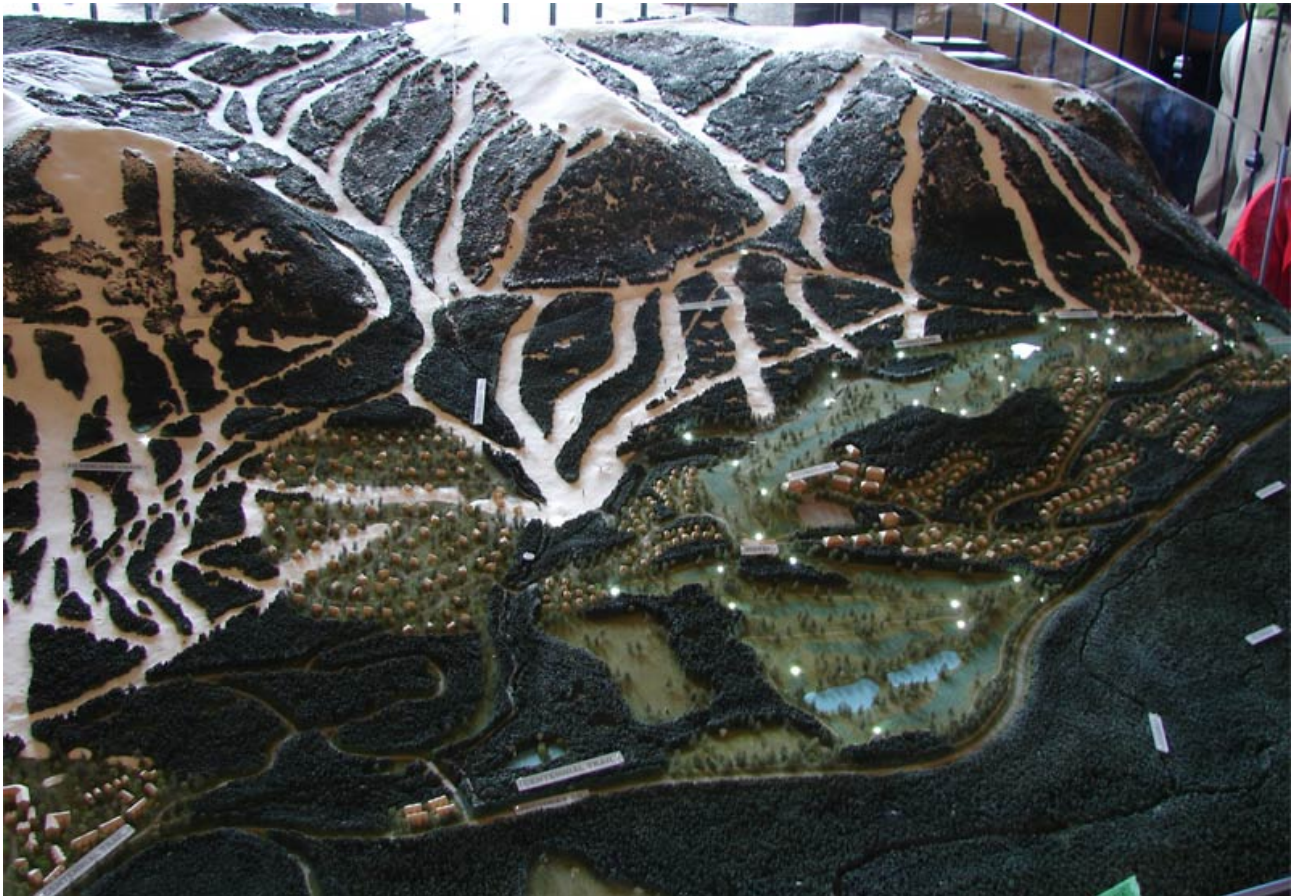
1.2. The Proposed Developments and “The Community”

In late November, 2007, Howard Katkov (CEO and president of RMR Acquisition Corp., CEO and president of Red Mountain Ventures G.P. Ltd., and director of Red Mountain Resorts Inc., see Appendix B for company profile details filed with the B.C. government), unveiled a large scaled model of his ski and golf resort development proposals within Rossland’s drinking watershed, Topping Creek (*Red unveils plans for new 18-hole course*, Trail Daily Times, November 29, 2007).

On November 27th, Red Mountain Ventures informally presented a preliminary plan for a Thomas McBroom/Annika Sorenstam Championship golf course. The presentation to the Rossland City Council Planning Committee was an outline of the feasibility analysis and as of yet, we have not made a formal application to the city regarding the golf course. We intend to submit an application for OCP and Zoning Amendment sometime in January. We will also launch a public information website that will contain all of the plans, reports and design development of the golf course... The purpose of this website is to ensure that the public have access to all of the application documents. (Red Mountain Resort Community Update, December 17, 2007)



Above: Photo of Topping watershed, looking northward. The boundary of the watershed begins over the first ridge of trees in foreground. Below: The scaled model of Katkov's ultimate development dream for Topping. The golf course area in lower right is the area in the lower right area in the above photo. The two Topping tributary drainages are located on either side of center in the scaled model, the streams of which converge about where the ski run areas in white converge just to the left of bottom center. Katkov's pitch to Rossland City is to relocate the present water intake from the bottom lower left hand corner of this photo to collect only the waters of the upper right tributary, the Squaw basin.



Some four months later when Katkov finally presented the application documents to Rossland City on April 18, 2008, the documents were withheld from the public for almost six weeks, that is, only after Rossland residents filed Freedom of Information requests to do so which the City initially rejected.

Dear Councillors – With a public meeting on the golf course development coming up on June 24, it becomes urgent for the public to have access to the application. Citizens need time to review the proposal to be informed in advance of the meeting.

As you know, we requested access to the application nearly a month ago, and continue to feel that the public is greatly disadvantaged by not having access to the development application, which according to the City's on Freedom of Information Bylaw is to be made available to the public "on demand."

Can you kindly let me know when it will be available? (Email from Kathy Moore, Citizens for Responsible Development, to City Council, May 25, 2008)



When Rosslanders finally acquired the documents, they had very little time to absorb the technical information some two weeks prior to a June 24 public consultation/information meeting sponsored and required by the proponent.

They have all the space they need, about 450 acres for a new 18-hole course plus residential development and green space, on land leased years ago from the province for ski resort terrain.

A golf course high in the alpine and in the city's watershed, "can be sensitively designed and constructed without jeopardizing the environment," Katkov said.

Katkov has been working on a plan since January that would build 160 single family homes,



330 condos, and 120-room hotel around their proposed golf course. (*Katkov shows off golf plans and professionals*, Rossland Record, November 20, 2007)

Asked by the Record if he expected to use pesticides on the proposed new course, Katkov said, “Whatever programme we’re going to use, they are going to be the best practices around the world. I don’t know the regimen of maintaining golf course turf. We have a partner who owns golf courses in the States. He will be our adviser on that.” (*The watershed and the golf course and pesticides*, Rossland Record, November 30, 2007)

A big golf course uses about 35 million gallons of water a year, designer Tom McBroom said. (*Katkov shows off golf plans and professionals*, Rossland Record, November 20, 2007)



23 June 2008
Major Gordon Smith and
Councillors,
The City of Rossland,
Rossland, B.C.

Dear Mayor Gordon Smith
and Councillors

This letter is being written on behalf of a number of local physicians who both live and practice in this area. We provide care for many people in this community across a broad age spectrum from the very new born to the elderly. We would like to raise before you public health concerns we have regarding the proposed development by Red Mountain Ventures of a golf course within and adjacent to the community's water reservoir and water shed collection area. Our motivation as physicians is to safeguard the health and wellbeing of our patients and we are concerned that this development proposal may result in the contamination of our community's water supply with pesticides and herbicides with subsequent deleterious health related effects to both humans and local wildlife.

Golf course issue creates flood of letters

The development proposals announced in late November 2007 were soon met with a flurry of concerns by Rossland residents. By the end of February, 2008, following a meeting with the community (some 250 people) and the developer, a 935 signature petition from Rossland residents opposed to the development proposals was handed over to the City of Rossland. As stated in a May 27, 2008 letter to the provincial Information and Privacy Commissioner from the Rossland-based Citizens for Responsible Development, concerning Rossland City's "refusing to allow citizens access to an application for a proposed golf course and residential development within the City community watershed":

935 people signed a petition opposing golf course resort and residential development in the community watershed. (Delivered to City Hall late February. To put this in perspective, 1,375 people voted in the last municipal election).

City receives petition but takes no action

Mar 13/08

A second petition was delivered to MLA Katrine Conroy to be presented to the Legislative Assembly this week and signed by 959 citizens. This petition requests that the provincial government not modify its operating agreement with Red Mountain Ventures to allow golf and residential development in the watershed.

Residents worry about watershed, lack of planning

Numerous letters have been written to the City Council and local newspapers from citizens with deep concerns about the protection of the quantity and quality of the water from the community watershed, development of a golf course resort complex in the watershed, and the quantity of water available for the community's present and future needs.

LETTERS TO THE EDITOR

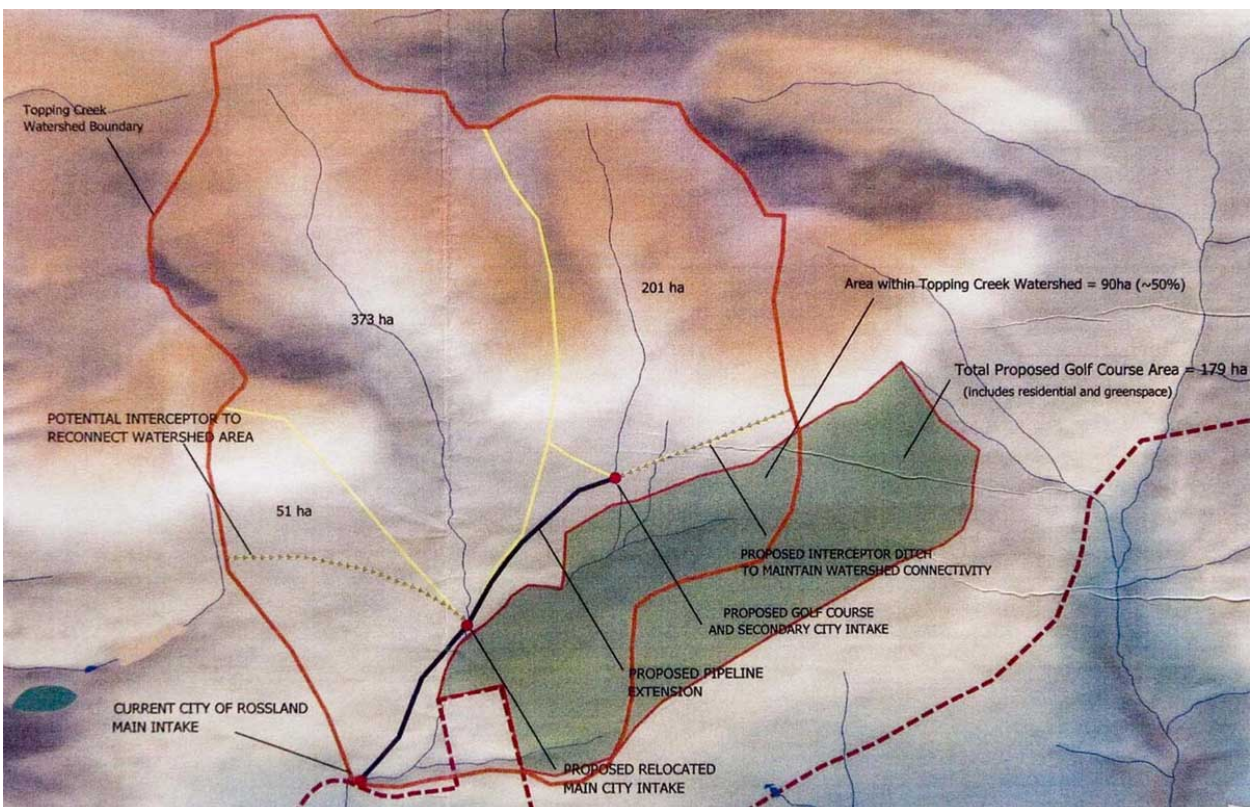


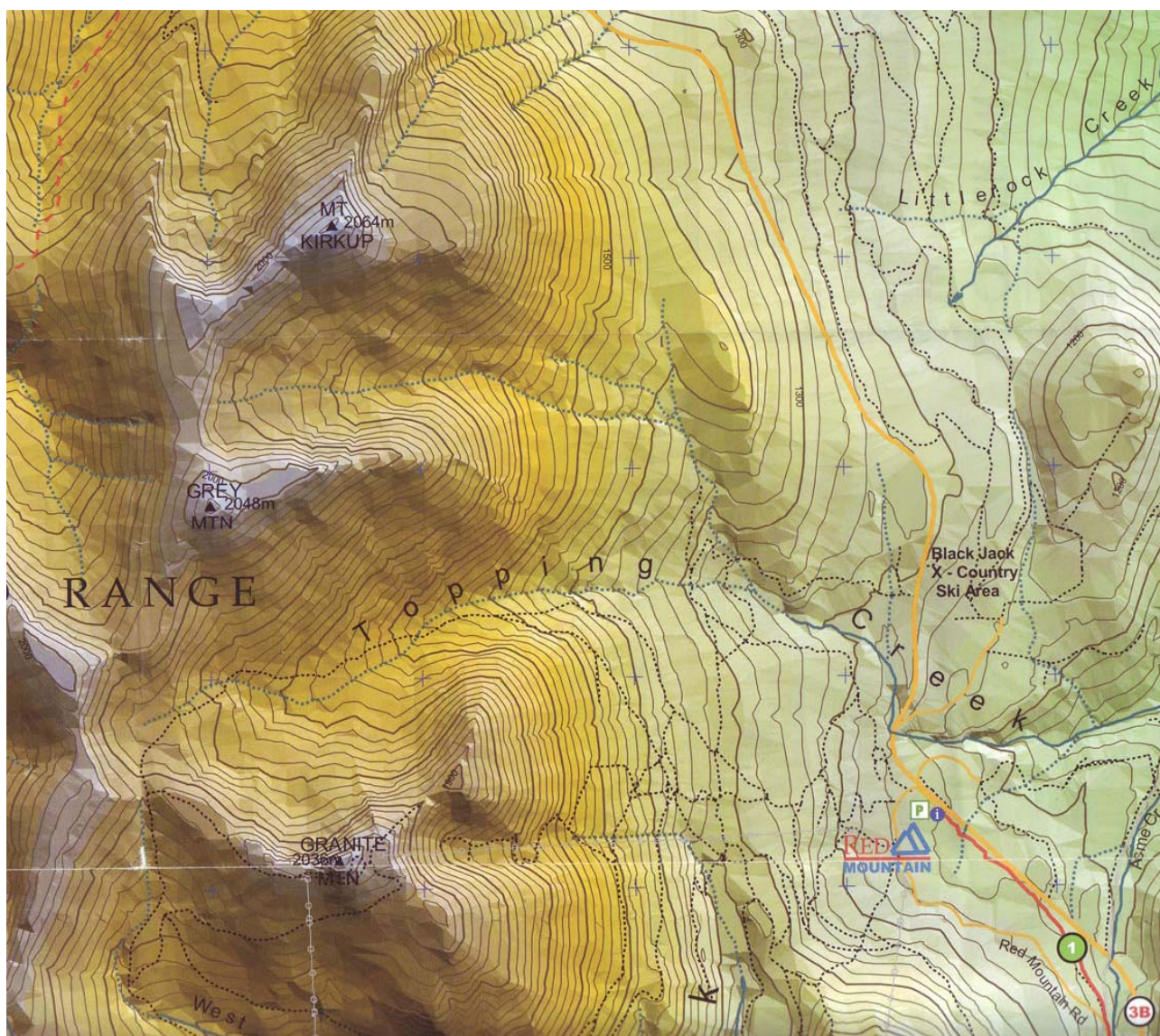
Keep greedy developers out

City staff is being allowed ample time to study and work on this development application with the developer's and other consultants while the public has no access to the information for its own review and due diligence process. Also, we have been denied access to the "terms of reference" which would outline the work of these expert consultants, there remains a great question whether or not the scope of the experts' work is sufficient, appropriate and focused on the community's issues.



Photo of lower Topping watershed, June 25, 2008. The area in the centre, below the small forested hill, and the area immediately sloping downward toward the lower right hand side, is the area that is slated for golf course clearcutting, etc., as depicted in the map area below. The map below (copy of Red Mountain Ventures' 2007 Concept Plan for Topping Creek) only shows the proposed golf course, not the other residential/ hotel and ski run developments. What has not been identified in recent development application documents is the value of protecting the existing uneven-aged forest species throughout the Topping watershed, as it pertains to water quality and quantity. Many of the younger forest stands, primarily in the lower Topping watershed are approaching maturity, with some stands already mature (mature stands, depending on whose definition it is, range from 80 to 120 years in age). The importance about this fact, is that the older the forest becomes, the better the water quality. In other words, Topping Creek is becoming, ever more, a very valuable source of fresh surface water, while some City Council and developers are earnestly contemplating its demise.



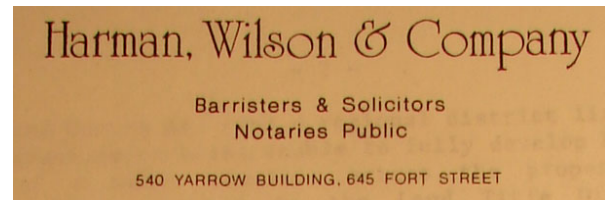


Contour relief map of Topping Creek watershed. Squaw Basin tributary watershed is the valley between Granite and Grey Mountains, and the other Topping tributary is located between Grey and Kirkup Mountains. Red Mountain ski hill hotel, condos, and ski lift area is located to the right of Granite Mountain down by Highway 3B, the RED Mountain symbol on the map.

2. TOPPING CREEK AS A *LAND ACT* CROWN RESERVE FOR COMMUNITY WATERSHED PURPOSES

2.1. The Solicitor's Letters

There are two critical documents regarding the nature of Topping Creek's land status as a Crown Watershed Reserve that recently surfaced after lying dormant for some 24 years. They consist of two letters from the Corporation of the City of Rossland's former Victoria-based solicitors, Harman, Wilson & Company, the first dated December 21, 1983, and the second dated February 6, 1984. The implication of these letters, as they pertain to legislative restrictions for land use planning procedures and issues, include and extend beyond their relevancy to the Red Mountain Venture's development proposal on Crown land.



In 1983, the City of Rossland was encountering yet more difficulties regarding conflicting land use issues within Topping Creek and the City's concerns over its resource protection, issues unidentified in the two letters. Therefore, after asking the City's solicitor to seek avenues to legislatively protect its drinking watersheds, the solicitor forwarded an initial letter, with the following advice:

One of the three steps that can be taken to protect your community watershed is to apply for a Crown reserve over the Crown land in which your community water supply watershed is located.

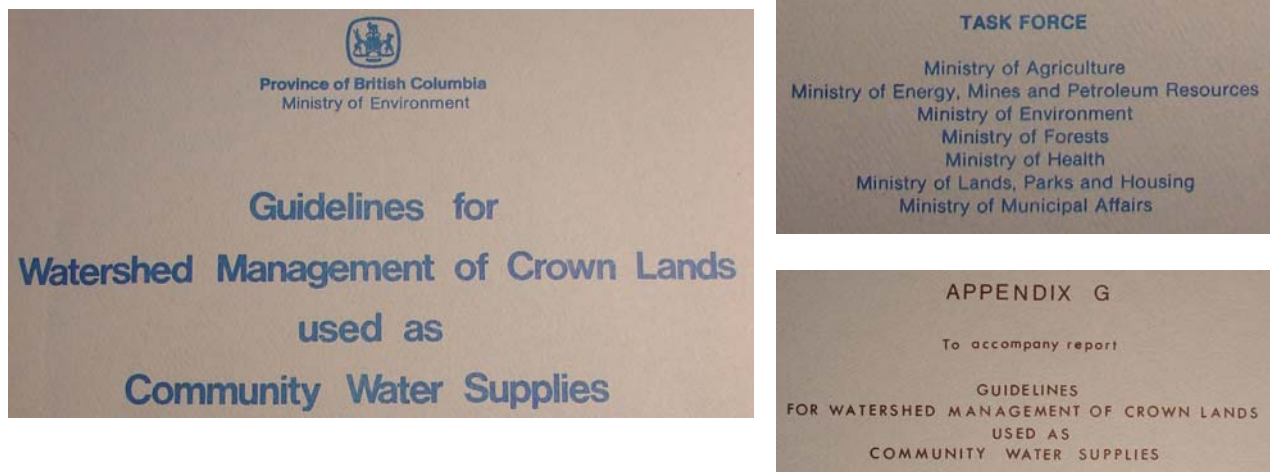
I will be making inquiries regarding a Crown reserve for your watershed, but unfortunately the people I need to contact are away from Victoria at this time. I shall be in touch with you as soon as I have completed my investigation with the Ministry of Lands regarding Crown reserves for community water supplies.

By way of a preliminary report I enclose herewith a photocopy of Guidelines for Watershed Management of Crown Lands Used as Community Water Supplies and a copy of Appendix G to accompany the report.

The third step towards the protection of your community water supply is to approach the Regional District for an appropriate zoning regulation of the privately owned lands that are located within the watershed. A few years ago I gave some assistance to the City of Cranbrook in a similar problem. I shall forward to you any material in that regard that I think would be helpful. In the meantime, you should approach the Planning Director of your Regional District in this regard. Again, let me know if I may be of assistance in framing the required zoning legislation.

What the City of Rossland's solicitor was apparently unaware of at the time of his inquiries was that Rossland's drinking watershed sources had already been established as Crown Map Reserves by the provincial community watersheds task force sometime between late 1973 and 1975 (information about the correct date for their establishment will hopefully be presented in the upcoming full report). In 1970, the Social Credit government revised the *Land Act*. Revisions were also made to

the Crown Reserve section, which now elaborated on the provision and definition of Order-in-Council (Section 11) and Map (Section 12) Reserves. Both had the same function – to prevent dispositions on and alienations of Crown lands – except that Section 11 Reserves were permanent, that is, at the discretion of the provincial Executive, Cabinet.



From information provided below, Topping Creek had already been established as a Crown Reserve prior to 1973, which the City Clerk had known about. What is not known is what type of Crown Reserve was originally established: was it an Order-in-Council or a Map Reserve.

The reason as to why the City's solicitor may have been successfully unaware of their status as Crown Reserves is that Appendix G list of community watersheds, which the solicitor had a copy of, failed to clarify on the cover title page or within the document itself that the entire list of watersheds were all "Crown Reserves". Furthermore, the October 1980 community watershed Guidelines document, to which Appendix G was attached, failed to state the same throughout. As the author discovered in his lengthy investigations about this mystery, these omissions were purposely engineered by government administrators, so as to deceive and confuse provincial water users. These were done in the early stages of a highly sensitive and organized cover-up initiated by top administrators in the Ministry of Forests to facilitate highly contentious logging and road access permits in provincially reserved areas to access remaining intact timber resources – the word "reserve" became taboo.

The City's solicitor identified that Rossland's drinking watersheds were all properly indexed and accounted for in Appendix G, which would provide the City with a quick reference point in its pursuits with the Ministry of Lands to establish the watersheds as Crown Reserves:

In applying for the watershed reserve you already have recognition from the Crown Provincial that in fact there is a watershed attributable to the use of the City of Rossland in connection with Hanna (Rock) Creek, Elgood Creek, Murphy Creek, Topping Creek, Little Sheep Creek and Josie Gulch. You will note on the south-eastern British Columbia location of community watershed area map and in Appendix G to accompany Guidelines for Watershed Management of Crown Lands used as community water supplies, recognition of Rossland's use of these watersheds.

NELSON		FOREST DISTRICT		SECTION 3, 6 PAGE 2	
NELSON		WATER DISTRICT			
WATERSHED		U S E R		*DRAINAGE AREA	*LAND STATUS
*NO.	*SOURCE	*NAME	*POPULATION	*SQ. MILES	*STATUS
19F	LITTLE SHEEP CR	ROSSLAND (CITY)	771	2.5	CR 55%
13R	MC DERMID CR	KRESTOVA (IMP DIST)	130	0.9	CR 100%
1R	MC NALLY CR	NASIS (IMP DIST)	100	2.3	CR 73%
20A	MC QUARRIE CR	TRAIL (CITY)	530	0.5	CR 80%
15	MERRY CR	KINNAIRD (TOWN)	2846	2.1	CR 86%
3D	MOUNTAIN CHIEF CR	NEW DENVER (VILLAGE)	279	0.3	CR 100%
19C	MURPHY CR	ROSSLAND (CITY)	340	1.1	CR 100%
33	PROCTOR CR	PROCTOR CREEK (WATER USERS COMM)	100	3.4	CA 99%
11	QUARTZ CR	YAIR (REG WATER UTILITY)	325	2.6	CR 98%
20R	RANDALL CR	TRAIL (CITY)	400	0.4	CR 83%
3A	RASHDELL & ANGEL	NEW DENVER (VILLAGE)	90	0.1	CR 80%
32	SANDY CR	SANDY CREEK (WATER USERS COMM)	300	4.6	CA 99%
3C	SIMPSON CR	NEW DENVER (VILLAGE)	185	0.2	CR 100%
12A	SMOXY CR	SOUTH SLOCAN (IMP DIST)	130	1.9	CR 82%
7	SOUTH BLUNT CR	RIDGEWOOD (IMP DIST)	105	0.3	CR 100%
26	SULLIVAN CR	ERICKSON (IMP DIST)	400	2.5	CR 100%
9R	SUTHERLAND CR	N SHORE NELSON LTD (REG WATER UTILITY)	100	0.1	CR 85%
20E	TIGER CR	TRAIL (CITY)	3430	3.4	CR 10%
19D	TOPPING CR	ROSSLAND (CITY)	835	2.7	CR 71%
12B	WATTS CR	SOUTH SLOCAN (IMP DIST)	20	0.3	CR 100%
1B	WENSLEY CR	NAKUSP (IMP DIST)	1200	1.1	CR 100%
			CATEGORY 1 PAGE 12		

Two pages from Appendix G of the 1980 *Community Watershed Guidelines*, showing Rossland's Category One Crown Watershed Reserves (marked in yellow). These pages came from Bill Mickelthwaite's stored watershed files.

NELSON		FOREST DISTRICT		SECTION PAGE 3	
NELSON		WATER DISTRICT			
WATERSHED		U S E R		*DRAINAGE AREA	*LAND STATUS
*NO.	*SOURCE	*NAME	*POPULATION	*SQ. MILES	*STATUS
10A	ANDERSON & FELL CR	NELSON (CITY)	2380	5.2	CR 85%
3B	AYLARD CR	NEW DENVER (VILLAGE)	90	0.1	CR 83%
4	BARTLETT CR	SILVERTON (VILLAGE)	246	2.2	CR 100%
22	BATH CR	BEAVER FALLS (IMP DIST)	500	1.1	CR 61%
1C	BROUSE CR	NAKUSP (IMP DIST)	1200	1.6	CR 92%
20D	CAMBRIDGE CR	TRAIL (CITY)	5240	5.2	CR 4%
27	CAMP RUN CR	NORTH CANYON (IMP DIST)	400	2.2	CR 100%
21	CASINO CR	CASINO (IMP DIST)	53	0.7	CR 6%
31	EAGLE CR	EAGLE CREEK (WATER USERS COMM)	75	2.6	CA 99%
19B	ELGOOD CR	ROSSLAND (CITY)	220	0.7	CR 100%
8	FOUR MILE CR	NASOOKIN (IMP DIST)	120	1.3	CR 100%
20C	GEORGE CR	TRAIL (CITY)	1600	1.6	CR 6%
35	GLASER CR	CRESTON (TOWN)	3204	0.6	CA 52%
19A	HANNA (ROCK) CR	ROSSLAND (CITY)	1235	4.0	CR 100%
34A	HENRYX CR	RIONDEL (CENTRAL KOOTENAY REG DIST)	250	1.9	CA 99%
34B	INDIAN CR	RIONDEL (CENTRAL KOOTENAY REG DIST)	300	2.0	CA 99%
9A	ISAAC CR ETC	N SHORE NELSON LTD (REG WATER UTILITY)	500	0.5	CR 75%
19G	JOBIE GULCH	ROSSLAND (CITY)	30	0.1	CR 70%
13A	LANGILL CR	KRESTOVA (IMP DIST)	190	1.3	CR 100%
28	LISTER CR	LISTER (IMP DIST)	300	1.0	CR 100%
19E	LITTLE SHEEP CR	ROSSLAND (CITY)	465	1.5	CR 99%
			CATEGORY 1 PAGE 11		

As reported by the author in his June 2006, *From Wisdom to Tyranny: A History of British Columbia's Drinking Watershed Reserves*, Appendix G of the October 1980 Community Watershed Guidelines document was an inclusive list of about three hundred (300) Crown Watershed Reserves, established, or re-established, under the *Land Act* by the provincial Task Force on community watersheds (February 1972 to October 1980). These watersheds were identified under three separate categories of land area, Categories One, Two and Three. Information in Appendix G also listed the approximate percentage of each identified watershed of Crown and/or private land status.

All of Rossland's drinking watersheds were identified in Appendix G as Category One Reserves, and were also identified on an accompanying map. The Guidelines document stated that Category One Reserves were to be provided with "maximum protection". Prior to the document's release, inter-agency community watershed task force representatives agreed on this designation, even in isolation of public input from provincial water users. Information about these Category One Reserves in the author's book, *From Wisdom to Tyranny*, is that they were destined to be baptized as Order-in-Council, Section 11, Reserves, only that the Ministry of Forests prevented Cabinet from doing so.

Ignorant of the existing Crown Reserve status of Rossland's drinking watersheds, the City's solicitor nevertheless sent a second letter after conferring with a top administrator in the provincial Lands' Ministry about the correct legal interpretation and disclaimer of Crown Reserves.

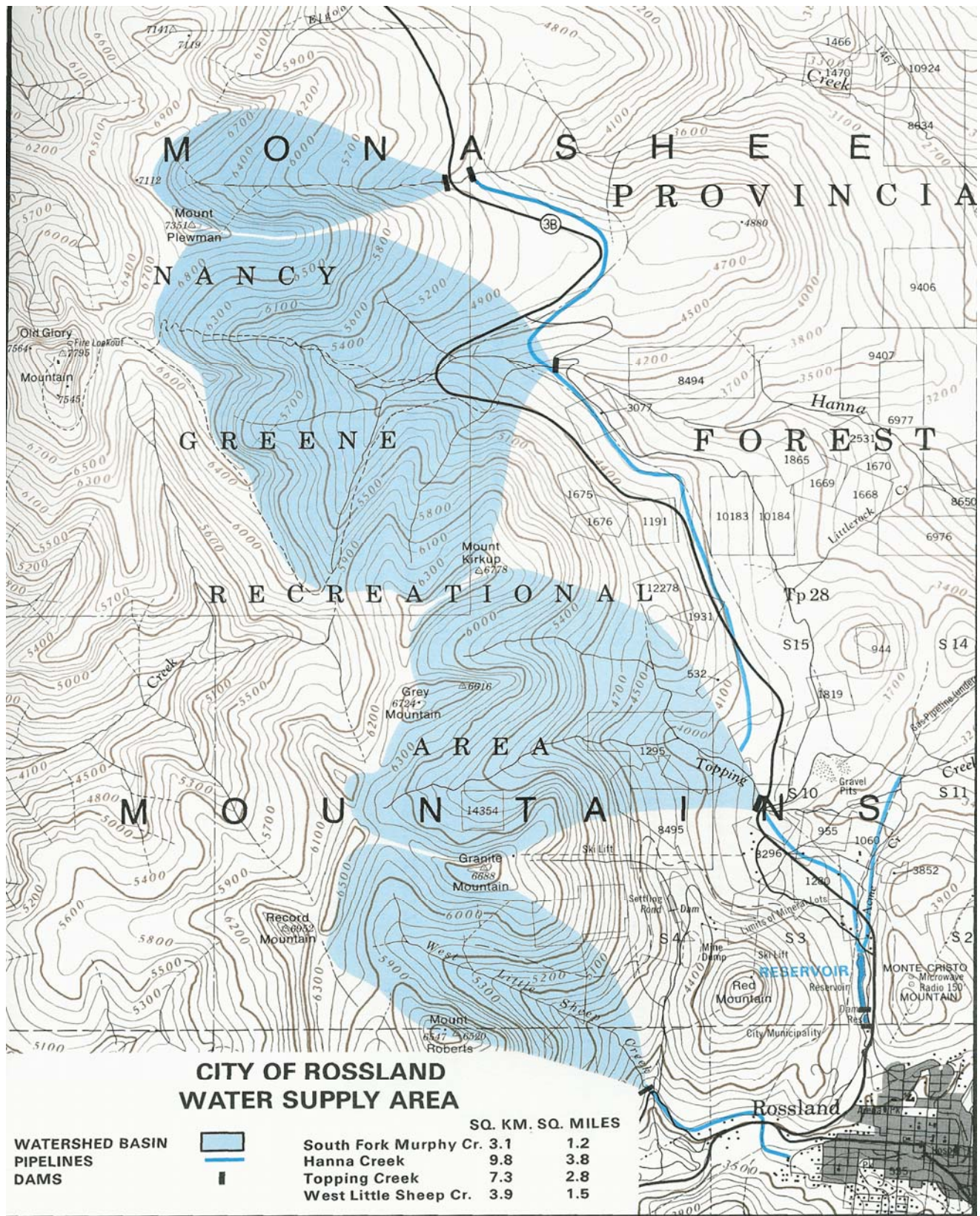
Crown Reserve for Watershed for Community Water Supply

The only positive step that you can take to protect your City watershed in Crown land is to apply for a Crown reserve for watershed for community water supply. If a Crown reserve is granted (,) that would prevent forestry and development activities as well as alienation of the Crown land all within the reserve without the Crown conferring with the City of Rossland.

From all the inquiries and investigations made by the author concerning such legal interpretations about Crown (community watershed) Reserves, this letter from Rossland's solicitor is the first recorded instance that validates the author's understanding, and therefore aids in contradicting the more recent disingenuous legal interpretations provided by the provincial government in the 1997 Justice Paris Supreme Court case which allowed Slocan Forest Products to illegally log within the Bartlett and Mountain Chief Watershed Reserves, the Lands files which the government shredded.

As the author stated in his 2006 book by way of a quote from a government administrator, the function of the *Land Act* Map Reserves, before becoming permanent Reserves, provided "interim protection", which prevent "inadvertent violations or land dispositions" on Crown lands (page 204, Section 11.2.2, in *From Wisdom to Tyranny*). Following the Paris Decision, government underhandedly used the controversial decision to establish legal precedence against the concerns of water users primarily about permitting logging in the provincial Reserves, something the government had been in the habit of doing previously under public radar.

It is not known what actions the City of Rossland took following its solicitor's advice. Perhaps, after making enquiries with the Regional Lands office, the City discovered that the Reserves were active, or that the City had simply forgotten about the Reserves and failed to check its records which would have validated the same. Whatever the case, it appears as though the City, even though perhaps recognizing the Crown Reserve status over its watersheds, failed to properly interpret its



Map showing contour locations, in blue, of Rossland's Crown Community Watershed Reserves (copied from Bill Micklethwaite's June 9, 2008 *White Paper*).

legislative significance and failed to prevent later incursions made, for instance, by the Ministry of Forests by way of forestry permits. The inference to permit forest management activities in Rossland's Crown Reserves, the Reserve status of which was left unidentified in reports, were continually stated by consultants and provincial staff in watershed management plans required under the Forest Practices Code Act and by way of Best Management Practices. The intrusion into and blanket management criteria over the Crown Reserves were part of a disturbing pattern that was erupting throughout the province.

2.2. The City's letter of 1971

On October 26, 1971, Rossland City Clerk, W.H. Vickers, forwarded the following in a letter to the Comptroller of Water Rights:

Further to previous correspondence in connection with the application of Granite Mountain Developments Limited to draw water from the City watershed and watershed reserve, enclosed herewith please find a copy of a letter from Granite Mountain Developments Limited along with the City reply which are self-explanatory. City Council continues to object to the application and also requests Granite Mountain Developments Limited be restrained from carrying out any work in and also from drawing any water from the City watershed.

At this preliminary stage of report history, this letter of 1971 provides the only instance of the earliest reference to a Crown Watershed Reserve for the City of Rossland, with the inference that a Watershed Reserve had been in existence prior to the provincial community watershed Task Force to establish, or re-establish existing, Watershed Reserves in drinking water sources beginning in 1973. This letter, in combination with a July, 1971 report to a provincial advisory committee (see next section), provide, at this preliminary stage, the earliest instances of Rossland City expressing the community's interest to protect the integrity of its drinking watersheds.

2.3. The Water Rights Deputy Comptroller's Letter of 1977

In Bill Micklethwaite's June 2008 report, *Rossland's Water Resources – A 'White Paper' for Rossland's Council and Citizens Summarizing Our Water Supply Situation*, in a section called *Watershed Map Reserves*, he included partial excerpt from an April 19, 1977 letter from the Deputy Comptroller of Water Rights, Earle Anthony, about Rossland's Crown watershed Reserves. His letter was in response to a letter from March 11, 1977, from the City of Rossland's City Clerk Vickers. Here's the full version about his comments to the Reserves:

In addition, the watersheds of Hanna and Rock Creek, Elgood Creek, Murhpy Creek, Topping Creek, West Little Sheep Creek, Little Sheep Creek, West Fork and Josie Gulch are within Watershed Map Reserves established to ensure referral from all Crown Agencies of any activity which may affect your (Rossland's) water supply. Our experience has been that the provisions of the Water Act and the aforementioned Map Reserves adequately protect the water supplies of communities such as Rossland.

Anthony's understanding of the function of the Reserves was correct, and was commonly understood at that time by knowledgeable government staff.

2.4. The 1980 Rossland/Red Mountain Resort Area Master Plan

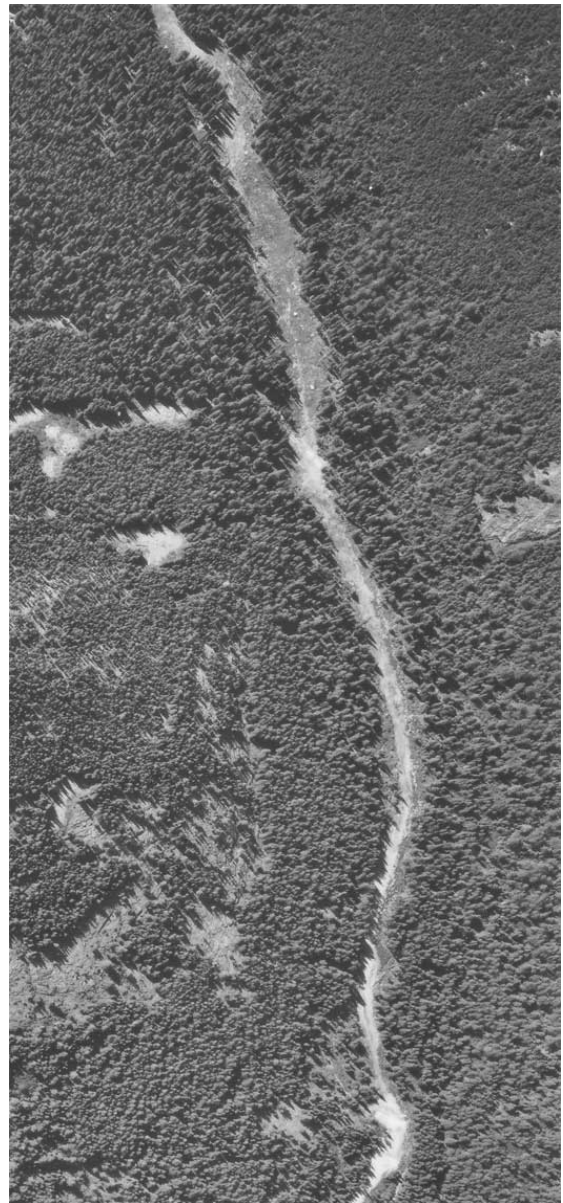
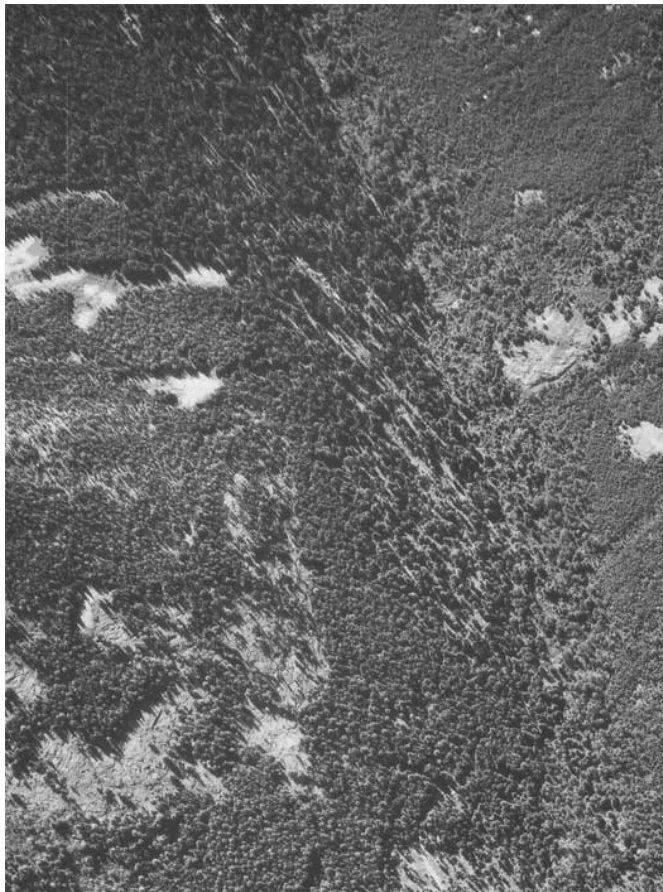
The December, 1980 ski hill master plan for Red Mountain, prepared by Ecosign Mountain Recreation Planners Ltd, Thompson, Berwick Pratt & Partners, and Sigma Engineering, is both an interesting and foreboding document, for many reasons (the plan was funded by the Canada-British Columbia Travel Industry Development Subsidiary Agreement).



The document contains some interesting summary insights into the history of Rossland, and provides a rationale for proposed future developments related to recreational skiing in and around Red Mountain. However, the document, as a development vision for proposed economic initiatives related to a declining job force at the Cominco Smelter in Trail, became a problem for the City of Rossland: its expansion would amount to a continued threat over the integrity of the adjacent Topping Creek Watershed Reserve. This shadow would inevitably lead to the present day politics by Red Mountain Ventures and the current Rossland City Council. Had those problems been sorted out by the City at the time, vis-à-vis the acquirement of private lands leading to more control over community watershed lands, the present controversies could have been largely overcome.

In this respect, the 1980 Master Plan correctly identified the problem and obstacles related to its proposed development expansion proposals because of its immediate proximity to the Topping Reserve and the location of the City's domestic water intake. However, as the following excerpt suggests, the vision for the ski hill expansion stages was unashamedly aggressive, in that, despite the existence of the Crown Reserve over the Topping watershed, the presumption was that development would occur nonetheless:

It is noteworthy that the study area's drainage basins north of Granite Mountain lie with the map reserve [underline emphasis] for the City of Rossland Watershed, and hence skiing and/or residential development within these areas will require special construction procedures. The watershed map reserve [underline emphasis] allows the City of Rossland to participate in the approval of applications affecting the use and/or dispensation of these lands as set forth in the Land Act.

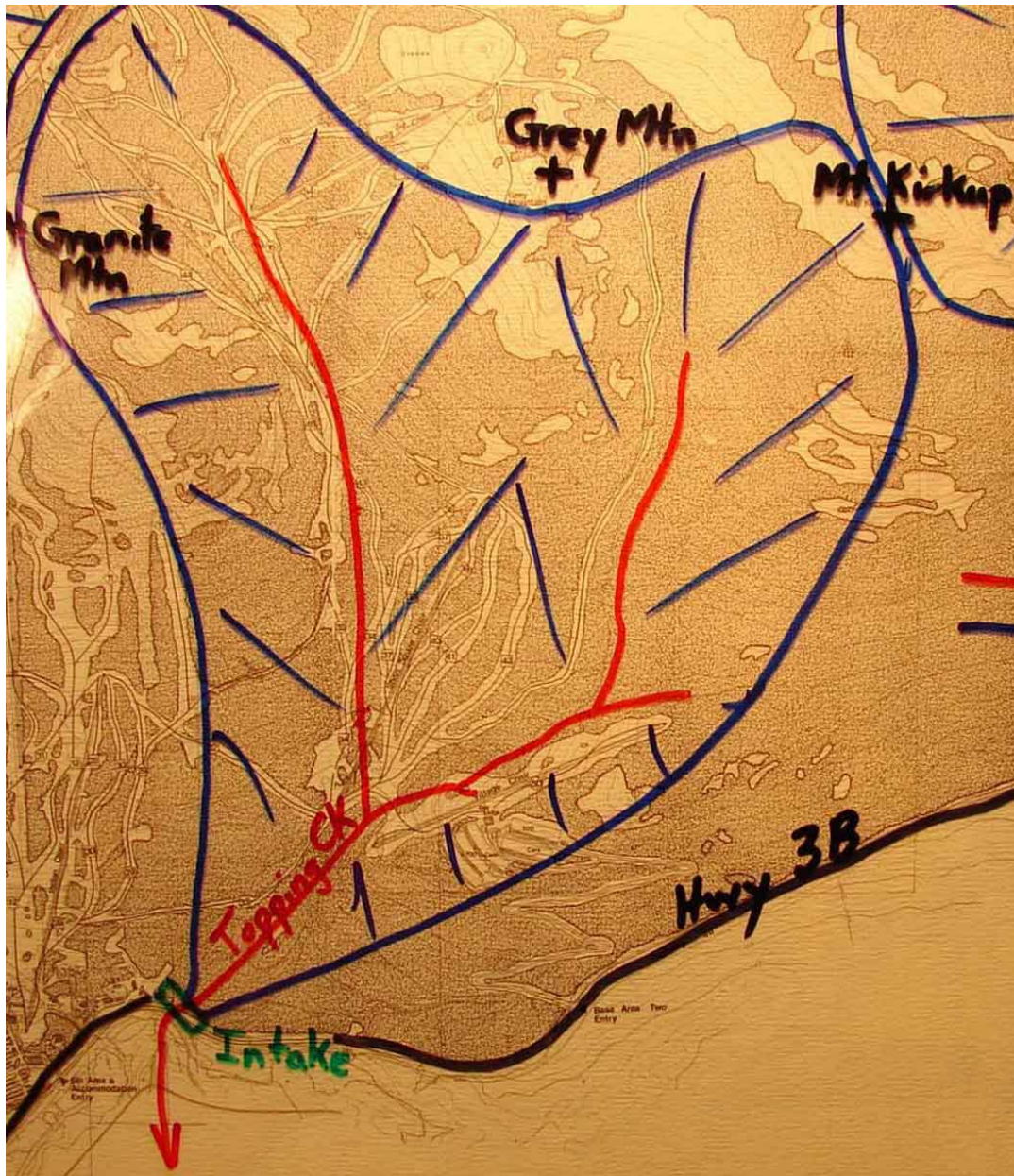


The two photos are close ups from the same area in Squaw tributary drainage in the Topping watershed. The image above was taken in 1974 and the image to the right was taken in 1980. The difference between the two photos is that a ski run was created by logging the forest right through the tributary riparian zone. Complaints about silting continued for some time in Rossland's water supply. This is Red Mountain Venture's vision to create many ski runs in the Topping watershed.

This excerpt from the Master Plan raises two important matters:

1. The proposed developments failed to occur after the Master Plan was submitted to Rossland City Council. The reasons for their failure ultimately suggest the disapproval of such by City Council, that is, until some twenty years later under the present controversial considerations for Red Mountain Venture's development schemes, with passage of related bylaws and amendments and rewriting of the Official Community Plan.
2. The 1980 Master Plan actually and correctly makes reference to the existence of the Topping Creek Crown Watershed Map Reserve. The reason why the consultants presumably did so is that they were provided with all the land status data and details from the provincial government, via the Lands Ministry, and therefore had to account for it in some way. Interestingly, the Map Reserve is not mentioned in the land status section of the Master Plan report, but only mentioned once in the above quote. However, the interpretation by the 1980 Master Plan editors regarding the powers attributed to the City of Rossland as the holder of

the Crown Reserve was limited and incorrect, insomuch as the interpretation of the planning oversight appears to have been slanted to the benefit of future development. For instance, in the map exhibits in the Master Plan document, there is no escaping the fact that the Topping watershed Map Reserve boundaries were envisioned as the new developmental playground. The correct interpretation of the Map Reserve status, as it relates to the community of Rossland's interests, is that protection is preferential and paramount in all and any planning proposals: the Map Reserve status is there to protect the Crown lands in all referrals. That finding supports the legal interpretation provided by the City's solicitor in February 1984 which he obtained directly from administrators in the provincial Ministry of Lands.



Copy of an overlay of a map in the 1980 Master Plan document. The light areas in the map indicate proposed ski runs and development areas, somewhat like the vision that Red Mountain Ventures has in its scaled model. The red line shows the main Topping Creek and tributaries, and the blue line marks the watershed's hydrographic boundaries.

2.5. The Urban Systems Report of 1993

In February, 1993, the Richmond City-based Urban Systems Ltd. presented its 78-page *Rossland Water Supply Master Plan* report to City Council. A cover letter by Senior Environmental Engineer Peter Gigliotti to City Administrator Andre Carrel stated that City Council had “thoroughly reviewed” the report on March 4, 1993, and provided amendments for Urban System’s final report.

Stated in section 1.2:

In September, 1991, the City commissioned Urban Systems Ltd. to undertake the study. The stated purpose of the work was “to develop and assess options for water supply sources and their protection, treatment, storage, and conservation to meet the City of Rossland’s requirements for the next 25 years.”

At the time of the study, Rossland City had no filtration or water treatment facilities for its fresh water surface-fed sources, other than simple chlorination. Urban Systems identified that, in light of this, and in comparison with the other watershed sources,

The initial investigations show Topping Creed and the “Blue Eye” spring to be most susceptible areas for surface water contamination. The Topping Creek watershed has several residential developments within it with minimal control over sewage disposal. Logging, skiing and snowmobiling are practices in the watershed.

The activities taking place in Topping Creek were mostly responsible for the City’s initiative to implement treatment plans, and its decision for slow sand filtration technology. The report also recommended the City practice water conservation measures.

In *Watershed Management* section 11 of the report, under a subsection called *Watershed Status*, Urban Systems identified all the land tenures, which included a reference to the Crown Watershed Reserves over the hydrological boundaries of the drinking watersheds to their intakes:

The City has recently incorporated the watershed areas within the City boundary. Much of the area is Crown Land. There are various forms of tenures, permits, reserves and other designations with exist on the Crown Land. Some of these are:

1. Map Reserves: to City of Rossland in the Murphy, Hanna, Topping and West Little Sheep Creek watersheds.

2.6. The Interior Watershed Assessment Procedure Report of 1996

Because of the *Forest Practices Code Act* legislation enacted in June 1995, there followed a long list of procedures, manuals and guidelines over the management of Crown forest lands and its water resources. The management over community watersheds was also affected and redesigned under this new legislation. Crown Community Watershed Reserves were purposely being lumped in with community watersheds that had no reserve status over them, all of them now falling under a new category of forest management. All of the community watersheds were issued with new requirements under The Code for Watershed hydrology Assessments, in order to interpret the cause

and effect relationships of water run off quality and quantity from former and future forest management (logging).

In August, 1996, Kelowna-based Dobson Engineering produced an Interior Watershed Assessment report on Rossland's watershed reserves, Elgood, South Murphy, Hanna, Topping, and West Little Sheep Creeks.

The objective of the Level 1 IWAP is to assess the potential for cumulative hydrologic impacts in the five watersheds associated with previous forest development and road construction. There were four primary impact categories assessed including: peak flows, surface erosion, riparian buffers, mass wasting (landslides).

The results of this assessment should be considered in the review of restoration work that might be recommended for the watersheds as well as in the evaluation of future harvesting proposals in these watersheds.

Aside from the findings in the report, which were produced without field inspections, there was no reference to the watersheds' status as Crown Watershed Map Reserves, a common oversight in reports by consultants and provincial agency staff in watershed assessments under the new Forest Practices Code. In other words, future forest management recommendations and prescriptions by consultants and provincial staff were being incorrectly applied to Crown lands in Crown watershed Reserves.

2.7. The Dobson, Urban Systems, and Grainger Report of 2002

In March, 2002, Dobson Engineering Ltd., Urban Systems Ltd., and Grainger Environmental Consulting combined their professional forest, environmental and engineering planning talents to produce a draft *City of Rossland Watershed Management Plan*. Their report was guided by a Terms of Reference from Rossland City, under a mandate for Official Community Plan Bylaw number 1854, section 16.7.

The City of Rossland, in co-operation with other agencies, will undertake a number of studies to obtain more information to implement the policies set out in this Plan. Key studies include: 4. Watershed Management Plan – preparation of a Plan which outlines how the integrity of the watersheds can be protected to ensure water quality.

Legislative References: Forest Practices Code of British Columbia, R.S. Chap. 159; Land Act, R.S. Chap. 245; Local Government Act, R.S. Chap. 323; Water Act, R.S. Chap. 483; Water Protection Act, R.S. Chap. 484.

3. Existing Conditions.

(a) Watersheds. (i) The Plan must identify the watersheds for the following creeks: Elgood, Neptune, Hanna, North and South Forks of Murphy, Topping, Record, Billings, West Little Sheep, Ophir and Trail.

(c) Land Ownership. (i) The Plan must identify all privately held lands and their registered owners. (ii) The Plan must also identify the ministry having jurisdiction for all crown lands,

along with all leases, licenses, permits and other land use or occupation instruments attached to the identified crown lands.

5. Process.

(a) Field Reconnaissance. Not enough is known and documented about the City's watersheds. The work plan must therefore include a field reconnaissance component to help with the preparation of the inventory of natural features.

(b) Community/Stakeholder Involvement. Scheduled public information and participation sessions (e.g., open house, questionnaires) must be incorporated in the planning process.

6. Objectives. The Plan's objectives must be structured to define the City's ambition for the long-term preservation of the natural flow quantities and characteristics and the current (natural) water quality standards and characteristics in all streams and creeks covered by the Plan.

(a) Future Permitted Uses. Future permitted uses include conservation areas, development areas for forestry, mining and recreation. The Plan must also identify all potential land uses that are uses that may be possible or feasible, whether or not such uses are presently known to be pursued by the public, private or voluntary sectors.

(b) Watershed Protection Measures. Identification of enforcement, legislation, education, restoration, rehabilitation and other suitable tools and programs.

7. Policies.

(a) Regulatory Measures. The Plan's policies must identify the regulatory steps required to achieve the Plan's objectives.

(b) Authority. The Plan must identify separately those policies that fall within the jurisdiction of the City of Rossland, and those that fall under the jurisdiction of other governments or their agencies.

The report stated in its introduction:

The City of Rossland has recognized the importance of protecting and maintaining the quality and quantity of its water supplies for the short and long term. This watershed management plan was commissioned by the City to establish watershed objectives and policies.

One piece of information absent in the 2002 draft Watershed Management report was a reference to the status of Rossland's watersheds as Crown Map Reserves, identified by Urban Systems nine years previous in its 1993 report to Rossland City.

2.4. Current Land Ownership and Watershed Activities

In 1992 and again in 2001, the boundaries of the City were extended to include the water supply areas within West Little Sheep Creek, Topping Creek, Hanna Creek, South Murphy Creek and Elgood Creek.

The remaining portions of the watersheds are within the boundaries of the Regional District of Kootenay-Boundary and are privately owned or are Crown land. The purpose of this boundary expansion was to allow the City a measure of control in the upland watershed areas that it previously did not have. Although Crown land is still administered by the

Province, the incorporation of the water supply areas within the boundaries of the City provided the City with the opportunity to address land management issues through zoning.

Why the Reserves were overlooked is not known, and becomes part of a mystery, once again. Had they been mentioned, there would have to be an accounting about Crown land use planning issues concerning the Reserves related to forest management and proposed resort developments mentioned in the 2002 draft.

There was something new being introduced about Rossland's long-held policy to protect Topping Creek from development. Under Section 2.0, *Current Conditions*, "With the potential for increased development in the watersheds and associated population growth, City Council has recognized the importance of an assured long-term high-quality water supply to meet future demands." This was further elaborated in Section 2.6.2, Recreation:

The 1999 Red Mountain Resort Master Plan describes Red Mountain's intended expansion and development plans. Currently offering 260 ha of developed ski terrain, the Master Plan expansion proposes a ski area of 797 ha serviced by 11 ski lifts. The proposed expansion area encompasses Record Ridge, Grey Mountain, Mt. Kirkup and Mt. Roberts, as well as improvements and expansions of ski facilities at Red Mountain and Granite Mountain. All of these developments are located in the City's community watersheds above its intakes.

In Table 2.7.3, *Long Term Importance of Watersheds*, were comments about each drinking watershed. Alongside Topping Creek came the following controversial recommendation:

Even though significant recreational and residential development is planned within this basin, it represents a supply, which would be very expensive to replace. With adequate measures to safeguard water quality, combined with existing treatment, development should be able to occur without reducing water quality.

This rationale was later embedded in Section 3.2, *Long-Term Objectives*, and in Section 4.1:

Over the long term the watershed management objectives should be to: Achieve healthy, properly functioning watersheds; Meet the economic needs of the community; ... Develop partnerships with all licensed stakeholders in the watersheds and the public for the protection of the water resource.

4.1. Plan Framework

The purpose of the watershed management plan is to protect the source quality and quantity of water in the City's watersheds in order to meet the needs of the residents of Rossland now and into the future. The goal is to develop a plan that results in watersheds that are environmentally healthy and also meet the economic needs of the community. The plan is not intended to be a "cookbook" but rather a flexible framework designed to achieve the desired watershed conditions through cooperation not confrontation. The only way that the plan will work is if all the stakeholders and the public see themselves as partners with a common goal – the protection of the water.

The new economic development objective was later described in Section 4.3, *The Action and Implementation Plan*, under *Local Government Authority*, concerning "Regulation of land use and development within the municipal boundaries of the City of Rossland." In the section was a

discussion on a number of points that elaborated on changes to City bylaws and OCP amendments, with a consideration to “designating the entire watershed a Developmental Approval Information area.”

Under Table 3.3.1, *Desired Future Conditions*, were comments about “forest development” and “other land uses”, with comments that it would be an “ideal future condition” for no forest development above the City intakes:

Other Land Uses

- Red Mountain future development may result in leases on Crown land that may be subject to City OCP/bylaws.

Forest Development

- Watersheds are mapped to determine the timber harvesting landbase and the non-timber harvesting landbase.
- For the timber harvesting landbase total chance plans are prepared identifying all roads (permanent and temporary) and all potential cutblocks.
- Forest development is planned to promote forest health and to have minimal effect on water quality.

The draft report stated under Action #3, *Protection of Water Quality, Strategies: Forest Development*, “Forest development should be consistent with the strategies presented in the Kootenay-Boundary Land Use Plan... Current development is planned and carried out consistent with the Forest Practices Code.”

In the author’s book, *From Wisdom to Tyranny*, is a discussion about how the Crown Watershed Reserves were purposely not documented or accounted for in both the *Kootenay-Boundary Land Use Plan* and the *Forest Practices Code Act*. As already stated, forest management activities and objectives through the Ministry of Forests were to be excluded within the Reserves, and what transpired was that the Ministry underhandedly and secretly included them in provincial timber harvesting land base.

2.8. Red Mountain Ventures’ documents

There is no reference to the Topping watershed as a Crown Reserve in the proponent’s, Red Mountain Ventures, golf course application documents recently submitted to the City of Rossland. Given the overview of documents presented in this section, this appears to be a serious oversight.

The manner in which the Topping watershed is repeatedly statused by the proponent, is by reference to it as a “designated community watershed” (i.e., in *The Golf Club at Red Mountain Environmental Impact Assessment*, prepared for the RMR Acquisition Corp. by Masse & Miller Consulting Ltd., February 2008). This definition adheres to the Topping watershed as defined by the Ministry of Forests, initially introduced in 1995-1996 by the passage of the *Forest Practices Code Act*. Though accordingly correct, it is incorrect, insofar as the *Forest Practices Code Act* failed to properly identify the status of a number of community watersheds in its official status list as active Crown Watershed Order-in-Council and Map Reserves under the *Land Act*. The result of this trickery was that existing Crown Reserves were no longer being referred to as such, making references instead to

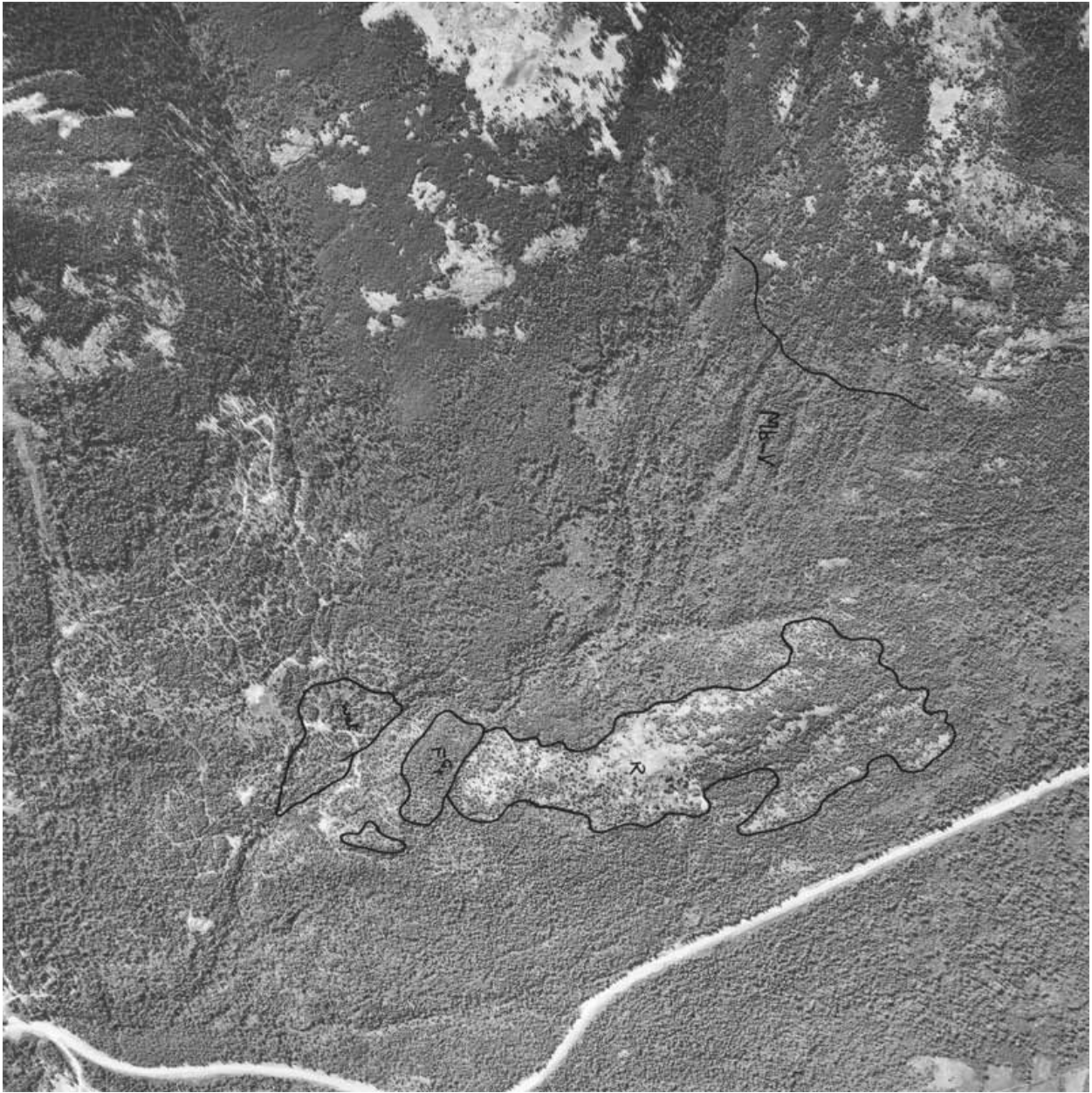
“designated community watersheds”, indistinguishable from community watersheds reserved and not reserved.

But this wholesale oversight should not exclude the proponent from being ignorant of this fact, because the proponent is responsible for putting all the cards on the table. However, the proponent could argue that the provincial government had failed to identify Topping Creek as a *Land Act* Watershed Reserve during its search of land status records, and if such is the case, and if the Reserve is found as an active status, then the provincial government is at fault.

Because of the seriousness of this matter, the author conducted an audit of all references in reports recently published by the proponent in the application to Rossland City. For instance, if there was a reference to any of the documents described in this preliminary report section which mentioned the status of Topping Creek as a Crown Map Reserve, then there should have been a reference to, or an explanation of, this fact by the proponent. In all the proponent’s documents reviewed, there is only one document which has a small list of references, namely the Environmental Impact Assessment report mentioned above. In its reference list, there is no mention of any of Rossland City documents mentioned above. A review of the proponent’s (RMR Acquisition Corp.) draft October, 2007 report by Masse & Miller Consulting Ltd., *Red Mountain Resort and Golf Course – Best Management Practices*, which was not included in the application documents, did not include any references as well.

Aside from the relevant issue and inferential consideration of Topping Creek as a Crown Reserve, it appears that the proponent, through the consultants’ reports, has neglected to review relevant documents provided to the City of Rossland over time.

3. 1975 & 1977 Subdivision Applications within Topping Creek Watershed Reserve Rejected by Rossland City and Provincial Ministries



1974 aerial photograph of Topping Creek Watershed Reserve (top of the photo points westward). The intake is located at the bottom left corner of the photo. The black-lined areas in the photo are those drawn by someone who identified certain forest features. Former logging activities are noticeable in areas on the photo. Note absence of development.

From the scant number of critical files related to Topping Creek recently acquired and reviewed, there are strong grounds to conclude that proposed developments on private lands within the City's primary water source were previously opposed and denied by Rossland City Council, including parallel supportive opposition by provincial government agencies. In addition, a 1971 report to the Nancy Greene Recreation Advisory Committee by the City of Rossland recommended that the private lands in Lot 1295 "be purchased by the Provincial Government" or by the City, or zoned against construction access.

The documentation presented in this section about Council's inescapable position, i.e., "City Council has decided to take whatever steps are necessary to protect the water supply to the City", contradicts recent decisions by Rossland City Council towards the granting of residential development permits for Creekside condos located immediately above the Topping Creek domestic intake, and the related public perception of Council which seems to be aiming to favor the controversial development proposals promoted by Red Mountain Ventures which Rosslanders openly oppose.



Recent Creekside Condo development immediately adjacent to Topping Creek, and just above community water intake. Top left photo, June 23, 2008, is of development site showing material erosion of silty-clay soils down toward Topping Creek, where only some turbid soil is caught in a silt fence structure. Bottom photo of developer Gideon Wiseman talking on his cell phone after he ordered his contractor to shut off his excavator engine. Following the excavation work on this jobsite, which was videotaped, Wiseman was issued a Stop Work Order. The controversially approved Creekside Condo development can possibly be understood as a litmus test of proposed developments slated for Topping Creek.

3.1. Alderman Honey's and City Engineer Lee's Report of 1971

On July 14, 1971, City of Rossland's Alderman R.N. Honey and Engineering Consultant T.D. Lee presented a six-page report, *Effects of Proposed Skiing Developments in Squaw Basin on the Topping Creek Watershed of the City of Rossland*, to the Nancy Greene Recreation Area Advisory Committee. The report began with the City's POLICY:

The city's primary concern is the protection of its water supply.

In the report was a brief discussion about the impacts of skiers to water quality concerns within the Topping Creek Squaw basin tributary, and proposed commercial and residential developments.

Conclusions

1. Skiing activities in the Squaw Basin, including lifts and runs, pose no threat to the quality of the City's water supply from Topping Creek.
2. The construction of parking facilities and/or ski-lodge facilities in any portion of the Topping Creek watershed upstream from the intake structure would present a threat to the water quality.

General Comments

As previously stated the City's primary concern is the protection of its watershed and to this end we recommend the following:

1. That the land in question (Lot 1295) now owned by Sander Brothers be purchased by the Provincial Government and be made Crown land. This we feel provides protection in that
2. Crown land within the properly licensed water reserve area cannot be developed without the express consent of the City of Rossland.
2. If recommendation number one is not possible – that the area be zoned to prevent construction or access without the permission of the City of Rossland.
3. If necessary, the City is willing to purchase the parcel of land in question to protect their watershed.
4. We recommend that a water feasibility study be done within the area.

This 1971 is a critical document, because it serves as the center piece or foundation for future concerns and controversies in Topping Creek. Unfortunately, the City failed to purchase the said private lands, and failed to have the government to do the same. Instead, the private lands were to remain a thorny issue over the succeeding decades, under zoning constraints, where, during the present day, its future is at the whim of another City Council. But, by 1975, the issue would soon rear its ugly head again.

3.2. The 1975 Subdivision Proposal

On April 29, 1975, the provincial community watersheds task force chairman J.D. Watts forwarded correspondence to Department of Highways Manager R.E. McKeown in Rossland regarding “Community Watershed Area and Proposed Subdivision of Parcel A, S.L. 30 and S.L. 31, except Parcel 201659 – I, Twp. 28, Plan X-60, Kootenay District – Topping Creek.”

The community watersheds task force, established in February 1972 by way of a Deputy Ministers Committee operating under the authority of the Environment and Land Use Act enacted in 1971, had been routinely aiding the concerns of provincial water users, officiating over and preventing the permitting of conflicting uses in drinking watersheds. During the opening years of its eight year long mandate, the task force established and re-established (or reconfirmed) Crown Watershed Reserves to protect the public’s drinking watershed sources.

In his letter to the Highways manager, J.D. Watts also made reference to correspondence sent by the Regional Water Rights branch official in Nelson City, T.H. Oxland, on April 22, 1975, relating these concerns.

Further to Mr. Oxland’s comments, it should be noted that the community watershed of Topping Creek would be particularly sensitive to this proposed subdivision, as the drainage area above the intake works is only 2.7 square miles. In addition, as pointed out by Mr. Oxland, downstream users would also be adversely affected.

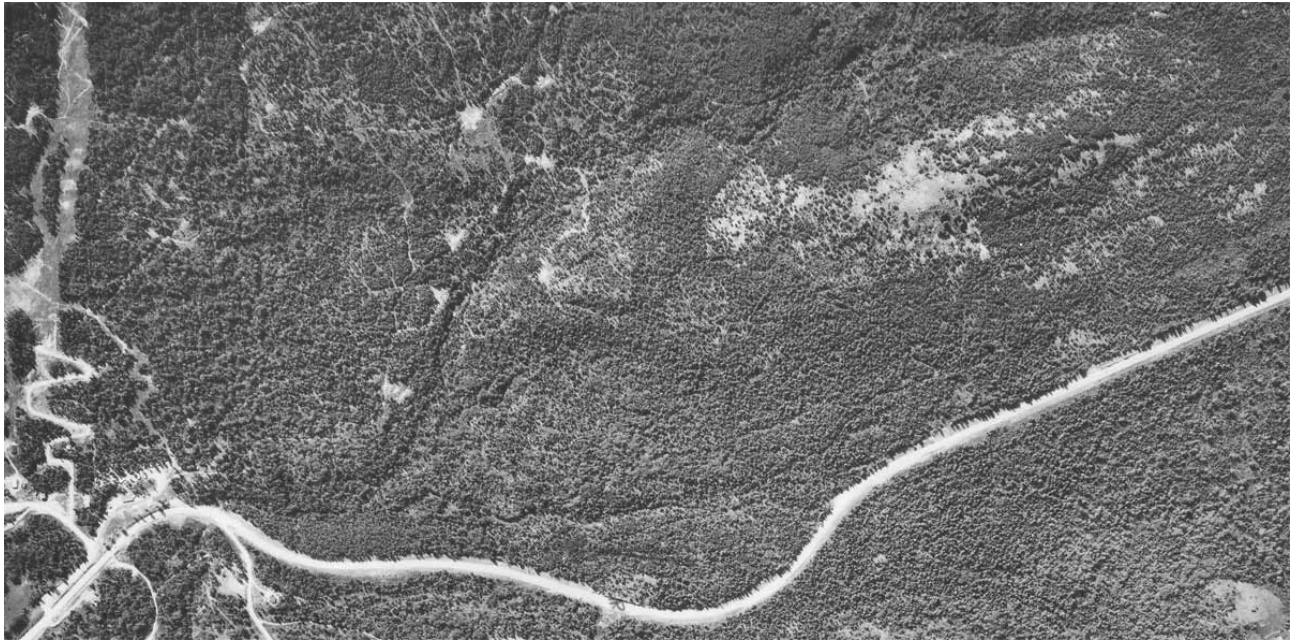
The Water Investigations Branch would recommend against approval of this sub-division, because of these concerns. I trust that this Branch, and in addition, the Department of Health and the affected water users in this area will be kept fully informed of your progress in this matter.

As the documents show, the issue was making its way through the affected and organized ranks of government. On the same day, April 29, 1975, professional engineer D.G. Levang with the Department of Health sent a departmental memo to the Director of the West Kootenay Health Unit “Regarding Proposed Development in Rossland Watershed:”

Having looked at the watershed and maps of the proposed development, I feel there is a high probability for contamination of Topping Creek.

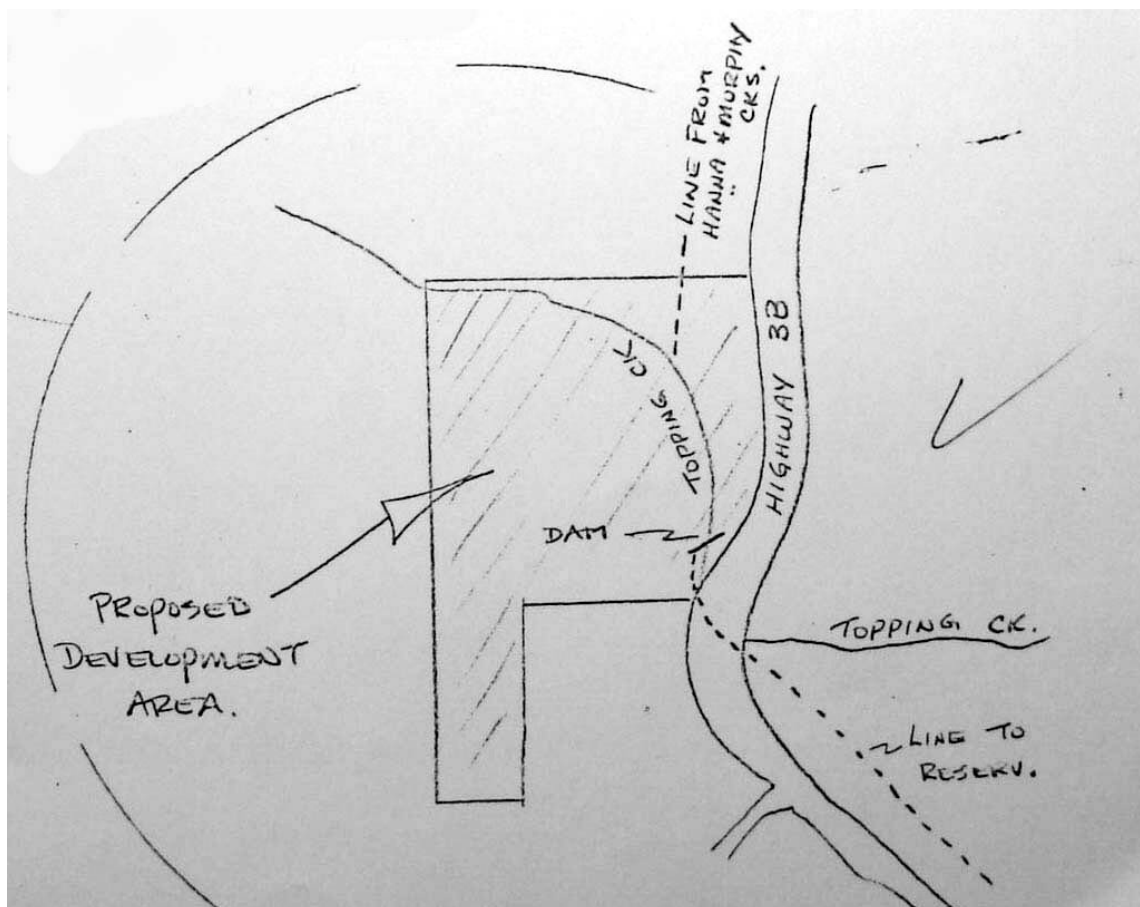
I have written to Mr. R. Nicholl of the [Community] Watershed Task Force, W.I.B. [Water Investigations Branch], for comments. I have also spoken to Ernie Levesque of the R.D.K.B. [Regional District of Kootenay Boundary]

I recommend that no development of any type be allowed in that area, at least until Nicholl has sent his comments and until Levesque, Koberstein and myself have had a chance to walk the terrain and study it in detail.



Above: Section from a 1974 aerial photograph of the proposed development area. Topping Creek can just be seen as a darkish line from the top center area on photo down to the left towards the road and ski run area at the bottom of Red Mountain.

Below: Copy of a lower portion of the map in Levang's memo showing proposed subdivision boundaries. The "DAM" on the map is the location of the domestic intake on Topping Creek.



The two-page April 30, 1975 letter to R. W. Nicholl from D.G. Levang, with an attachment showing the map subdivision proposal (see map above), began with some introductory comments where Levang recalled statements about similar cases that Nicholl recently addressed at a regional Resource Management Committee meeting in Nelson attended by many ministry representatives and local government representatives. He said, "At that time you indicated that you had provided assistance to various Government Agencies on specific watershed problems:"

A situation has arisen in the West Kootenay Health Unit about which I would like your comments.

The City of Rossland (population 4,000) draws its water from three Creeks, Hanna, Murphy and Topping. The head waters of all three creeks are in the vicinity of Red and Granite Mountains. Hanna Creek and Murphy Creek are dammed and water runs from these two dams to a collection box and into a line. The line empties into Topping Creek about 1,000 feet behind a dam which forms the principle intake for the City water supply. The water runs from the Topping Creek dam through a second line to two large open reservoirs and then into the system.

A developer has purchased from private owners most of the land in the Topping Creek watershed, including the land around the intake. The developer's plan is to subdivide this property and sell lots, 150 single family plus a condominium area and a commercial area. The bulk of the watershed would then become a residential area of the type found within municipal boundaries.

The Topping Creek intake is at about 3,800 feet. Portions of bedrock are exposed in the area. I am concerned that not only contaminated surface run-off but sewage will run into the Creek. The water is chlorinated before use but a development of this type would contaminate the water to a level where simple chlorination is inadequate.

Any comments which you care to make will be sent with my remarks to Dr. N. Schmitt, Medical Health Officer, West Kootenay Health Unit.

Public Health Inspector W.D. Koberstein forwarded a three page inspection report of the proposed subdivision to the Rossland Highways Department District Superintendent on June 10, 1975. Koberstein's recommended the Highways Department reject the proposal.

Two separate site inspections were performed on this proposed subdivision by W.D. Koberstein, P.N.I. Initially on May 22, 1975, the inspection showed considerable runoff and pooling of runoff water on the flat areas both on the upper elevations, and as overflow water in the low level next to the creek beds. This inspection was curtailed because of the remaining snow pack.

The second inspection took place on June 4, 1975, and was far more extensive than the first. The entire area is controlled by the creek system within the area. The present raw water supply for the City of Rossland drains through the proposed subdivision. The geography of the area is dependent upon the existing creeks.

We are objecting to the proposed subdivision based on the given information for the following concerns:

1. The existing City of Rossland raw water supply is extremely vulnerable to a development of this proportion, within its water collection area. It is my opinion that subsurface sewage disposal would inevitably reach the water courses that drain this area and thus adversely effect the quality of the City of Rossland's water supply.

In addition it is my understanding that this particular watershed provides other downstream users as well as those of Rossland. These existing functions would also be effected.

2. The proposal as it now stands has roads in areas presently under water, and over areas that have straight bedrock cliffs 70 to 80 feet high that drop directly into Topping Creek. A large portion of the area designated as commercial is unusable because of excessive sloped areas that end on the creek banks. The area designated as condominium between the two creek beds is extremely swampy and in my opinion unsuitable for development of any type. The southern single family lots in Phase II are also in the extremely low and wet areas. As the lot lines are not presently definite, locations of specified lots was not possible. However, it is my opinion that the large bedrock ledges as described in the Phase I area would either eliminate large areas for development or force the replanning of lots to evenly distribute the bedrock into considerably larger lots.

3. Soil in the general area seems to have considerable amounts of sand and gravel with some heavier clay deposits on the higher elevations. However, all areas slope toward one of the water courses.

In summary, the developer has not given adequate information as to actual development plans concerning water supply, definite lot locations, drainage specifications, and population densities anticipated. It would appear that no thorough inspection of the property has been performed by the developer. It is also my opinion that subsurface sewage disposal within this water shed would definitely affect a large population not directly adjacent to the development.

The soil appears able to receive subsurface sewage disposal by not without affecting the quality of the creek water. An extensive drainage system to remove excess surface water would also be required.

It was not possible for me to determine the depth and actual soil conditions and my opinion is based on surface material. Therefore, if any development does materialize, it is my opinion that a community sewerage system would be the only logical form of sewage disposal for a development with a population density that this development would produce.

We are, therefore, recommending that this development be turned down as it presently stands.

From every indication, the subdivision proposal within the Topping Creek Watershed Reserve was denied.

3.3. Subdivision Proposals Reappear in 1977

On April 7, 1977, it was Rossland District Highways Manager R.E. McKeown who this time informed the Medical Health Officer in Trail about another development proposal by Trail residents P. Geronazzo and C. Price in the same area of the lower Topping Creek Watershed Reserve.

Please note that subdivision lies with the Nancy Greene Recreational Area. The applicant wishes to subdivide in two phases. The present proposal is concerned with phase 1 consisting of lots 1-7 inclusive.

On April 15, 1977, the City of Rossland responded to a letter from the Department of Highways about the proposed subdivision. It is evident that the concerns raised about the previous rejected proposals in 1975 were repeated by City Council through City Clerk W.H. Vickers:

Thank you for bringing to the City's attention the application of P. Geronazzo and C. Price to subdivide parts of Sublots 30 and 31, Plan X-60.

City Council strenuously objects to the subdivision for numerous reasons. Rather than state them all at this time, I will only register the major concerns as follows:

1. The development straddles Topping (Stoney) Creek which is an open creek, and the gathering point of all domestic water which supplies the City.
2. Should development be allowed, this water supply could be contaminated with sewage effluent.
3. The creek could be contaminated by the influx of people. Children and domestic animals could disturb the creek causing silting. There is no garbage disposal for the area, therefore; the possibility of contamination from that source also strongly exists.
4. The City will not supply water to the subdivision.

City Council has decided to take whatever steps are necessary to protect the water supply to the City.

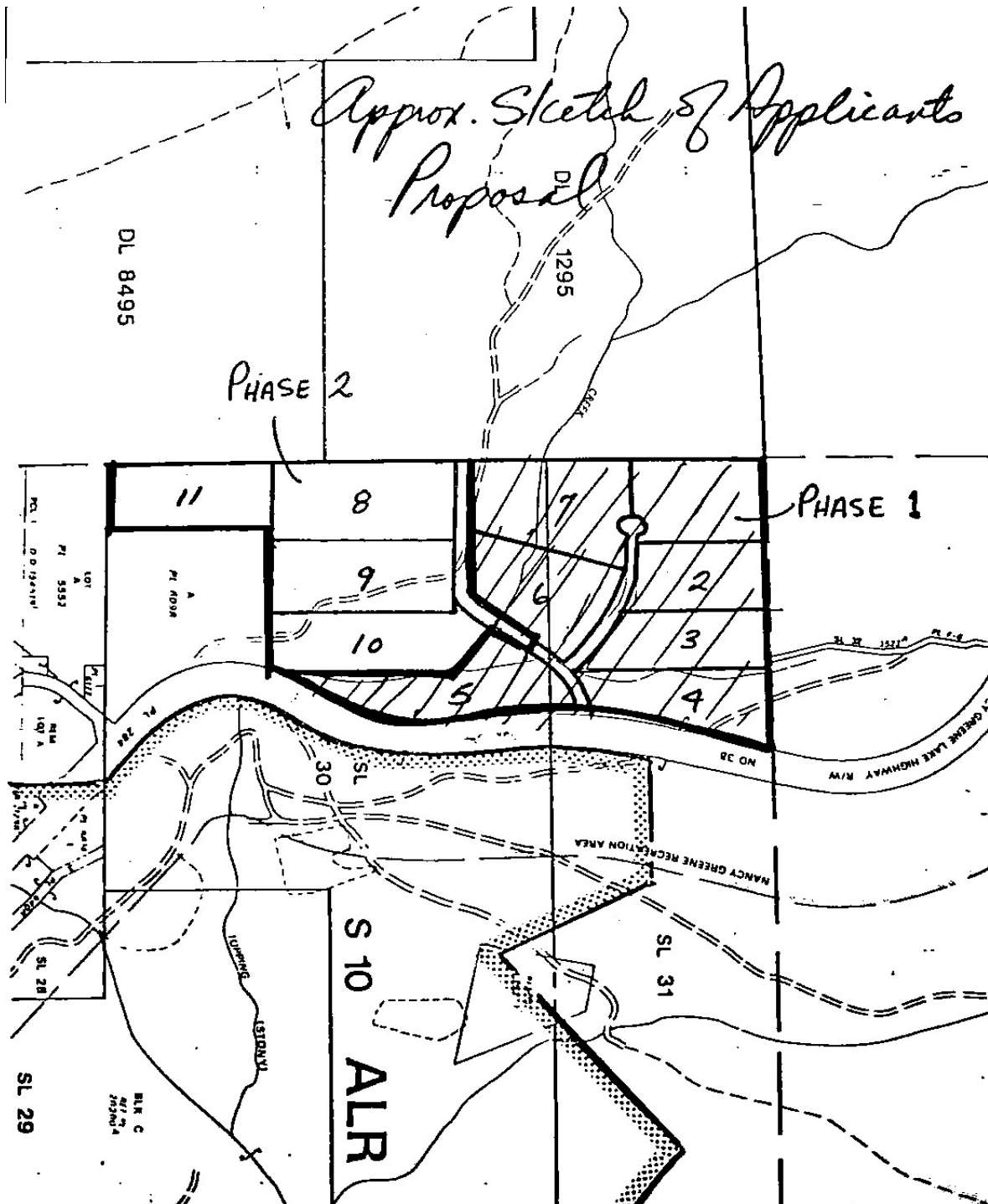
As mentioned earlier, Council reserves the right to elaborate on the objections registered in this letter and also to submit additional pertinent arguments in protest against the proposed development.

The proposal was also featured in the local newspaper, as stated from the following undated source, *Rossland opposes new subdivision*:

The City of Rossland has made it quite clear it wants no part of a newly-proposed development for an area near Granite Mountain.

The proposal was forwarded to city council for study at Tuesday night's meeting by Department of Highways district manager Roge McKeown, whose office had received the

From: Cadastral Subdivision Map, Agricultural Land Reserve (ALR), Regional District of Kootenay Boundary, 82-F4. The domestic intake is located at the lower left hand corner of proposed parcel number 10, part of proposed Phase II. Topping Creek enters the middle top area of parcel 7, part of proposed Phase I.



application to develop along the highway and provide access. Signed by P. Geronazzo and C. Price, the application seeks to develop an area beyond the land owned by Granite Mountain Development, the company which has been trying to build a subdivision below Granite Mountain for several years without success.

The reason the city is strongly opposed to the new proposal is that it straddles Stoney (Topping) Creek, one of the city's main sources of water. Ald. Laurie Charlton pointed out that much of the creek is open at that point, and Ald. Bill Micklethwaite added that although the developer has indicated in the plan that it will install a culvert, the area in question is also a significant collecting point for other water feeding in.

A letter will be sent to the Department of Highways, voicing "strenuous objection" to the proposal. "It's really too bad," commented Mayor Harry Lefevre, "that the Ker Priestman report (prepared for the Regional District) didn't deal with matters of this nature."

Rossland City's letter was also forwarded to the Health Department. On July 5, 1977, West Kootenay Health Unit Director N. Schmitt sent a two-page departmental memo to the Assistant Deputy Minister in Victoria about the matter, copies of which were forwarded to the City of Rossland, the Regional District of Kootenay Boundary, and the Ministry of Municipal Affairs:

Re: Future Land use, Nancy Greene Recreational Area: specifically proposed subdivision of parts of S.L.'s 30 and 31 west of R./W. Plan R-284 except part included in Plan 6098, Twp. 28, Plan X-60, Kootenay District.

The above proposed subdivision has been referred to our attention for comment on several occasions since 1975. The present proposal appears to be the one that the subdivider wishes to proceed with. After reviewing our whole file on this matter, the Chief Public Health Inspector has reached the conclusion that we require additional professional and technical expertise in land use suitability to complement our own, for future comments to the subdivider and the subdivision approving officer. I am in agreement with this conclusion.

We are extremely concerned with the subdivision proposal as well as future land use of the whole Nancy Greene Recreational Area (Rossland to Nancy Greene Lake) for the following reasons:

1. The City of Rossland is dependent on various creek and spring sources in this area for its domestic water supply.
2. The community of Riverdale is dependent on surface drainage from this area for its domestic water supply.
3. The community of Blueberry Creek is dependent on the Nancy Greene Lake/Blueberry Creek drainage area for its domestic water supply.
4. At present, surface waters in Nancy Greene Recreational Area are not subject to contamination from known human sources.
5. Our Public Health Inspectors, Regional Environmental Engineer and the Task Force on Multiple Use of Watersheds of Community Water Supplies (Mr. J.D. Watts, Chairman) Water Resources Service have all recommended against approval of past subdivision proposals in the same area (past correspondence attached).

6. The City of Rossland is not in favour of this subdivision. The Regional District of Central Kootenay Boundary Planning Department has expressed concern about the same (past correspondence attached).

We are asking that your office approach Mr. G. Simmons, Associate Deputy, Ministry of Environment with the view of involving the Resource Analysis Branch in doing a comprehensive study in land use suitability in the Nancy Greene Recreational Area as a whole, and more particularly in the general area of the aforementioned proposed subdivision. Amongst other things we wish to know what land uses should not take place in this area.

We have had an opportunity to read the 1975 survey that this Resource Analysis Branch did in the town of Golden and we were impressed with their efforts.

If we receive a favourable response to our request, we would prefer that the study get underway this fall. We would also like the study group to co-operate and communicate their efforts with the Health Unit, City of Rossland and the Kootenay Boundary Regional District.

All past correspondence related to this subdivision that we have on file is attached.

At your earliest convenience, may we please be informed of the decision regarding our request.

After the issue landed on the desk of government staff at the Resource Analysis Branch, it was about three weeks after Schmitt's letter to Victoria that the Department of Health received a formal response by way of a July 27, 1977 memo from Ministry of Environment Associate Deputy Minister G.E. Simmons to Associate Deputy Minister K.I.G. Benson of Public Health Programs:

In response to your request of July 14th, the Resource Analysis Branch has received the correspondence you provided on the subject area. I should at the outset note that it is not our policy to carry out detailed surveys on private land in response to proposals by a private developer since the cost of such surveys should be borne by the developer.

After examining existing soil maps and air photos, Mr. Benson, Director of the Resource Analysis Branch, advises that detailed surveys by that Branch would only confirm the reports of Mr. Levang and Dr. Schmitt. Extra lines and specific measurements from a detailed survey would simply quantify the fact that the area cannot be developed without extreme effects upon water quality and seasonal quantity (greater than present runoff in thaw or rain and less than present in dry periods).

As indicated in the correspondence attached to your memorandum, the Task Force on Multiple Use of Watersheds for Community Water Supplies examined this proposal some two years ago. I have also reviewed the issue with Mr. J.D. Watts, Head of our Planning and Surveys Division, and Chairman of the Task Force. It would appear that the proposed development could adversely affect water quality in Rosslands' supply system.

Since no agencies in the referral process appear to be in accord with the proposed development, it would seem appropriate that it should not be approved. This of course is the responsibility of the Approving Officer.

4. THE QUESTION OF MUNICIPAL (COMMUNITY) GOVERNANCE IN THE CONTEXT OF CONTROVERSIAL DEVELOPMENTS IN TOPPING CREEK

Of comments received by our group from citizens who have read the draft OCP, more than half deal with protection of the watershed. Of those, the single greatest concern is that the language used in the draft is not firm enough to ensure protection of the town's watershed and water supply. Where definite guidelines are given, they are often modified by subsequent comments which make the guidelines in question less definite and more interpretative, or phrased in such a way as to leave the commitment to protection in doubt.

Example, on Page 59, Section 23.4, Policies-Potable Water, #4 states: "Update the watershed management plan including the establishment of watershed boundaries." In fact, there is at this point no watershed management plan, and there are existing watershed boundaries. Thus it would make more sense for this to read, "DEVELOP a watershed management plan and PROTECT existing watershed boundaries." (Letter to Rossland Mayor and Council, May 4, 2008, by Kathy Moore, Citizens for Responsible Development)

Rossland Council can re-zone that area, but the re-zoning has to be consistent with the Official Community Plan. Since what Red Mountain Ventures wants to do is NOT consistent with the current official plan, Katkov is asking is that Council AMEND the town's OCP.

As everyone knows, Rossland has been working toward the development of a new OCP for nearly a year; that's part of what the Vision to Action process was all about--so citizens could provide input as to what they want to see in the new OCP, which is to be the guiding document of what they want to see in terms of the direction their town develops. So why amend the existing OCP now, particularly to take things in a direction NOT indicated in the Vision to Action's Sustainability Plan?

Well, because Katkov wants the old OCP amended. Now. So he can get on with the golf course project and related real estate. (Rossland Citizen email, December 4, 2007)

There are plenty of opportunities for development outside our watershed. In Whistler, the Sustainability managers told me they don't even consider proposals in their watershed, much less build in them. They recognize it as a valuable resource and stringently protect it. The fact that we have been mediocre stewards of our water supply in the past doesn't mean we should continue to set the bar so low. (Letter to the editor, Trail Daily Times, Kathy Moore, Citizens for Responsible Development, undated)

Graham Kenyon's recent letter appears to miss the point. Community concern is not about golf. It is about a proposed golf course and residential development IN THE WATERSHED. Mr. Kenyon's letter really puzzles me since he was the chair of the Steering Committee for the Visions to Action process, which clearly identified community concern with the watershed.

That concern is now incorporated in the Strategic Sustainability Plan which was adopted by council. On page 95 of the SSP are the following statements: “Establish the watershed boundaries and protect the watersheds. Protect the land in perpetuity from development, logging, mining, and any other intrusive use that would impact the integrity of the water supply.”

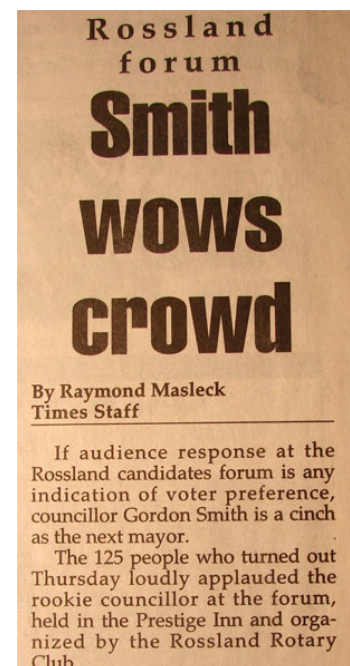
Given Mr. Kenyon’s leadership role in the process leading to the SSP, the Community’s concern for the watershed should not be a surprise to him. (Bob Bechaud, Letter to the editor, Rossland Record, May 23, 2008)

What I see missing from the draft OCP is any statement that there will be NO FURTHER DEVELOPMENT in the Topping Creek watershed, which is known to supply about 2/3 of the town’s water during the 9 driest months of the year--and which Little Sheep Creek, if it is brought on line, can’t begin to replace. There are lots of “motherhood statements” about mitigating the effects of development in “environmentally sensitive areas,” but nothing about disallowing developments in such area. Whistler and many other communities across BC will not even consider a development in the watershed. And this is what most Rosslanders are asking for--or so it would seem, from the 959 who just signed a petition to be presented at the Legislature in Victoria, asking that the provincial government NOT allow Red Mountain Resorts to develop a golf course in the watershed. I should think that a few local residents, both in town and outside town, would also be bothered by the fact that the developer is expecting to get some 450 acres of Crown land virtually given to him for the golf course, condos, hotel, etc. Our land, right? Given to Katkov & company at something like \$5000/acre? In exchange for...??? Oh, right--I forgot. Some low-paying resort-type jobs and a golf course that few of us could afford to play on. (Rossland resident email, May 22, 2008)

4.1. The Mayor and the ‘Visions to Action’ Sustainability Plan

Rossland City Mayor Gordon Smith, a former first term City Councilor, was elected as first-term Mayor in late November, 2005, during the provincial wide municipal elections held every three years. He is primarily responsible for steering City Council, since late 2007, to consider the adoption of proposed extensive resort developments in the Topping Creek drinking watershed reserve, contrary to ongoing strong and collective disapproval by Rossland constituents.

As this preliminary report has already demonstrated, Mayor Smith’s position is most controversial, not only because it blatantly counters public disapproval, but it also stands in sharp contrast to the City’s historic policy and position that advocated, through common sense, the protection of its drinking watersheds against similar development proposals. And, as discussed below in section 4.3, the scheme has apparently managed to advance to this stage because Rossland’s famous Constitution Bylaw was repealed, preventing its citizens from its rightful ability it previously had, to quash Council land use and



other decisions through binding referendum.

As members from the newly formed Rossland-based Citizens for Responsible Development have correctly interpreted, their local issue has become an ugly and thorny contest. Rossland Municipal governance has stretched public accountability beyond acceptable limits and harnessed discretionary powers in order to appease the controversial aspirations of an influential San Diego-based developer inside the Topping community watershed. This is evidenced in recent skirmishes with local residents about the refusal by the Mayor and the majority of Council on the release of the developer's application, and in defiance of two separate public petitions against the unethical proposal. This suppressive action against the early release of the application gave the City the dubious distinction by the Canadian Association of Journalists who nominated Rossland City on May 14, 2008 for its annual "Code of Silence Award".

Contrary to present-day controversies about the Mayor and community accountability, a review of the Trail Daily Times newspaper during and following the municipal election campaign in November 2005 includes statements and promises made by Mayor Gordon Smith about his mandate to listen to his constituents:

We have to ask ourselves: Are we communicating effectively? Are we listening and paying attention to the needs of Rosslanders? We really need to reach out and ensure that we are involved and in touch with the broad spectrum of the community.... The current Official Community Plan dates from a time when there wasn't much growth. We have to look at where we want to be in 10 or 15 years. What are our core values and how do we preserve those? (*Unite behind City's Vision*, November 10, 2005)

Smith said he was criticized in some quarters for not being "a team player," so he is gratified that the "vision of accountability and responsibility that I have been trying to put in place" was endorsed by voters. (*Rosslanders shake it up*, Nov.21, 2005)

Unite behind city's vision

When Rossland councillors decided to select an interim mayor from their ranks last January rather than holding an election, they had to toss a coin after several deadlocked votes.

"There were a lot of divisions on council almost from the start," said first-term councillor Gordon Smith, who lost the toss. "Unfortunately, it has affected our effectiveness."

Council needs to unite behind a vision of Rossland's future. The place to start is by "renewing our relationship with the community."



Gordon Smith

By early 2006, at the beginning of the Mayor's mandate, the City began a long undertaking to map out its future through the involvement of the community for a new planning vision document.

Rossland city council is gearing up for a lot of soul-searching over where the resort community is heading. The process will be kicked off with a consultant's report on the impacts of development. A request for proposals for this study will be going out shortly. This will be followed by successive rounds of "scenario" and "strategic" planning, the creation of a "community vision," a community "sustainability strategy," and finally a new Official Community Plan and other planning objectives."

A crucial part of the exercise will be public consultation during each stage, said Graham Kenyon, who has been urging the city to undertake the process after being involved in the



abbreviated version for the Lower Columbia Community Development Team. "This is not just window dressing. This has to be done in a way that the community really feels they are part of it."

"I think council is firmly behind this," said Mayor Gordon Smith. "We will proceed and hold up our end of the bargain." (*Public plays role in Rossland's future planning*, January 10, 2006)

The phase one report on development was released in July 2006, to which the Mayor commented, "This is Step 1 in a series of planning components that is designed to get us to a sustainability plan for the community" (*Rossland development paying for itself: report*, Trail Daily Times).

By January 2007, Rossland City hired Vancouver City-based Sheltair Group for \$161,000:

to complete a strategic plan laying out community directions and objectives, and then rewrite the Official Community Plan, which governs land-use decisions, council decided Monday.

"This will not be a bureaucratic planning exercise," council was assured by Graham Kenyon, chair of the city's strategic plan steering committee, which recommended hiring Sheltair.

"Collectively we shall define our

desired future, and collectively we shall develop the road map to get us there, plotting a course that combines economic prosperity with social well-being and lifestyle, while maintaining an environment we will be proud to leave to our grandchildren." (*Vancouver company hired to rewrite Rossland's OCP*, Trail Daily Times, January 17, 2007)



The so-called community plan was referred to as the “sustainability plan”.

Concern about the pace of development in Rossland is such that council is considering saying “no thanks” to several small donations from developers to help fund a year-long planning exercise.

The city is soliciting funding for its “sustainability plan,” for which it has retained a Vancouver consultant at a cost of \$161,000.

But, at its next meeting, council will consider a motion to turn down commitments of \$5,000 from Red Mountain condo builders Val and Steve Ash, and \$2,500 from Red Mountain Resort.

“There is a concern out there that this thing is going to be developer-driven,” said councillor Larry Doell. “It is quite widespread and vocal.”

Doell told council Monday there is a “highly-charged environment out there. There are all these subdivision proposals coming forward and people are feeling sensitive.”

Councillor Lloyd McLelland suggested that a “professional consultant” isn’t “going to be swayed” by the source of funding, including a \$40,000 commitment from the Real Estate Foundation of British Columbia.

“There is a lack of trust in the community,” he said. “If we don’t overcome that, and succumb to this, we will never get anywhere.” (*Rossland may nix developers’ offers of cash for planning*, February 28, 2007, Trail Daily Times)

The name eventually adopted by Council for public participation in the “sustainability plan” became the “Vision to Action” process.

On Friday, for the second time this year, more than 130 people came out to a public meeting to listen to a presentation about community sustainability and have a say on where they think the city should be going.

“Rossland is facing an unprecedented amount of change and is at a crucial crossroad in its development,” said Graham Kenyon, chair of the steering committee.

“Our challenge is to create a community that is sustainable in the face of global change and unprecedented environmental constraints.”

One way a community builds towards the future is through an official community plan (OCP), but rather than revising Rossland’s plan in a traditional way, the city has decided to take an alternative approach. Kenyon and a small steering committee are leading the process in looking in how sustainable Rossland will be over the next three to five decades.

“The whole process is getting people involved from the beginning to the end. We are going through each of the driving forces that could impact the city to see what the consequences could be.”

Citizens help map out Rossland's future

By Kate Skye
Times Staff

A boom in development in Rossland is causing the community and council to ask what residents want the city to look like in 10, 20 or 50 years.

Wanting to examine these questions from all angles, the city has embarked on a process called Vision to Action in an effort to engage citizens in mapping out the future.

On Friday, for the second time this year, more than 130 people came out to a public meeting to listen to a presentation about community sustainability and have a say on where they think the city should be going.

"Rossland is facing an unprecedented amount of change and is at a crucial crossroad in its development," said Graham Kenyon, chair of the steering committee. "Our challenge is to create a community that is sustainable in the face of global change and unprecedented environmental constraints."

unpredictable challenges "elephants."

"It is very difficult to see what is coming and I don't think it is human nature to think about the future," he said. Most municipalities focus on the years in which they are elected to serve.

Communities can view the future in one of two ways, he suggested. They can be like groundhogs constantly looking around to see what's coming down the road or they can act like ostriches who want to keep their heads in the sand.

Change is here and it will accelerate in the coming decades, he said. Creating a community sustainability plan that will eventually become an OCP is one way to be proactive.

"This is not the easy way to write an OCP," said Rossland Mayor Gordon Smith, "but it is the right way to write an OCP."

At Friday's public meeting, Moffatt outlined seven "elephants" that all communities will have to deal with in the future: change in demographics, urbanization, climate change, the economy, natural

"This is not an easy way to write an OCP," said Rossland Mayor Gordon Smith, "but it is the right way to write an OCP."

To help engage the community and move the process along, the city has hired Erin McGuigan to coordinate the Visions to Actions project.

"At this point we are trying to get the community involved and invested," she said. "We have plans to reach out to other groups, school groups, youth and seniors, new parents, and we will funnel their ideas back into the process."

The task force will meet again in April to explore the visioning component. In June, they will set out actions to be implemented.

"Rossland is going to get a reputation as a forward-thinking community," Kenyon added. "And that is an asset in itself."

"This is another step in a long legacy of this community being very caring about its future. We are creating a set of tools for both council and the community to map out a better future and if those tools are going to be effective, it has to have a solid foundation of community input."

The process Rossland is undertaking requires "forecasted intelligence," he (Charlie Wieder, new to the community from Buffalo, New York) said. "This is about stretching your mind to where we could go or shouldn't go. It's exciting, as a plain citizen, to have some input into the destiny of the town." (*Citizens help map out Rossland's future*, Trail Daily Times, March 26, 2007)

By June, 2007, Mayor Smith had prepared a public statement printed as a lengthy commentary in the Trail Daily Times. One of his main focus points was on his commitment "to renew the relationship city hall had with the community", which he said was "best embodied in the "Visions to Action" project and new Official Community Plan rewrite":

This month marks the halfway point for council and with a year and a half remaining in our term, it's a good time to check our progress.

Rossland city council promised change during this term and we are well on our way to meeting that commitment. Our first main objective was to rebuild city hall into an organization focused on providing the best possible municipal services to our citizens. Our second main objective was to renew the relationship city hall had with the community. The next few months will see both those promises fulfilled.

Our second high-level objective, to renew the relationship between city hall and the community, is best embodied in the “Visions to Action” project and new Official Community Plan rewrite. With the help of our volunteer steering committee and taskforce, council is reaching out to our residents to create an inclusive and innovative strategy that strengthens our capacity as a community to grow and prosper.

The result of this project will not only be an innovative new Official Community Plan and Community Sustainability Strategy but also a framework for value-based decision-making that councils will utilize for years to come.” (*City meeting goals of strong staff, community relations*, June 20, 2007)

When the *Visions to Action – City of Rossland Strategic Sustainability Plan* report was finalized in January, 2008, the public had included an important provision. That provision was contained in Section D, Strategic Actions, under identification number 112:

Strategic Action: Establish the watershed boundaries and protect the watersheds.

Consideration: Protect land in perpetuity from development, logging, mining, and any other intrusive use that would impact the integrity of the water supply.

In the report’s foreword by Mayor Smith, he stated:

How we manage change and whether it brings long-lasting benefit of permanent harm to our community is the most important and most daunting challenge that we face.

The Strategic Directions and Actions contained within this document have been arrived at by an innovative process of public consultation, collaboration with subject matter experts and planning and design workshops. What makes this document unique is that it is firmly grounded to the expressed vision and values of the community at large.

The community is the collective author and the stewardship of the plan is the responsibility of Rossland City Council. This document provides a compass point for community building and ensures that future councils have the necessary tools to make consistent and reliable value-based decisions required to navigate a rapidly changing environment.... the community of Rossland has created a vision for itself and a plan to get there.

Despite the Mayor’s rosy rhetoric, it wasn’t long after the release of the Visions to Action report that the proposed fate of the Topping watershed, that was said to be protected in that report, was already receiving great public dismay and condemnation.

4.2. “In the Best Interests of the Community”

On July 4, 2008, The Rossland Record published a memo, *Mayor’s Memo: Full Text*, written by Rossland Mayor Gordon Smith on June 17, 2008. It was addressed to the attention of City Administrator Ron Campbell. The memo was leaked to the press, and contains remarks that prompted Rossland resident and Citizens for Responsible Development member Kathy Moore to call for the Mayor’s resignation, *Mayor Encouraged to Resign*.

Here is a copy of much of that memo that concerns comments related to Red Mountain Ventures' initial development phase proposal for a golf course in the Topping Creek drinking Watershed:

Procedural Considerations

- Golf course DP [Development Plan] should be procedurally straight forward as Council has already considered the down-zoning of the property in question.
- There is no compelling reason for the City to hold or stall the process.
- An arbitrary waiting period will not contribute to due process or fair consideration by Council.

Political Considerations

- DP will come as surprise to Council. It is scheduled on June 23rd.
- Will be construed as fast tracking and thus will have a negative affect on community opinion.
- Council needs to proceed in a way that demonstrates "careful consideration" and, at the same time, not give away the process to a special interest group.



Mitigation: "Balancing political perception and procedural integrity"

- Before considering the DP, Council should have an opportunity to participate in the community consultation [held on June 24th]. To proceed without it will alarm many in the community.
- At the next regular meeting Council should receive an update on the application process. *Memo to include:*

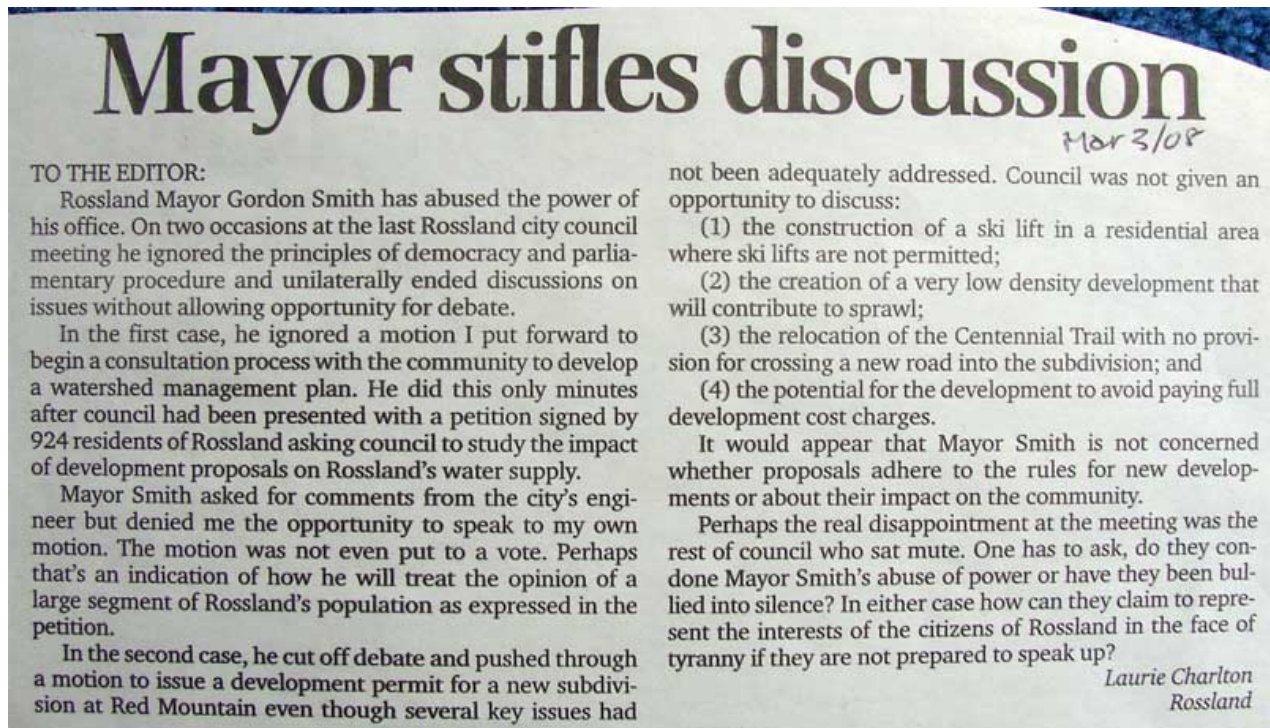


1. Procedural steps, i.e., D.P., OCP, zoning, etc., the intention to provide a road map in order to mentally prepare Council for the process. Memo should act as a refresher for Council re: the process and legal rights of the applicant, Council needs to know what it can and cannot do. Don't leave the door open for LC [Councilor, Laurie Charleton] to obscure the process with confused Council. Council must have a laser-sharp focus on the process.

2. Update on the hiring of third party resources.

3. Update on the community consultation.
4. Proposed timeline for completion of application.

If the above is considered on June 23rd, and then the DP application on July 7th [error, supposed to be July 14th], then I believe we will be able to better manage the inevitable surge of misinformation that will be distributed throughout the community. We should be prepared at the June 23 meeting that LC [Laurie Charleton] will introduce a motion to hold a referendum. Council will not vote in favour (with Doell and Charleton voting opposed). Staff should be prepared to provide input into the discussion re applicable referendum legislation and Community Opinion Bylaw.



Communications

- We must take a leadership role (having CRD post the application on the web before the City is a good example of what not to do).
- Dedicated web page to the application – application, fact sheets, process map, announcements, news releases, etc.
- Information mail outs – process, meeting dates, etc.
- Shaw TV.

The public scrutiny on ALL operations of the City is going to be very intense for the duration of this application process. All aspects of the Corporation [City of Rossland] must be running at peak performance. Even small mistakes (the Vernon cover letter on the bylaw at the last

meeting) will be exploited to portray the City as unprofessional and not capable of making a decision in the best interests of the community.

This is the test of our combined efforts over the last two years to build a new City Hall. Lots of work ahead and need extra help from all.

Your thoughts?

The published exposure of remarks by the Mayor in his private email will no doubt lead to public disapproval and concern over the short and long term about the City's apparent lack of neutrality and perceived favoritism (as represented by the Mayor and the Administrator) toward the proposed controversial developments. In terms of the public comments by the Mayor since 2005 in the few quotes provided in this report section, the Mayor's email helps, to some degree, reveal his intentions.

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LOCAL

City hiring hydrologist but not paying for comprehensive water survey

BY RAYMOND MASLECK
Times Staff

At this point in its review of Red Mountain Ventures' golf course proposal, Rossland city council isn't interested in commissioning a full-blown hydrological study of its watersheds or technical advice from local citizens.

The rest of council rejected attempts by councillor Laurie Charlton to get a 60-page report on the city's water supply by Bill Micklethwaite on the agenda Monday.

"We have an engineer and if we need another report we should get a qualified hydrologist," said councillor Lloyd McLellan, who suggested the report be "turned over to staff for further information.

"If we want a study that means something, with data that means something, we have to be willing to pay for a hydrological study," he added.

ability of water," their memo stated. A comprehensive survey "would provide valuable, additional data," but "this would likely be a multi-year process with a six- to seven-figure price tag," the memo concludes.

"The city action plan will not be a Committee for Responsible Development action plan."

JACKIE DRYSDALE

Councillor Jackie Drysdale said the plan for dealing with the application "will be a city action plan, developed by the city, and input from the community is welcome.

"The city action plan will not be a

The golf course proposal would alienate much of the low-elevation watershed that supplies Topping Creek and sustains the city during nine low-flow months of the year, from July to March. Most of the rest of the watershed is made up of steep, rocky ground, that is frozen for extended periods and/or quickly sheds most of its water after rainstorms and spring melt.

"If we had a really bad year, like 1929-30, we'd be in deep trouble," Micklethwaite said. "That drought is just back, past memory and, out of sight, out of mind."

With the community slated to keep growing and weather patterns projected to keep warming and become more erratic, replacing lower Topping with water from other, undeveloped city water licenses isn't sufficient, he said.

"We are going to need those watersheds anyway. The water shouldn't be



Photo of John van der Eerden, Manager, Water Resources Group, with Associated Engineering. He, among other consultants, was fielded questions by the public on the evening of June 24, 2008, during the public consultation process required by Red Mountain Ventures for Rossland City. During the introduction process, he stated: “I am a Water Resource engineer at Associated Engineering in Burnaby. I’m also the past president of the Canadian Water Resources Association, which promotes sustainable water management. So that’s really part of the credo of that organization. That gives me a really good backdrop for me participating in a process such as this. What I’ve learned today, actually, is that probably first and foremost, there is a shared sense of responsibility with the watershed in Rossland ... it’s really heartening to see. Something that Terry mentioned about the perceived conflict between economic development and the status quo. I really interpret that as ‘sustainable development’ – developing the watershed in a way that benefits the community and that does not provide any detrimental impact. It’s about sustainability, and looking for ways of actually developing a watershed plan.



Photo (far left) of Michael MacLatchy, Senior Water Resources Engineer, Associated Engineering, at the same meeting as mentioned above.

Both Associated Engineering representatives co-authored Red Mountain Venture’s *Water Management for the Golf Club at Red Mountain* (April 2008).

4.3. Rossland’s Constitution Bylaw History, its Relation to the Present Controversy, and Implications for Provincial Adoption

Rossland voters again have the right to force a referendum on city matters, but council is not required to heed the result. The outgoing council has adopted a Community Opinion Bylaw to replace the Constitution Bylaw repealed last month. With a petition signed by 20 percent of registered voters, citizens can again require the city hold referendums on city bylaws or citizen initiatives. But zoning and Official Community Plan matters are exempted and council is not bound by the result of the vote. The previous bylaw exempted zoning matters but not the OCP and was considered binding on council. (Community Opinion Bylaw in – Trail Daily Times, November 29, 2005)

On the late morning of June 24, 2008, the author met with former Rossland City Manager Andre Carrel (1984-2000). The chance meeting turned out to be significant, because of how it helped shape and contextualize the author's perspective on the background politics in the City of Rossland. And of related significance, it also helped provide a framework for rethinking the provincial perspective.

In Carrel's book, *Citizen's Hall – Making Local Democracy Work*, which he published in 2001, the year after his departure from Rossland City, are details on how Rossland City adopted revolutionary governance in December, 1990, known as the Constitution Bylaw.

Electors shall have the right to petition Council to submit any Bylaw and any amendment to a Bylaw to referendum prior to final adoption. (7.1)

A majority vote in a referendum on a Bylaw dealing in a municipal matter shall be binding on Council. (13.1) (Exerpts from Constitution Bylaw No. 1728, December 10, 1990)

In August, 1990, Carrel released *A Constitution for Local Government: The Rossland Discussion Paper* (five pages), which was reviewed by City Council and its citizenry. The paper discussed the implementation of a new community contract, whereby citizens were provided with new powers extending beyond their limited influential rights set by provincial and federal governments that merely extend to casting a vote for an elected member to City Council. Carrel summarized the problem, at the local (third order) government level, "the law protects a council's power; it does not protect the citizens' common interests" (page 26).

Carrel sent out his discussion paper for academic review. University of B.C. political scientist Paul Tennant commented:

Your proposal ... if implemented would add a significant and meaningful element of citizen participation. It would also add a distinctive quality to Rossland civic government. Should it be proceeded with, the "Rossland model" would engender such discussion across the country among journalists, academics, and local government officials. (August 3, 1990)

As Carrel described, the new process was "unusual", in that "referendums, petitions, and initiatives should not be limited to money matters and property servicing projects, but should apply to all bylaws" (page 30).

The real power of a referendum is not found in casting a ballot on a question presented by government. The real power is in the right to call a referendum on any issue, at any time. In a democracy, the power to call a referendum should rest in the hands of citizens, not in the hands of government. It should also not be assumed that referendums invariably result in the overturning of council decisions. Of the thirteen referendums held in Rossland during the first decade of its Constitution Bylaw, five referendums overturned council decisions, but eight ratified council decisions. (page 37)

Over a ten year period since the passage of the Constitution Bylaw, "Rosslander citizens voted for" via binding referendums:


- the establishment of a Water Quality Reserve, funded by an annual \$100 parcel tax to be applied to every property;
- a boundary expansion, incorporating only fifty new residents, but increasing the size of the community sevenfold, extending Municipal control over the development of the Red Mountain ski area and strengthening the city's influence over land management decisions in the community's watersheds;
- \$4 million project to construct British Columbia's largest slow sand filtration and first ozone water disinfection plant;
- a \$250,000 project to rebuild the city's raw water intakes; and
- a mandate for city council to renegotiate the return of the city's fire and recreation services from regional control, to restore full municipal autonomy over these services, and to gain more effective control over program expenditures. (Page 38)

Carrel's reference to "strengthening the city's influence over land management decisions in the community's watersheds" through a former binding public referendum has obviously gone off kilter since the Constitution Bylaw was revoked some three years ago. Nevertheless, Carrel finds:

The significant achievement of the Constitution Bylaw is not that thirteen referendums were held in the first decade after its adoption. The significant change in Rossland politics is not that Rossland saw more referendums in the 1990s than any other municipality in Canada. The achievement of the Constitution Bylaw is that it brought about a change, albeit a subtle and gradual one, in the way that Rossland council related to its citizens. (Page 44)

Rossland council is aware of its citizenry. Council accepts that it does not hold a monopoly on wisdom, knowledge, and concern in the community. The council has learned that its duty is not to make the tough decisions; its duty is to involve citizens in a dialogue on tough questions and to involve citizens in making tough decisions. The change in awareness is not one-sided. The citizenry too is aware of its new relationship with council. The responsibility for decisions at city hall is shared, even if council continues to make most decisions in the traditional manner. (Page 46)

LETTERS TO THE EDITOR



Put golf course to referendum

Rossland Mayor Gordon Smith in his June 11 Community Comment has, I am certain, managed to offend many citizens of Rossland including those that supported him, as I did, in the last election. He also seems to have taken on the role of spokesman for Red Mountain Ventures' (RMV) golf course proposal.

I take exception to the subtle misrepresentations embodied in his comment and I resent being denigrated as a "privileged advocate for unchanging community" or of being a contributor to "coordinated angst."

cost of fuel and air transport, the passport issue and most importantly, the crashing U.S. real estate market with its economic contraction greatly affect recreational real estate sales, including those with golf courses.

"I take exception to the subtle misrepresentations embodied in (the mayor's) comment and I resent being denigrated as a

profitability in this already tightening market?

The June 9 meeting of Rossland council to discuss RMV'S application provided me with no comfort. The application, as presented, contained a specific provision that RMV not undertake a water study unless the golf course is first approved.

The expressed sentiment at city council that an absence of a water study would not necessarily prevent a decision to approve RMV'S golf course is even more worrisome. With golf star Annika Sorenstam confidently predicting opening in spring 2011, it is

The unavoidable, gut-wrenching irony in the present public crisis over development proposals in the Topping Creek community drinking watershed is that Rossland's citizenry have had their communicative binding rights with Council, established under its former Constitution Bylaw, revoked, and are now back in the grip of dictatorial powers regulated under antiquated, imposing and limiting provincial legislations – Council is free to amend its Official Community Plan in favor of the developer despite community disapproval and criticisms.

The re-imposed anti-democratic crisis in Rossland, as it now stands concerning public decision-making over the future of Topping Creek, is not limited to its municipal boundaries. It extends beyond into the provincial and federal realms, and ultimately, into global governments. A peaceful and thoughtful revolution is needed to re-write public colonialist-based laws that extend beyond the powers delegated to the confines of elected officials (often manipulated by self-interested lobbyists), to the realm of all. And, as Carrel carefully notes, there are many problems associated with such contemplation and new legislation.

The mechanisms and procedures by which the philosophy is applied was designed to work in Rossland. We have never suggested that other municipalities should simply adopt Rossland's Constitution Bylaw, or that this bylaw would automatically transform other municipalities into democratic communities. If the process should suit another municipality, that would be a coincidence. (page 41)

But the main point, is that something should be done, and as soon as possible.

As more governments strive to become “mean and lean,” as public policy is increasingly determined by economic policy and as economic policy is increasingly shaped in global terms, interest in meaningful citizen participation in decisions that will alter the community will grow. Citizen participation be means other than through single-pressure groups in the pursuit of self-interest may yet take hold in other municipalities, either by following the Rossland model or by developing systems that reflect their own community character, culture, and history. When that happens, the pendulum of municipal politics will have started to swing away from cynicism and apathy towards citizens creating, shaping, and building the public good of their communities. That is the purpose of a municipal constitution. (Page 48)

5. CONCLUSION

The records clearly indicate that the City of Rossland had a stated policy to protect its drinking watersheds from the encroachment of residential and resort development. Such policy was also formerly enjoined by affected provincial government agencies.

The records also clearly indicate that Rossland City had requested the establishment of Crown Reserves over its drinking watersheds, beginning at some unknown time, and that, from last record, were still in existence in 1993. The records also seem to indicate that Rossland City failed to understand or undertake the legal relevancy of the Reserve status, as a legislative mechanism against Crown dispositions and alienations, as communicated by the City's solicitors in 1984. This is reflected in the Ministry of Forests' presumption and permitting of forestry operations in its drinking watershed Reserves over time, and may also be reflected in the present planning process consideration by Red Mountain Ventures for alienation of Crown lands in Topping Creek through application with the provincial government.

There is, oddly, nothing referenced or stated about the historic concerns by the City of Rossland against former development proposals in Topping Creek Watershed Reserve in recent documents and reports concerning Red Mountain Ventures' application for resort and golf course developments, nor is there reference to Rossland's Crown community watershed Reserves. The absence of such relevant accounting may suggest two possibilities: that this information has simply been overlooked, or that there is an unwillingness to provide this perspective to the constituents of Rossland. In either case, Rosslanders should insist that all the City and provincial historic records be made available and carefully reviewed well in advance of any City Council determination on Red Mountain Venture's proposals.

Under the present development proposals for the Topping Creek Watershed Reserve, Rosslanders, under threat of a City Council which is seemingly bent towards controversial development approval, are faced with a simple yes or no decision: do they want a drinking watershed in Topping Creek as it stands, or do they want development. As it appears, the resort residential and golf course developments, in conjunction with future ski lifts and logged ski runs, will, in essence, render the Topping watershed unusable as a source of future domestic drinking water. Ironically, if Rossland City constituents are not in favour of this development, as it now seems, they will have little remedy if Council should vote in its favour.

Appendix A

Why Rossland Needs a Watershed Management Plan

Committee for Responsible Development - Position Paper

Submitted to Rossland City Council and Staff

April 14, 2008

THE PRESENT

“The citizens of Rossland obviously value clean drinking water and don’t want it impacted by anything. People have raised the issue of a resort development proposed within the drinking watershed boundaries. I think it is wise to listen to their concerns, given that developments in watersheds often have negative impacts on the environment.”

(Fin Donnelly, Executive Director, Rivershed Society of British Columbia. Councillor, City of Coquitlam, April, 2008)

As Mr. Donnelly indicates, developments in watersheds are a widespread concern. We need look no further than the base of Red Resort to confirm that development can and does negatively impact the environment regardless of good intentions. Development is complex. Accidents can and do happen. It has already happened here.

“We’ve always had plenty of water in Rossland. Why the concern?” (Long time Rossland resident, April 2008)

In addition to potential increased water demand from new development, we are faced with a changing climate. The 2007 Columbia Basin Trust publication “Climate Change in the Canadian Columbia Basin” notes “A warmer climate and lower summer precipitation caused longer periods of low flow and lower flows at the end of the summer.” Hydrological models of stream flow at Waneta and Mica dams also indicate a shift to earlier runoff and late summer reductions in stream flow.” The past is not necessarily the future when it comes to water. Rossland needs to consider this in water capacity planning. Rossland needs to do this now, before making water use decision that will have lasting impact.

BACKGROUND

In March 2002, Dobson Engineering Ltd and Urban Systems developed a draft Watershed Management Plan for the City of Rossland. More than six years later, this document remains a draft.

The January 2006 Official Community Plan states as a part of Land Use Strategy, “Given that the supply of Rossland’s water is generally within the municipal boundaries, the City has an excellent opportunity to control the use of the watersheds. Given the importance of the long-term vitality of these areas, a special study should be undertaken. Such a study could be in the form of a Watershed Management Plan.”

The need for a watershed management plan was again identified in the Strategic Sustainability Plan. Most recently the Oceans, Habitat and Enhancement Branch wrote the City on December 12, 2007: “Consequently we strongly recommend that a water management plan be developed for this watershed as soon as possible.” The watershed referred to was Topping Creek.

The Committee for Responsible Development believes that a comprehensive Watershed Management Plan is an essential, and long overdue, step to preserve the quality and quantity of Rossland’s drinking water.

CURRENT SITUATION

In a public meeting on February 12, 2008, Red Mountain Ventures presented their plan for The Golf Club at Red Mountain. Fifty percent (50%) of the development was proposed for land in the City’s Topping Creek Watershed. RMV’s water consultant, Associated Engineering, reported that sufficient water was available from the City’s three active watersheds (Hanna, Murphy and Topping) to meet City requirements for approximately 30 years based on current water use patterns. The report did point out that the capacity and potential water yield of the City’s three watersheds had not been confirmed by flow monitoring, either by Associated Engineering or previously by others.

No analysis was made on the adequacy of the City watersheds to supply future needs.

Future needs = current demand+previously authorized large-scale development+core population growth+golf course irrigation+golf course residential development.

The Committee has reviewed all available historical watershed data from past City studies as well as Environment Canada data on area stream flows. The analysis indicates that there is no factual data on the capacity of Rossland’s watershed, only estimates.

The population growth data in the OCP has not been updated since 1991.

No estimates of how climate change will impact the timing and flow of water from Rossland’s watershed have been made.

In summary, there are no reliable estimates of Rossland’s future water needs. There are no reliable estimates of Rossland watershed capacity. There is a complete absence of data to support ANY decision committing water capacity to new development.

WHAT STEPS SHOULD COUNCIL CONSIDER?

The closing paragraph in the April 11, 2008 online edition of Rossland/Trail News article on the recent Planning and Development Committee meeting reads: “Red Mountain has not yet applied to get formal approval from the city. According to (Mayor) Smith, until the application is actually filed the city has done everything they can do on the issue.”

In fact, the City has not done everything they can do. The Committee respectfully suggests that the following actions are appropriate:

1. Increase protection for Rossland’s watershed by immediately revising existing Bylaws and creating new Bylaws as necessary to:

- Extend the boundaries of the Topping Creek Environmentally Sensitive Development Permit Area to include the entire Topping Creek watershed.
- Prohibit, in perpetuity, development in the R-LDR section of Red Resort beyond the currently authorized 100 equivalent units.
- Prohibit, in perpetuity, any land uses in that portion of the R-MA and RLDR sections of Red Resort that lie within Topping Creek watershed beyond those currently authorized.
- Revise RR-1 zoning to prohibit any new use or development not consistent with the current OCP's stated intent to "protect the integrity of the Rossland Watershed and associated environmental features"
- Revise the R-MA and R-LDR zoning in the area to the west of Blue-Eyed Swamp to incorporate R-OS designation (parks/trails/open space) along Topping Creek and its tributaries.
- Incorporate these Bylaws in the OCP.

2. Immediately initiate a comprehensive hydrologic survey of the Rossland watershed by independent professional experts qualified and licensed to perform such investigations. The survey should include actual water flow data from Hanna, Murphy, Topping and Little Sheep Creek sub watersheds and other sub watersheds deemed appropriate by City staff. The water flow data should quantify the timing and seasonal variation of water yield from each sub watershed. Consult with experts on climate change in the Columbia Basin to model how water yield and timing may change in the foreseeable future. This survey would provide data on the present capacity of Rossland's watershed and estimate how climate change will impact the capacity in the future.

3. Create a water demand database using current demand, population and demographic trends and all development needs currently authorized. This Database would form the baseline demand for evaluating adequacy of current supply and determining the capacity of the watershed for additional development.

4. Create a comprehensive Watershed Resource Management Plan, incorporating the results of the new hydrologic survey, together with capacity and demand data. The content of the Plan and its review and approval should be in accordance with The Water Act (RSBC 1996, Chapter 483.)

5. Incorporate the Watershed Resource Management Plan in the Official Community Plan.

6. Defer decisions on development applications with significant watershed issues until the above five actions are completed.

7. Immediately curtail City financing of developers' share of infrastructure expenditures. Institute a policy requiring that developers pay their share in advance and as a condition of development permit approval. This is to preserve the City's limited borrowing capacity for infrastructure needs of the community.

ABOUT THE COMMITTEE FOR RESPONSIBLE DEVELOPMENT

The Committee was created to support solutions for sustainable development in Rossland. We seek to educate, inform and engage the community in deciding critical issues. We seek open and transparent communication with all stakeholders, including developers.

The Committee focus:

- Supporting sustainable organic growth that provides lasting economic development in the local community and region
- Protecting irreplaceable community resources such as the watershed that make sustainable growth possible.
- Supporting the implementation of the Vision to Action process as reflected in the Strategic Sustainability Plan.
- Supporting long-range public financial policy and planning that facilitates responsible development and fairly apportions costs among all stakeholders.

The Working Group:

Lesley Beatson
Bill Mickethwaite
Bob Bechaud
Kathy Moore
Louise Drescher
Sheree Sonfield
Ross Hopkins
Andy Stradling
Ken Holmes

More information at the Committee web site: www.rosslandbc.org

APPENDIX B: COMPANY SEARCH AND PROFILE (British Columbia Ministry of Finance, B.C. Registry Services)

1. Red Mountain Resorts Inc.

Incorporation Number: BC0366241

Incorporated on May 19, 1989

Amalgamated on June 2, 2004

Amalgamated into RMR Acquisition Corp.

Incorporation Number: BC0696628

Mailing Address: C/O Pushor Mitchell, 3rd Floor – 1665 Ellis Street, Kelowna, B.C. V1Y-2B3

Director Information

- Philip Dowley. 5553 Bellevue Avenue, La Jolla, California, 92037
- Howard Katkov. 5014 El Acebo Del Norte, Rancho Santa Fe, California, 92067
- Donald Thompson. 2355 Second Avenue, Rossland, B.C. V0G-1Y0

Officer Information

- Hank Cuttall, President. 1145 Lakeview, P.O. Box 1987, Rossland, B.C. V0G-1Y0
- Michael McBride, Secretary. 5150 Dundas Street West, Etobicoke, Ontario. Executor of the Will of Glenn McMann. M9A-1C3

2. RMR Acquisition Corp.

Incorporation Number – BC0696628 (Active)

Recognition Date and Time: June 2, 2004, 7:20 pm, Pacific Time, as a result of an **Amalgamation**

Amalgamating Corporations information – Red Mountain Resorts Inc. (BC0366241) and RMR

Acquisition Corp. (BC069068)

Mailing Address: Suite 1700, Park Place, 666 Burrard Street, Vancouver, B.C. V6C-2X8

Directors

- Philip Dowley, CFO. 5553 Bellevue Avenue, La Jolla, Californai, 92037
- Howard I. Katkov, CEO, President. 13954 Mar Scenic, Del Mar, California. 92014
- Donald J. Thompson, Secretary. 2355 Second Avenue, Rossland, B.C. V0G-1Y0

3. Red Mountain Ventures G.P. Ltd.

Incorporation number: BC0677457

Incorporated: September 19, 2003

Previous Company Name: 677457 B.C. Ltd. (Company Name Change: May 14, 2004)

Mailing Address: Suite 1700, Park Place, 666 Burrard Street, Vancouver, B.C. V6C-2X8

Directors:

- Jeff Busby. 314 Loma Larga Drive, Solana Beach, California, 92075
- Philip Dowley. 5553 Bellevue Avenue, La Jolla, Californai, 92037
- Officer information: CFO. 406 9th Avenue, Suite 309, San Diego, California, 92101
- Rocco Fabiano. 1646 Lugano Lane, Del Mar, California, 92014
- Howard I. Katkov, CEO, President. 13954 Mar Scenic, Del Mar, California. 92014
- Donald J. Thompson. 2355 Second Avenue, Rossland, B.C. V0G-1Y0

Website information about Red Mountain Ventures Director Rocco Fabiano



[Direct quote from Belvedere Capital website]

Rocco Fabiano, Belvedere Capital. Rocco Fabiano is a former Group Executive for Household International (now HSBC North America), from which he retired in 2002. In this position, he oversaw Household's private label credit card business, its automotive finance business and its tax-refund lending business as well as Household's insurance operations. In his five years in this position, Mr. Fabiano's businesses led Household in profitability growth, on an absolute basis as well as a percentage basis. Overall, he was responsible for 7,000 employees and \$650 million in annual after-tax net income. Mr. Fabiano has also founded three successful automotive finance businesses; Consumer Portfolio Services which he took public in 1992; ACC Consumer Finance, which he took public in 1995 and then sold to Household International in 1997; and ACC LLC, which he sold to CompuCredit in 2007. In addition, he has been the chairman of a commercial bank, a thrift retail banking executive, the chief operating

officer of a mortgage company and a management consultant. Mr. Fabiano is currently an Advisor to the President of CompuCredit, a Partner and Director in Red Mountain Ventures (ski area and a real estate developer in British Columbia), the Chairman and the majority shareholder of College Advance (private student lending), the Chairman of DigiTales Software (audio books) and a Partner in Del Mar Partners (investor in new vehicle franchises). He was an Ernst & Young/NASDAQ Entrepreneur of the Year for 1997 and is a former chapter chairman of the Young Presidents Organization. Mr. Fabiano holds an MBA from Cornell University as well as a BS in Genetics and an MS in Protein Chemistry from Colorado State University.

Excerpt from New York Times article, *Lowering the Credit Fence: Big Players are Jumping into the Risky Loan Business*, December 13, 1997.

The few big companies with longstanding subprime experience, like Household, are adding new lines of business. Last month, Household bought the ACC Consumer Finance Corporation, a subprime auto lender, picking up an executive along with the acquisition who has ample expertise navigating the perilous waters of subprime lending.

ACC's chief executive, Rocco Fabiano, was chairman of Far Western Bank, a subprime auto lender in Tustin, Calif., when state regulators closed it in 1990 because of risky lending practices. The Government prosecuted Mr. Fabiano in 1993, contending that he was involved in bribery at another bank. He was acquitted in 1995. In the meantime, Mr. Fabiano founded two other subprime lenders, one of which was ACC.

Household said it was aware of Mr. Fabiano's history and is "comfortable with the quality and the integrity of the management" at ACC. Mr. Fabiano, noting that he has never tried to hide his past problems, dismissed the Government's charges as meritless. "Every investor," he said, "has to determine what they think is legitimate" about the management of a public company.

The last year has been a brutal one for small subprime lenders. Many of these former high-fliers have fallen to earth beneath the weight of lending and accounting scandals and other problems. In the auto market, the financial meltdown of the Mercury Finance Company earlier this year has been followed more recently by earnings problems at competitors. On the mortgage side, the Cityscape Financial Corporation, the Aames Financial Corporation and the Green Tree Financial Corporation, have also been battered.

APPENDIX C: GLOBE & MAIL PROMOTIONAL ARTICLE, APRIL 18, 2008, HOWARD KATKOV

Mr. Katkov builds the 'anti-Whistler', by Lori McLeod.

California real estate developer Howard Katkov will have to strike a fine balance as he strives to develop a ski resort in southern British Columbia he hopes will become the “anti-Whistler.”

Since he bought the Red Mountain ski resort and its surrounding real estate near the town of Rossland in 2004, the self-described “surfer dude and serial entrepreneur” says he has devoted himself to preserving the unique culture, affordability and unpretentiousness that first drew him to the area.

But running a ski operation gobbles capital at a rapid rate, and to keep Red Mountain profitable and in good shape also means building condos, hotels and other residences around the base, a process that must be carefully controlled to avoid becoming another “cookie cutter” development, Mr. Katkov says.

“What we want is to have a lot of nice things here, but we don’t want to put it in your face,” said Mr. Katkov, who will not disclose what he paid for Red Mountain, but says millions have already been invested in the resort.

Top left. The recently-completed five-storey steel and concrete condo building called Slalom Creek at the mountain’s base.

Top right, Howard Katkov. Bottom, plans for The Mountain Project, a 24-unit residential development devoted to sustainability and outdoor living, which will include a test lab for products related to mountain life, Mr. Katkov says. (RED MOUNTAIN RESORT INC.)

“We’re not about 20 restaurants and the Body Shop and the Starbucks on the corner and never will be. There’s plenty of that product out there that caters to a very thin demographic of high-net worth individuals on the real estate side.”

Mr. Katkov could choose to rub shoulders with the upper crust at a high-end residential development at Whistler or Vail. His career has included successful turns as a real estate lawyer and developer who has built more than 3,000 homes. He also founded teen cosmetics line Jane, which he sold to the Estee Lauder Cos. Inc. in 1997 for an undisclosed, but no doubt, tidy sum.

However, before his initial visit to Red Mountain in 2000, Mr. Katkov says he was suffering the resort fatigue many of his friends had also come down with at the time.

“I was tired with what has happened to all of these large ski resorts, the large corporate model of stampout, same-old, gentrified big box ideas,” he says. “I wouldn’t say I hate them — they’re just not me.”

Nestled snug in the West Kootenays with a population of about 3,500 and not a traffic light in sight, Rossland is known for its high-quality skiing and for being the hometown of top athletes including Olympic ski champions Nancy Greene and Kerrin Lee-Gartner.

The area also has extensive hiking, mountain-biking and cross-country ski trails, and is close to worldclass fly fishing.

Its laid-back charm is the antithesis of what Mr. Katkov, an avid skier and mountain biker, had come to dislike about the ski industry. He decided to build a home in Rossland as a gathering place for friends and family, and as a base for year-round outdoor activities.

Then, in 2004, the opportunity arose to buy the resort — which was discovered during the gold rush of 1890 and hosted the first recorded Canadian downhill ski race in 1896 — from its six local owners.

Real estate development is now under way, including a recently-completed five-storey steel and concrete condo building called Slalom Creek at the mountain's base. Forty-two of the building's 67 units are sold, with buyers including golfer Annika Sorenstam, who is co-developing a golf course at Red Mountain with Canadian architect Thomas McBroom.

"When Annika was here working on the golf course with us she decided to buy a condo with her fiancé. She said to me, 'I feel so good here, this is where we want to be,'" Mr. Katkov said.

Units at Slalom Creek average 1,400 square feet and a cost of \$420 a square foot, putting a two or three-bedroom condo at about \$588,000.

There will also be a 72-unit single-family subdivision called Caldera, where lots average 12,000 square feet and range from \$269,000 to \$369,000. Eighty per cent of the first 18 lots, released in early April, sold on the first day, Mr. Katkov said.

Buyers include members of the low-key Leon family of Leon's Furniture fame, who plan to build a number of residences at Red Mountain, he said.

Construction of a condo-hotel, to be run by the Houston-based Valencia Group, is also slated for this summer.

Another interesting facet of the resort will be a project devoted to sustainability and outdoor living. The Mountain Project, a 24-unit residential development, will break ground in the spring. Five of the first 10 of its ski-in homes have been sold, with buyers including senior executives at sports equipment manufacturer K2 Corp. and high-tech textiles manufacturer W.L. Gore & Associates Inc. Home prices average \$400 per square foot.

The building will have radiant concrete floors, untreated siding, Finnish soapstone stoves and other environmentally-friendly features. It will also include a gathering place for mountaineers, and will be a test lab for groundbreaking ideas and products related to mountain-life, Mr. Katkov says.

As these first buildings give way to more activity, the key to preventing things from spiralling out of control will be to maintain tight restrictions on every aspect of development, Mr. Katkov said.

"We are in control. We own all the property at the base. We have 200 pages of design guidelines from signage to colours. We have a strategic plan as to how we want to build out our base area, which doesn't include creating a village with the amenities of the mega-resort."

A maximum of 1,400 units will be allowed on the 4,200 acres at Red Mountain, and homes can't be larger than 16 per cent of the size of their building lots.

Commercially-zoned space will be capped at 70,000 square feet, something that is critical to the continuing economic development of nearby Rossland, Mr. Katkov said.

"So many good things have happened here in the last four years. The downtown is vibrant, there are so many new businesses, young families are moving back in."

“Having said that, some people still legitimately are very fearful of losing what they love about Rossland. That’s something I have to stay on my toes and be aware of as well, because I don’t want to be known as the guy that screwed up the last great ski resort in North America.”