From Wisdom to Tyranny

A History of British Columbia's Drinking Watershed Reserves

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EXECUTIVE SUMMARY - FINDINGS AND RECOMMENDATIONS

From Wisdom to Tyranny is a long, factual investigative report about British Columbia's (BC's) Watershed Reserves. It is based on information accumulated over a period of about ten years from numerous sources, including two large and intriguing government files. The Reserves, created under the provincial *Land Act*, were public lands specifically set aside and protected as community drinking and domestic water sources. Early Forest Atlas maps—the central information reference for all Forest Service activities—displayed, in large letters, a standard disclaimer over these drinking watershed sources: ***NO TIMBER SALES***. The protection of the public's drinking water was obligatory, a fiduciary responsibility—what the Chief Forester's office reluctantly understood as a "moral obligation" and described as such to administrative foresters (L.F. Swannell, Assistant Chief Forester, December 29, 1960).

The report details a turf war over BC's drinking watersheds, pitting the Forest Service and its private industry clients against the province's water users, and involving various elaborate cover-ups of the truth about Watershed Reserves. The government's most scandalous behavior erupted in late 1980, following the end of a nine-year Task Force investigation into public drinking water sources. A succession of conniving public administrators—primarily government foresters and forest advisors—conspired to devise elaborate, wholesale deceptions in order to allow industrial resource users to operate at a profit in areas that were previously off-limits and protected as Watershed Reserves, all at the long-term expense of community water users.

The creation of BC's Watershed Reserves by concerned water users and politicians began about 100 years ago. The Reserves were administered through provincial and federal Crown land legislation that protected public drinking water sources, mainly from commercial logging and public trespass. As BC's population increased and industry expanded following World War II, other threats to water sources emerged: cattle grazing, mineral exploration, hydroelectric and other utility corridors, road access, recreation, etc. Evidence presented in 1944 and 1945 at BC's second Royal Commission on Forest Resources described many Reserves throughout the province and noted that BC's water users wanted the provincial government to continue applying this form of protection. The evidence also revealed that in the Okanagan Valley area the Forest Service was secretly ignoring legislation that protected the Reserves, abandoning its formal referral responsibilities to water users. However, later provincial Royal Commissions (in 1956 and 1976) and the Forest Resources Commission (in 1991) mysteriously failed to mention anything about Watershed Reserves, despite the fact that a provincial Task Force (1972-1980) had created and re-created about 300 of them under the protective powers of the *Land Act*. The BC Lands Ministry continued to create Watershed Reserves until the late 1980s, at which time the Social Credit government, heavily influenced by resource industry titans, began to uniformly ignore these preserves.

Government foresters, in alliance with industry and academic foresters—a coalition described in this report as the "Timber Triangle"—began to systematically oppose and stymie the *Land Act* legislation from the 1960s onward, lobbying provincial and local governments to allow logging in Watershed Reserves. Though only briefly summarized

in this report, the crusade against the protection of the public's drinking watersheds actually originated in the United States (US) in the 1940s. The Washington forest industry reinforced its incursions into Seattle's Cedar River drinking watershed with an extensive public-relations program in support of such activities, a program that quickly spread to BC with the help of industry associates and government foresters.

In July 1946, a US Forest Service forester, George A. Duthie, announced to municipal drinking water engineers affiliated with the American Water Works Association (see the article *Should Your City Have a Municipal Forest*, in the *AWWA Journal*) that thousands of protected community watersheds in the US should sacrifice their collective timber holdings for the common good of the forest industry. The rationale espoused by Duthie, and others like him, also helped introduce timber harvesting to BC's drinking watersheds. A policy of "single use" of such watersheds (for water production only) had long dominated both governmental and public thinking. The forest industry, however, considered "single use" a threat and an irritant, and gradually insinuated an alternative model, one of "multiple use"—later polished under the banner of "integrated resource management"—thus eroding and, eventually, eradicating the protected status of municipal and community drinking water sources.

The manner in which the Timber Triangle initially instituted these changes was by compromising protective drinking watershed legislation and policies in the largest population centers. In BC this meant the watersheds of the Greater Victoria and Greater Vancouver Regional Districts. In the northwest US, Seattle's Water Department and the Portland Water Bureau were targeted. The Triangle's endeavors were tenacious and insidious; the battle was for total control. Later efforts in BC focused on the city of Nelson's community drinking watershed (Five Mile Creek, vigilantly protected as a Watershed Reserve since 1939), where secret plans to log and construct roads were designed to become important precedents for harvesting in the region's remaining domestic watersheds. Although the Five Mile Creek Reserve was eventually protected as a provincial park in 1994, the Ministry of Forests was not prevented—despite persistent opposition by local water users and community activists—from going ahead with its plans. Today, as a result, drinking water sources are jeopardized throughout the Nelson Forest Region and—more ominously—public opposition to ministry activity is sadly fragmented and divided.

FINDINGS

This report makes a series of intriguing and disturbing findings about Watershed Reserves—and about the effects that the actions of the BC government, primarily through the Forest Service, have had on them. These findings are summarized, chronologically, in the following 18 points:

1. The resolution passed by professional foresters and engineers at a February 1952 BC Natural Resources conference, calling for forest harvesting in BC's protected drinking watersheds, heralded a new era for sustained-yield logging throughout the province. The announcement of the resolution coincided with proposed sustained-yield logging in Greater Victoria's watersheds, the first such program in Canadian history (Chapter 3).

2. The Social Credit government amended a critical section of the *Forest Act* in 1960 (the first such change since the legislation was created in 1912) to exempt newly allocated and future Tree Farm Licensees from policies that provided protection to public drinking watersheds within their permit boundaries. This contradicted government policy on the protection of drinking water sources (Chapter 3).

3. A December 1960 internal memo from Assistant Chief Forester Swannell to his provincial foresters detailed how they should overturn and deflect policies that protected *Land Act* Reserves and watersheds not reserved (Chapter 7.2).

4. In 1967, a government forester advised the alteration of the Lands department's policy for the protection of forests in Watershed Reserves, a policy that had been in place for decades (Chapter 7.3).

5. Public Sustained Yield Unit planning committees throughout BC were directed to begin logging in community and domestic watersheds and to include these previously off-limit areas in the timber harvesting land base. This went against specific recommendations in Forest Service manuals to keep the drinking watersheds out of proposed Allowable Annual Cut determinations (Chapter 9.3.6).

6. The revision of the *Land Act* in 1970 by the Social Credit government included the removal of the 999-year lease condition for Crown lands, originally introduced in 1908 specifically to protect drinking watersheds (Chapter 1.2).

7. In the early to mid-1970s a number of Forest Service regions blatantly rebelled against specific ministerial orders, made through a cabinet committee to a provincial Task Force on Community Watersheds, to recognize newly created and re-created Watershed Reserves on the Forest Service's Forest Atlas maps (the central reference tools for all forest license permitting). During this period the Forest Service illegally allowed logging and granted road permits in an unknown number of Watershed Reserves (Chapter 7).

8. After the Forest Service was removed from the broad overview of the Ministry of Lands, Forests and Water Resources in 1976 and established as the stand-alone Ministry of Forests, the service began to single-handedly override policies designed to protect the public's drinking watersheds (Chapters 7.8, 8, 9.3.2 and 9.3.3).

9. The substantial revision of the *Forest Act* in 1978 included the removal of the 66-year-old provision that specified how the public's drinking watersheds were to be protected in Provincial Forests (formerly called Forest Reserves) under the *Land Act* (Chapter 9.3.10).

10. The manipulative reinterpretation of drinking watershed and Watershed Reserve policies by Ministry of Forests planners in 1981 and 1982—and the corruption of Ministry of Environment directives to adhere to such policies—conformed to a new internal policy of "integrated resource management" (Chapter 8.1.2 and following).

11. The Ministry of Crown Lands was removed from all *Land Act* Watershed Reserve referrals (Chapters 7.7 and 8.3).

12. The newly created Ministry of Forests attempted but failed to take control of the responsibilities of the ministries of Health and Environment as Lead Agency over the Watershed Reserves and drinking watersheds not reserved (Chapter 8.1).

13. The Ministry of Forests secretly railroaded a 1978 recommendation from the provincial Task Force on Community Watersheds to the Deputy Minister's Environment and Technical Land Use Committee to permanently protect about 150 Watershed Reserves as Section 11 *Land Act* Order-in-Council Reserves. This legislation would have given the watersheds the same level of finalized protection as provincial parks, creating a powerful precedent and example for the stewardship of drinking water sources. Eventually, all these Reserves were wrongfully included in the timber harvesting land base (Chapter 5).

14. In 1984, the Ministry of Forests and the Ministry of Environment began the first formal public planning processes for provincial Watershed Reserves, known as Integrated Watershed Management Plans (IWMPs). Government records indicate that the Ministry of Forests planned to use the IWMPs as a tool to force provincial water users to accept multiple forms of resource use in their protected watersheds. Water users rejected this assault. During these planning processes in the 1980s and early 1990s, the government failed to provide any information to BC's water users about the Watershed Reserves and their legislative significance (Chapter 8.2).

15. After 1986, when the stand-alone Ministry of Forests absorbed the functions of the Lands Ministry to become the Ministry of Forests and Lands, it quietly began to STRIP a large number of the Community Watersheds of their Reserve status, thereby DEMOTING them to their original Notations of Interest (under the *Land Act*), a non-protective designation (Chapter 11.3).

16. When the Social Credit government was replaced by the New Democrat administration (1991), a new "public participation" era in land use planning was legislated under the Commission on Resources and Environment (CORE). Three Regional Land Use Plans were completed by the mid-1990s, and numerous sub-regional planning processes (known as Land and Resource Management Plans or LRMPs) took place and continued up until the present time. During these planning processes government failed to inform the public about Watershed Reserves, despite the fact that they were officially registered on Legal Survey and Forest Atlas maps. These processes, insofar as they relate to Watershed Reserves, were thus conducted illegally, as they ignored the legislative status of *Land Act* Reserves (Chapter 8.4).

17. From 1993 to 1995, an internal government committee on drinking watersheds re-classified hundreds of *Land Act* Watershed Reserves, along with drinking watersheds not reserved, into one group, known as *Forest Practices Code Act* Community Watersheds. The Reserves, which already had their own file codes under the Lands Ministry, were given separate file numbers associated with the new *Forest Practices Code Act.* There was not one reference to Watershed Reserves in either the 1995 *Forest Practices Code Act* or the 1996 *Forest Practices Code Guidelines Manual*. There was no mention of the significance of Watershed Reserves under *Land Act* legislation as areas that precluded provincial resource permitting. Watershed Reserves were made invisible. It was as if they had never existed, proof that if you ignore something intently enough it can be made to disappear—and others can be made to believe that it has disappeared—even though it is right in front of everyone's eyes. There may be sufficient grounds to legally challenge the *Forest Practices Code Act* for purposely ignoring Watershed Reserves (Chapters 8.4.5 and 11.2).

18. The Valhalla Wilderness Society took the government to the BC Supreme Court in June 1997 over two Watershed Reserves in the Slocan Valley near the town of Silverton. It was the first trial in BC's history regarding a Watershed Reserve. The government misled the court by stating that the two Reserves in question were not Reserves under the *Land Act* and that the Ministry of Forests had the right to issue road and logging permits there. Unfortunately Justice Paris sided with the government and ruled that the permits were legal. This report includes a comprehensive rebuttal of Justice Paris's July 8, 1997, *Judgment* and an exposure of the scandal behind the trial (Chapter 9.3). Subsequent to the trial, the Ministry of Forests and the Ministry of Environment, Lands and Parks (superseded in 2001 by the ministries of Water, Land and Air Protection and Sustainable Resource Management) contravened government policy by using Justice Paris' *Judgment* as a legal precedent to approve multi-resource use in Watershed Reserves.

    A serious question arises from the court case (discussed at length in Chapter 9). Why did the respondents—the Attorney General's Department, the Ministry of Forests, the former Ministry of Environment, Lands and Parks and forest giant Slocan Forest Products—conspire to deliberately mislead the court and commit possible perjury about two small, almost insignificant Watershed Reserves? The answers have a lot to do with what led up to that moment in history (described for the most part in Chapter 8), and concern the corruption of public resource administration in BC over almost two decades. Ultimately, this subject is not confined to within the borders of BC but is inextricably linked to the convoluted resource politics of the United States.

As a result, the public's water supplies (hundreds of sources in BC, thousands in the US) were degraded, sometimes severely. Water sources were polluted and expensive water treatments required, paid for by tax dollars. The degradation of the watersheds, never accurately reported on before, has provoked continued public resistance and criticism, and an overwhelming lack of confidence by citizens in their own drinking water sources.

RECOMMENDATIONS

Despite the gloomy, tragic history of BC's Watershed Reserves, it remains the Tap Water Alliance's sincerest hope that British Columbians will benefit from the information presented in this report. Aside from what the government and the courts have tried to tell the public, there is overwhelming evidence that citizens do in fact have a legislative right to the full protection of their drinking water sources, as demonstrated by early provincial legislation and a long legacy of "single use." This fact is not apparent, however, because the issue has been purposely clouded by a government in bed far too long with "vested interests." Instead of being accountable to its own citizens and protecting their drinking water, BC's government has indoctrinated and misled local administrators and the public for decades about the (unsuitable) benefits of "multiple use" and "integrated resource management." Government has acted in bad faith to its electorate and has abused the public's trust.

The following are our primary recommendations (restated verbatim from the report's conclusion):

- 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.