

# B. C. TAP WATER ALLIANCE

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Doug Konkin  
Deputy Minister,  
Forests, Lands and Natural Resource Operations

February 27, 2013

## Emergency Intervention: McNeill Lake / Haslem Creek Watershed Reserve Tenure

Dear Mr. Konkin

We request your immediate executive decision/action to postpone any and all timber sales in the McNeill Lake/ Halsem Creek Watershed Reserve, until such time as proper clarification and comprehensive adjudication is satisfactorily rendered regarding the history, purpose, policy, function and fiduciary entitlement of the said Reserve tenure, and in making restitution to re-status this Reserve as either a Section 16 or Section 15 *Land Act* tenure. As the deadline for proposed timber sales in the said Reserve is scheduled for tomorrow, February 28<sup>th</sup>, we therefore ask you advise the BC Timber Sales office accordingly.

Our request for an immediate postponement is based on and warranted by serious concerns resulting from a series of inquiries and discussions we have so far undertaken with government staff over the course of the last two or so weeks. These initiatives stemmed from instructions you gave to BC Timber Sales a few weeks ago to aid us find answers to our questions. Thank you for doing so.

We are disturbed about recent, internal directives that have changed the legal designation and status of the McNeill lake Watershed Map Reserve, and all other Map Reserves, under the administration of the Vancouver Regional area. These changes from Section 16 Map Reserves to Section 17 *Land Act Designation* Reserves have conveniently allowed for the discretionary letting of timber sales in areas that were to be protected from such, done, apparently, without notification, elaborate or otherwise, to water purveyors, in whose interests the Watershed Reserves were specifically established by a government executive committee.

A summary of our findings and concerns are as follows:

1. In our collection of records from government files, we have documents which identify that an executive committee of government, the Environment and Land Use Technical Committee, through recommendations by its Task Force on community watersheds, authorized and created a Section 16 Watershed Map Reserve over the Haslem Creek area in 1974 for the South Pender Harbour Waterworks District. The Reserve tenure was identified as Haslem Creek at that time, and was provided a Reserve file number. There is no information at this time on whether the said watershed had a similar Reserve tenure designation placed over it prior to 1974.

2. In an October 17, 1975 memo from the Water Investigations Branch, was a summary of investigations made on Reserve tenures within a number of Resource Folios, due to proposals for hydro electric transmission right-of-ways over Crown lands. Five Watershed Reserves were identified, which included “*Watershed No. 6b, Haslam Creek,*” “*within Vancouver Water District.*” The memo states: “*This Branch notes that two folio areas contain existing ecological reserves, one folio area contains proposed hydro electric power reserves and six folio areas conflict with community watershed reserves.*” In 1975, the chairman of the government’s Task Force on community watersheds advised B.C. Hydro to stay out of the Watershed Reserves, and as such, specifically ordered B.C. Hydro not to enter the City of Chilliwack’s community Watershed Reserves.

3. In 1977, the South Pender Harbour Waterworks District sent letters of concern to Human Resources Minister W.N. Vander Zalm and to MLA Don Lockstead about “*watershed protection.*” In a July 14, 1977 letter from the Department of Environment to the South Pender Harbour Waterworks District, the Director of the Water Investigations Branch identified the Reserve areas “*encompass both McNeill and Harris Lakes,*” and that his Department was intervening on behalf of the Waterworks District following a referral it received from the Forest Service in December 1976 concerning a proposed timber sale: “*It is our opinion that every effort should be made to preserve this watershed for the production of good quality water.*” The letter also commented that “*over the past year, with respect to Haslem Creek, we have on numerous occasions advised the Forest Service of the water resource value of your watershed.*” The Director concluded, “*We trust this response ... will assure you that the Government is moving towards a solution to the protection of community watersheds involving Crown lands.*”

4. Government documents show that the Haslem Creek tenure was one of over 150 smaller sized community Watershed Map Reserves in B.C. which were all scheduled to be upgraded and converted from Section 16 to Section 15 Order-in-Council *Land Act* Reserves. Recommendations for these upgrades had been in place by the government’s community watersheds Task Force since 1977, when the letter was written to the South Pender Waterworks District by the Ministry of Environment. Records also show that as late as 1982 government administrators were perplexed as to why the bulk upgrades had failed to occur under the Social Credit administration executive.

5. On the morning of February 25<sup>th</sup>, BC Timber Sales forwarded us a copy of a March 3, 2009 memo issued by the Integrated Land Management Bureau, Surrey Regional office, *Notice of Establishment of Section 17 Land Act Designation No. R092027, replacing Map Reserve No. 84279 cancelled March 3, 2009.* The memo is referenced in the 20-page long clearance or adjudication records that BC Timber Sales has with respect to the proposed timber sales in the McNeill Lake watershed.

The memo describes in full a revision or amendment made to the legal status of the McNeill Lake Reserve tenure, demoting it from a Section 16 to a Section 17 status. We made inquiries as to the origin date of the Reserve, the process involved in making such an amendment, why it was it done, and on the significance of powers related to both Section 16 and Section 17 Reserves:

(a) *Reserve date.* We were told that the Reserve was created in 1984. This date information is the same information provided to us in 1997 by a senior Lands administrator, in a long list of tenure data for all BC community Watershed Reserves. However, the 1984 date information conflicts with earlier records which show that the Section 16 Map Reserve was

created in 1974. There may be grounds to assume that the government's Reserve registry date of 1984 is in error.

**(b) Section 16 Map Reserve.** It was explained to us that Section 16 Map Reserves over Crown lands have almost absolute powers provided to them against any and all dispositions. We were informed that a disposition means “*a license of occupation, or a permit, or a right-of-way over Crown land,*” and that a disposition includes timber sales. “*Any application that comes in on a Section 16 Map Reserve, we just turn it away.*” We were told that the holder of the Reserve is the Ministry of Environment. When the Watershed Reserve was created for the interests of the water purveyor, it was created to protect the watershed. Given the fact that timber sales have occurred in Section 16 Reserves in general, in spite of their purpose, it seems likely they may have occurred because timber sale permits were not sent as referrals to the Lands Ministry for adjudication, where they would have been rejected.

**(c) Section 17 Land Act Designation.** It was explained to us that the Ministry of Environment, as holder of the Reserves, requested the Reserve tenure be changed from a Section 16 to a Section 17 designation. We were informed that the difference between a Section 16 and a Section 17, is that disposition applications in Section 17 Reserves, such as timber sales, “*can be accepted, if they are compatible*” with the Reserve holder, which is the Ministry of Environment.

We were also informed that the initiative to change the Reserve status was done internally, and that all of the community Watershed Reserves in the administrative boundary of the Vancouver Region were recently changed from Section 16 to Section 17 Reserves. Section 17 Reserves have an expiry date of five years, and are then, or not then, renewed.

**(d)** Where did the directive or authority originate to make the changes to the status of the Reserves located in the Vancouver Region? Was this also done in other Regions? Can such changes be made to the status of Map Reserves without the directive or authority from government executive? When they were created, or re-created, in the 1970s it was done so through an executive committee of government.

**(e)** Did the government, the Ministry of Environment as holder of the Reserves, notify the water purveyor, the Sunshine Coast Regional District (which had taken over the responsibilities assigned to the South Pender Waterworks District on January 31, 2008), of its intentions to alter the Section 16 Map Reserve status over McNeill Lake, and fully explain to the water purveyor the significance and purposes of the amendment? Did any representative of the provincial government attempt to do so? And if government failed to inform the SCRD, why was it not done? Did government inform any or all of the other water purveyors in the Vancouver Region of changes made to the status of their Section 16 Watershed Reserves? Were the interests of the water purveyors to protect their community watersheds properly defended by the Ministry of Environment, or was this an abrogation of the Ministry's public interest duty?

**(f)** According to information provided to us by BC Timber Sales, a timber sale(s) was let in the McNeill Watershed Reserve in 2010, the year after the Reserve was demoted. Was the reason for the timber sale(s) predicated upon the recent alteration or demotion of the McNeill Reserve to a Section 17? Did the government notify the water purveyor of the timber sale(s) when the sale(s) was proposed in 2010?

(g) We were informed that BC Timber Sales adjudication and clearance records for timber sales in the McNeill Lake Reserve which registers or identifies an encumbrance, specifically noted as a “*conflict*” with this Reserve tenure. Under the “conflict” heading or column, is a reference to the conflict having been “resolved.” We have asked for a copy of these records which denote these references, but as of yet we have not received them.

We were informed, that because of the “resolved” classification, is the reason why BC Timber Sales automatically lets timber sales in Watershed Reserves without making a formal referral for application approval with the Ministry of Environment, the holder of the Reserve. It is also apparently why BC Timber Sales is not required to notify the water purveyor of when timber sales are proposed and let in community Watershed Reserves.

When we asked for clarification about the “resolved” adjudication matter regarding Watershed Reserves, we were informed that an agreement or a Memorandum of Understanding had been made in the past to clear or “resolve” the Watershed Reserve tenure “conflicts”, but that there was nothing referenced in BC Timber Sales adjudication records to such an agreement or MOU. As a result, we have made inquiries on February 26<sup>th</sup> with the policy branch of the Ministry of Forests to locate this agreement. We are still awaiting notification and the documentation.

Sincerely, Will Koop  
Coordinator

Cc. Sunshine Coast Regional District Board Directors  
John France, SCR D ceo  
Ross Muirhead, Mt. Elphinstone Logging Focus  
BC Auditor General