SUMMARY, CONCLUSION AND RECOMMENDATIONS

Since 1998, the BC Tap Water Alliance has written 14 submissions and reports to provincial and local governments, 24 press releases, other numerous reports and correspondence concerning the protection of the public's drinking water, and two newsletters, a summary of which I have included in your present package and which are available for full review on our website. They primarily serve two purposes: to help expose concerns to provincial politicians and administrators, and to help educate BC citizens and their administrators and politicians on what we consider to be one of the greatest public resource scandals in this province. (Presentation to Pemberton City Council by Will Koop, BC Tap Water Alliance Coordinator, August 10, 2004.)

SUMMARY

The reserving and legislated preservation of public (Crown) lands as drinking water sources began just over 100 years ago in British Columbia, even before the establishment of provincial parks in 1911 (Strathcona Park, Vancouver Island). Such wise protective initiatives were not confined to BC and were derived from Canadian and US federal policies in effect at the time. They reflected widespread public concern over water supplies. The initiatives were well understood and broadly defended. The Reserves were outlined in early provincial memos and reports, and enshrined on departmental reference maps with bold blue-lined boundaries, file numbers and notations, and restrictive markings that said "No Sales," "No Timber Sales," "Health District" and even "Game Reserve." BC's citizens—and many of their political administrators—fought hard to protect those policies.

In the late 1940s, however, insurgencies and counter initiatives spearheaded by the timber industry and its tame foresters (collectively identified as the Timber Triangle) began to roll back the reservation of thousands of drinking water sources in the US. These efforts spilled over into BC, disrupting longstanding government policies that protected such sources. The invasion was motivated by greed and profit. Protected timberlands were made available for logging at the long-term expense of nearby communities. Due to their highly sensitive and political nature, the incursions to remove community watershed protections advanced gradually. Often, they were checked by conscientious civil servants and watershed defenders.

Following pitched battles in the mid-1920s that eventually led to the protection of Greater Vancouver watersheds, the next war was fought over the Greater Victoria watersheds, where fierce resistance by politicians and other public representatives continued to ensure protection until the early 1950s but was eventually defeated. By 1955 industrial logging was in high gear. Secret assaults on Greater Vancouver watersheds between September 1953 and late 1955 were forced underground for more than ten years because politicians, influenced by a deeply entrenched preservationist policy, rejected recommendations by the C.D. Schultz Company (which also had contracts in Victoria's watersheds) to introduce sustained yield logging. The logging arrived, though, in 1967, after politicians and senior engineers had been bombarded for years by sleazy forestry justifications. After four years of negotiations between the Greater Vancouver Water District and the Minister of Lands, Forests and Water Resources (1963-1966), the Water District's 1927 *Land Act* lease agreement was altered and re-established as a quasi-Tree Farm License agreement. With precedents now established for commercial harvesting in the two main regional government watersheds (which delivered domestic water to 60 percent of the province's population at that time), the assault on the remaining protected provincial drinking watersheds began in earnest, becoming progressively more organized and posing an ever-increasing threat to provincial water users.

The incorporation of the Community Watersheds Task Force in 1972 by the outgoing Social Credit government was a response to deep public disenchantment over the administration and loss of drinking watersheds. Provincial water users didn't just want accountability, they wanted protection. That's why the Task Force was given authority by the NDP cabinet, through the 1971 *Environment Land Use Act,* to establish and re-establish hundreds of Watershed Reserves under the long-established provisions under the *Land Act*. Feeling threatened, regional Forest Service offices staged a revolt, ignoring directives to mark the Reserves on Forest Atlas maps. For the rest of the 1970s, the efforts of a few civil servants and politicians to allow the forest industry to log in drinking watersheds were kept mostly in check. By the early 1980s, however, with the "sympathetic administration" of an industry-financed Social Credit government, the Watershed Reserves were again up for grabs. Profit, as usual, was the primary motivator behind this land grab. False science (in forest hydrology) was even introduced in order to convince the public of the benefits of logging.

Until about two decades ago, the protection of drinking water sources was considered, by both the public and government administrators, to be automatic—a matter of routine. Since the early 1980s, however, the ministries of Forests and Environment have engaged in an unrelenting public-relations campaign to persuade water users that the philosophies of "multiple use" and "integrated resource management" would adequately protect drinking water sources. The result has been a decline in the public's ability to protect those sources and divisiveness among water users—which was the government's intention all along.

Watershed Reserves and long-term leases established under the *Land Act* gave authority and powers (in the form of administrative instruments) to communities for collective resource protection on provincial Crown lands. What the agents of the Timber Triangle set out to do was to eliminate, bypass and hide those precedent-setting powers, making it appear to the public that the watersheds were under the exclusive authority of the *Forest Act* and thus earmarked for timber profits and other uses. However, despite numerous attempts by Timber Triangle agents to topple the "single-use" edifice that had been painstakingly built up in BC for the protection of drinking watersheds, neither the Watershed Reserves established under the *Land Act* nor the *Land Act* provisions for the establishment of such Reserves were ever eradicated (excluding internal manoevres to demote them). What government foresters and administrators did in the face of this obstacle was to ignore and hide the Reserves and cunningly subvert *Land Act* legislation and policies by creating the illusion that the Forest Service had the right to single-handedly authorize timber sales, road permits and animal grazing rights within Reserves. This activity is summarized in the following litany of interfering schemes and infringements:

- Willfully ignoring the existence of Watershed Reserves, and issuing forest licenses within these Reserves by bypassing referrals for the approval of such licenses by provincial Water Users;
- Introducing prejudicial timber-harvesting clauses in Watershed Reserve applications in the 1960s and in formal referrals to provincial Water Users;
- Sidestepping the Ministry of Lands as the central agency for all departmental referrals for Reserves;
- Including Reserves in the timber-harvesting land base and the Allowable Annual Cut;
- Subverting and ignoring recommendation by the Community Watersheds Task Force for the creation of Order-in-Council *Land Act* Watershed Reserves;
- Refusing to process and accept *Land Act* Reserve and lease applications from provincial water users;
- Tinkering with legislation to approve logging and grazing in drinking watersheds, and removing clauses on the protection of such watersheds;
- Transferring central registry Watershed Reserve files from the Lands and Surveyor General branches to the Forests Branch during the short life of the newly created Ministry of Forests and Lands in the late 1980s;
- Demoting an undisclosed amount of *Land Act* Watershed Reserves into non-protective Notations of Interest designation;
- Failing to disclose and discuss policies about provincial Watershed Reserves at regional and sub-regional land use planning processes;
- Failing to make specific references to Watershed Reserves in the *Forest Practices Code Act* and related *Community Watershed Guidelines,* or to provide explanatory administrative functions for them;
- Failing to present accurate information to the BC Supreme Court in the Justice Paris petition, and falsely interpreting the July 1997 Justice Paris *Judgment* in order to rationalize the uniform approval of forest harvest licenses in Watershed Reserves.

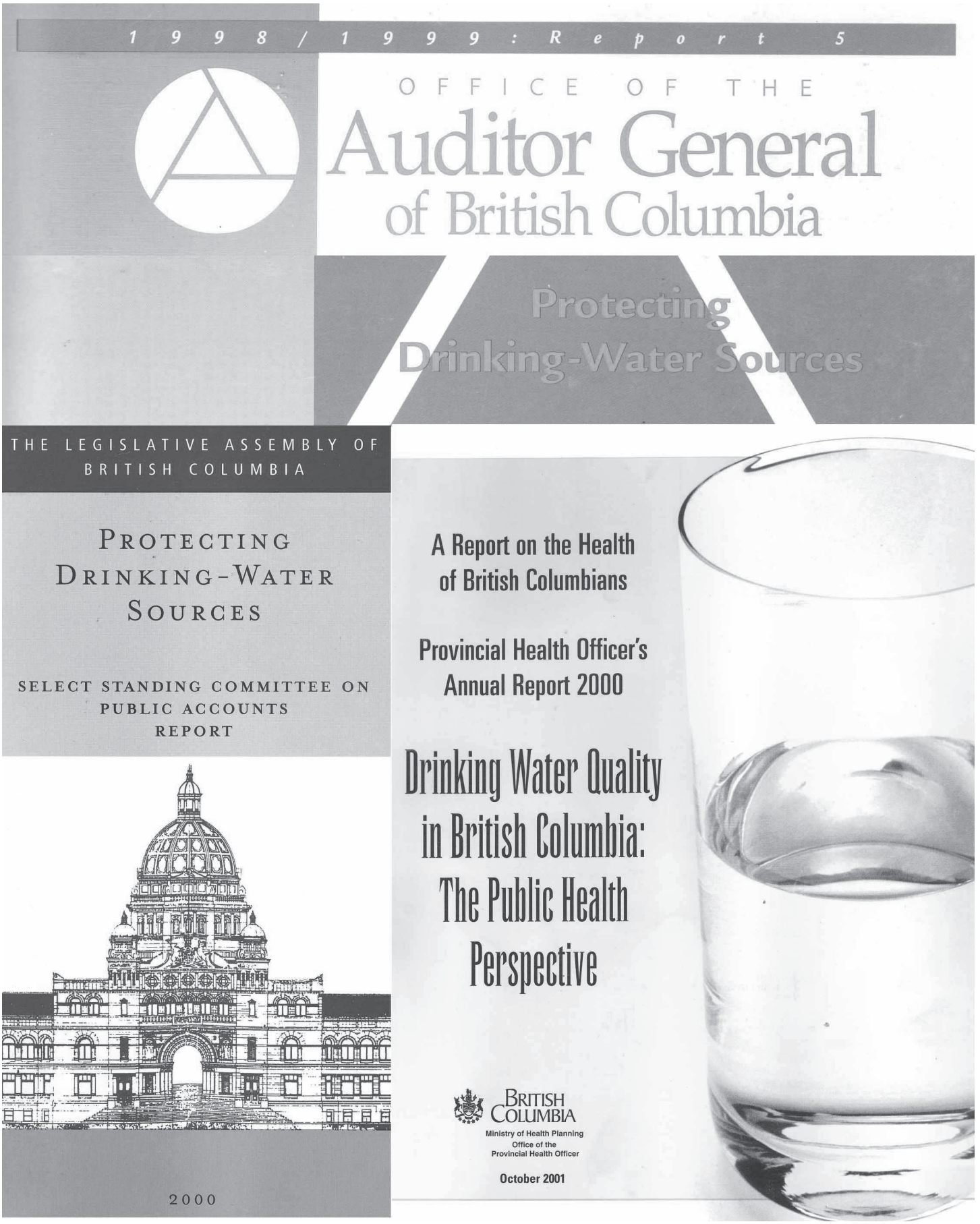

Exhibit 123. Collage of recent provincial government reports on the status of the provincial surface and sub-surface drinking water sources. Top: the March 1999 Auditor General's 161-page report. Bottom left: April 2000, 89-page follow-up report to the Auditor General's report by the Select Standing Committee on Public Accounts. Bottom right: the October 2001, 147-page Provincial Health Officer's report. Ever since the invasion of the public's drinking water sources in the 1960s, it took, astonishingly, almost 40 years for government audits to take place. These reports failed to investigate the related scandals. The BC Tap Water Alliance presented critiques and submissions to each of the report agencies (see website for the presentations).

CONCLUSION

British Columbians have an unquestionable legal right to undisturbed, clean and fully protected drinking water sources. This right is based on a legislative tradition that reserves water sources and protects their sanctity, and on related polices that govern the administration of Watershed Reserves under the *Land Act*. This right has recently been reinforced by the following events:

- The re-protection of Greater Victoria watersheds through the actions of activists and a supportive 1994 BC Supreme Court decision;
- The protection of Nelson's pristine Watershed Reserve water supply, achieved in the West Kootenay Land Use Plan in late 1994;
- The re-protection of Greater Vancouver watersheds in November 1999 (the Greater Vancouver Regional District's five-point resolution), which resulted from 11 years of hard-fought activism;
- The May 2, 1998, Sunshine Coast Regional District public referendum to end logging and proposed mining in its Watershed Reserves (and the recent accord between the Sechelt First Nation and the Sunshine Coast Regional District);
- Related efforts by the public to protect other drinking water sources.

Exhibit 124. Official ceremony and signing of the Accord, October 1, 2005, between the Sechelt First Nation and the Sunshine Coast Regional District (SCRD), on the resource protection of the Chapman and Gray Creek Watershed Reserves, the SCRD's sources of drinking water. The ceremony was held at the Sechelt Nation Longhouse.

Our hope and desire for British Columbians is that government representatives and administrators will once again embrace and defend the legislative legacy that once fully protected the public's drinking water sources. We also hope and desire that in the near future the way will once again be clear for water users to freely apply for and be granted perpetual rights to clean water and to the legislative protection of their water sources.

Those rights, unfortunately, have been lost over the last two or three decades, due largely to mischief makers in the provincial government. Forestry planners in the Ministry of Forests have manipulated their legislative authority under the *Forest Act*, the *Forest Practices Code Act* and the new *Forest and Range Practices Act* in order to compromise and avoid their legal responsibilities to protect the public's drinking water. This report presents evidence for three successive cover-ups regarding *Land Act* Watershed Reserves:

1. The secret decision to prevent Category One Reserves from becoming Order-in-Council Reserves;
2. The premeditated decision to ignore Reserves in regional and sub-regional provincial planning processes; and,
3. The open disregard for Reserves in the *Forest Practices Code Act*.

As a result of these cover-ups—and because of the fact that relevant government information was not properly placed before the BC Supreme Court—the court has labored under the impression that British Columbians do not have legislative rights over their drinking water. Yet provincial *Land Act* policies, in place now for more than 100 years, clearly specify that Section 15 and 16 Watershed Reserves are powerful instruments protecting public land from all tenure applications and uses. These legislative provisions have been wantonly and consistently ignored by provincial administrators. Since 1997, further controversial determinations by the provincial government have allowed community watersheds to be included in Community Forest License proposals, particularly in the Sunshine Coast Regional District. (For an explanation of these shady dealings—and for a history of newly implemented "community forestry" in community watersheds—refer to the upcoming presentation report on the Tap Water Alliance website under "Community Forestry".)

Advocates for commercial resource development have intrigued with government over the exploitation of public drinking watershed sources. And the government itself is guilty of consistently omitting, from its administrative and promotional documents, important historic information about the protection of provincial drinking water sources—especially Watershed Reserves. In fact, this pattern of omission has become a standard methodology for ignoring history and avoiding policies and legislation that inconveniently conflict with new development demands. It is used to muzzle the public and its elected representatives—and even the courts—and keep them ignorant. It is used to prevent them from asking serious questions or criticizing administrators about their rationales behind logging and degrading drinking water sources. The difficulty activists on the Sunshine Coast had in the early 1990s in obtaining government records and information about the nature and purpose of their Watershed Reserves is one of many instances that demonstrate this pattern.

Similar deceptive strategies were used in numerous reports for the Greater Victoria (mid-1950s to 1990s) and Greater Vancouver (mid-1960s to 1990s) Water Districts. Both regional administrations had restructured their underpinning protective policies—to great controversy—after logging began in their drinking sources. Accurate descriptions of how previous administrators had fought to protect their drinking water—along with accounts of how those water sources had received legislative protection—were curiously missing from such reports, and thus gradually expunged from public consciousness:

> The GVRD has, in this booklet, as in other GVRD reports, chosen to purge and sanitize its historical origins in order to comply with a controversial and contradictory mandate. That mandate, which was carefully engineered in the 1967 *Amending Indenture*, called to "liquidate" the old growth forests as defined under the shadow of sustained yield logging. (*Misinforming the Public: A Critique of the Greater Vancouver Regional District's Watershed Management Booklet* Protecting a Precious Resource—*A GVRD Exercise in Controlling Information*, by Will Koop, August 1995.)

The provincial government also religiously controlled how information concerning public drinking water sources would appear in reports. Sensitive details were systematically overlooked or edited out. These patterns of deliberate omission were also perpetrated in the US. The methodology was clearly unjust and unethical; indeed, it amounted to a wholesale public deception. One could compare it to a military process of psychological warfare against an enemy, or what the legal profession might identify as "withholding evidence." As government policies shifted over four decades from a land-management philosophy of "single use" to one of "multiple use," this methodology was applied in a conscious effort to remanufacture public perceptions.

Two main political bodies have administered public and private land in BC over the past 50 years: the Social Credit and reorganized BC Liberal parties (1952-1972, 1976-1991, 2001-08) and the New Democratic Party (1972-1975, 1991-2001). Both have routinely defended deep-rooted bureaucratic deceptions about public drinking watersheds. Even when the NDP was elected in 1972 and 1991 under the guise of bringing a new ecological accountability to government, demands to protect public drinking water strangely continued to fall on deaf ears. Why did politicians consistently shy away from their constituents' concerns? Why was this issue being systematically sidetracked? The answers have to do with behind-the-scene players hired to steer government in unethical directions and a long-standing course of action by foresters to implement and defend the "multiple-use" strategy. Much slick sophistry has been heard and empty promises made on the subject of water.

On one hand, for instance, ministers and administrators have upheld a veiled undertaking since January 2001 to "protect drinking water" through the passage of the *Drinking Water Protection Act*. On the other hand, ministerial policies openly contradict such protection. Water treatment technologies have become the latest buzzwords for rationalizing the degradation of the public's drinking water (its "protection"), with the concurrent spin that wildlife is now responsible for tainting and compromising water sources.

The central problem concerning drinking water protection is one that relates to public land-use decision-making in general: the absence of fundamental public accountability and participatory democracy at the provincial level of government. BC's citizens have no direct access to provincial lawmakers and their administrative guardians. Local and regional governments, by contrast, retain a semblance of accountability, where the "public" is closer at hand, and where citizens often freely appear with their concerns before committees and councils and board meetings. The quality of accountability, however, at local or regional levels of government can vary greatly, depending on the political make-up of the council or committee in question, and on factors controlled by provincial land and policy administrators.

Kim Brenneis identified the absence of provincial accountability as a predominant and persistent problem in *An Evaluation of Public Participation in the British Columbia Ministry of Forests,* a research paper for the 1989-1991 Forest Resources Commission:

> Legislation should set rights, responsibilities and standards for ranges of permissible limits for public participation. This includes many of the components listed above, such as participation opportunities at all levels, intervener funding, access to information and the right to appeal. With a legislative foundation for responsibilities and requirements, the public is provided with a standard to measure the government's performance. The government is also made formally accountable through legal avenues (the courts). A legal mandate for public participation can instill public confidence in the process and make the process more credible to participants (*Background Papers,* December 1990, pages 33-34).

Ultimately, Brenneis's recommendations for "participatory democracy" in land-use decision-making became a critical catalyst for law reform three years later in the *Sustainability Act for British Columbia*, proposed by Forest Resources Commissioner Stephen Owen and released in November 1994 under the new NDP government. Owen's *Act* would have enshrined four key elements: a legal framework, public participation, a dispute resolution system and an independent body to oversee the process. Both the NDP government and opposition leader Gordon Campbell's Liberal Party buried the proposal, however. An electronic search of government records revealed only one reference to the proposed *Act* in Hansard, uttered on June 29, 1995, by then-premier Mike Harcourt. The rejection of the *Sustainability Act* was a significant failure in BC's political evolution. One can only assume that it was derailed in order to maintain the status quo, i.e. to keep in place a provincial structure that prevents or forbids government accountability.

The political careers of former NDP premier Mike Harcourt (November 1991-February 1996) and present BC Liberal premier Gordon Campbell (June 2001 onward) were both nurtured by local government. Each premier was mayor of Vancouver (Harcourt, 1980-1986; Campbell, 1986-92); Campbell also chaired the Greater Vancouver Regional District and briefly presided over the Union of BC Municipalities. Both understood and complained about the deep disparity in accountability between provincial and local/regional levels of government. The two premiers represented opposite ends of the political spectrum—and both purported to have a policy of "open" government—yet neither legislated long-needed reforms to ensure that the provincial government become accountable to the public through participatory legislation.

Glen Clark, Harcourt's NDP successor, became Premier in 1996 and quickly disbanded the Commission on Resources and Environment that had been responsible for general land policy reform in BC. After the 2001 election, the Campbell BC Liberal government, with its corporate slogans and financial donations, systematically dismantled key environmental regulations and legislation—even removing the word "environment" from the ministry's name. (For a summary of these demolitions, see West Coast Environmental Law's recent 2005 report, *Cutting up the Safety Net: Environmental Deregulation in British Columbia.*)

More ominously, in 2001 both NDP and BC Liberal administrations forced the wrongful dissolution of the Erickson Improvement District (near Creston), a local government authority with elected trustees that simply wanted to protect its drinking water with non-chlorinated treatment. Both governments also ignored the Sunshine Coast Regional District's May 1998 referendum on the protection of drinking water sources from commercial logging and mining.

By contrast, the underdog Green Party of BC passed the following resolution: "Therefore be it resolved that the Green Party of BC would advocate for a *Clean Drinking Water Act* that will legislate watershed reserves for domestic consumptive watersheds and ban logging, road building, spraying of herbicides and pesticides, grazing and industrial development in domestic consumptive watersheds" (Resolution 29, November 2004).

The provincial government's secretive, deceptive and pervasive mismanagement of public drinking water supplies demonstrates that there is an urgent need for reform on two important fronts:

- First, to redirect government philosophy and policy from "multiple-use" and "integrated resource management" concepts back to "single use," and to re-educate public servants on this change.

- Second, to have the provincial government adopt standards of accountability that exist at regional, municipal and local levels of government, and to bring about stronger means of accountability—for example, those discussed and recommended by university researcher Kim Brenneis.

Such reforms, for instance, could help facilitate "open" government by requiring that regular public meetings with provincial agencies be broadcast on cable television and accompanied by transcripts. Ultimately, an official review must be undertaken of the status of the province's drinking water sources and their protection. Through open dialogue and just deliberation, we can heal ourselves, our government and our environment.

RECOMMENDATIONS

The following are our primary recommendations:

- That the contents of this report are a primary and sufficient catalyst for a provincial investigation into the actions of BC's government regarding the *Land Act* Watershed Reserves, and those drinking watersheds not reserved;

- That an independent body of examiners conduct a forensic audit of all Crown land provincial planning initiatives and government records concerning the public's Watershed Reserves and watersheds not reserved;

- That all licensed and tenured activities approved by the provincial government within Watershed Reserves be halted, pending a formal investigation;

- That this report serve as substantive grounds for water users to seek protection of their water sources through stronger legislation;

- That this report aid those BC water users with existing Watershed Reserves by helping them understand that they already have legal rights and avenues of protection over their water sources (despite what some government representatives have knowingly and mistakenly informed them over the years);

- That there are sufficient legal grounds to revisit, appeal and revoke BC Supreme Court Justice Paris's July 8, 1997, *Reasons for Judgment*, and to investigate the corresponding government information and memos related to the court decision.