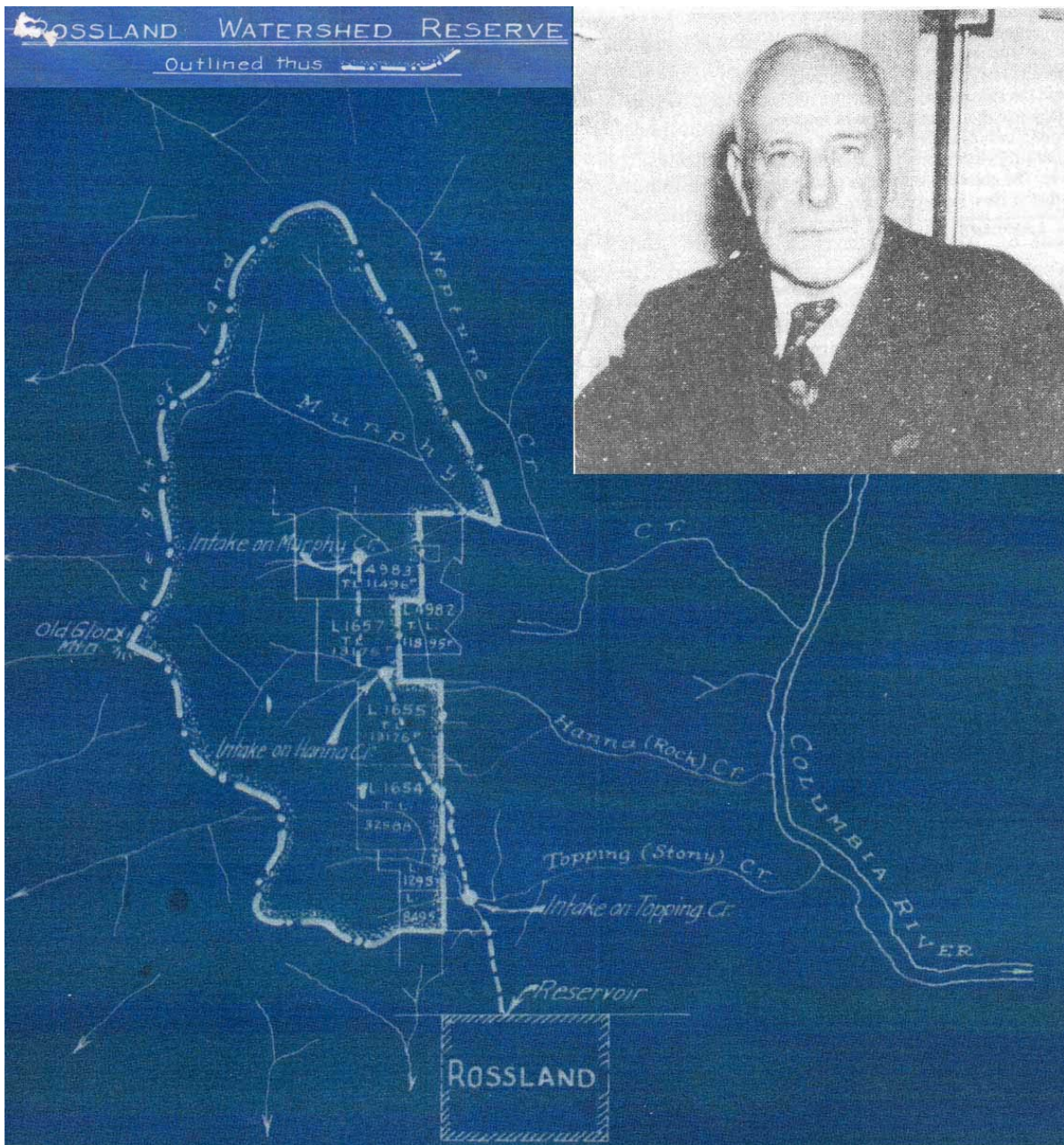


GOOD SERVANTS/ BAD SERVICE:

AN EXAMINATION OF RECORDS AND REPORTS RELATING TO ROSSLAND CITY'S DRINKING WATERSHED RESERVES (1923 – 2002)



By Will Koop,
December 8, 2008

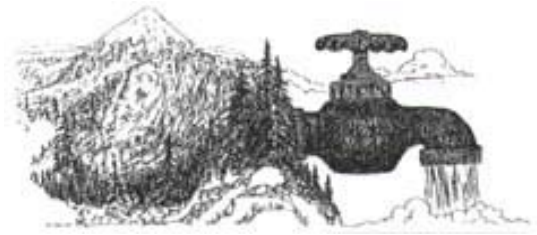
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FOREWORD

Following the B.C. Tap Water Alliance's release of the "preliminary" report on Topping Creek in July, 2008, the water source still currently under considerable threat from proposed Ski Hill, golf course, hotel lodge, residential, pavement and recreational developments, two government files¹ and old Rossland City records were obtained and reviewed. As a result, these records, which largely deal with information on the Reserve status and controversies of Rossland's drinking watershed land sources, became decidedly adequate to facilitate a second, updated, and perhaps final report now solely dedicated to the Reserve history.

With this new foundation, the information about the introductory reserve history in Chapter 2 of the preliminary report was reprocessed and re-included in this second report, to help facilitate revised continuity. In addition, the discovery of records concerning Rossland's Reserve(s), and their interpretation through this updated report's narrative, has provided another piece in the greater provincial picture puzzle concerning the history, legislative or otherwise, of drinking watershed protection. Interested readers should also view this report as a progressive discussion and connection to issues raised in the author's 2006 book, *From Wisdom to Tyranny, A History of British Columbia's Drinking Watershed Reserves*.

Since its inception in early 1997, the B.C. Tap Water Alliance strongly advocates drinking watershed protection through research and public education, a position which rests in the spirit of common sense and through the long-held views of "the commons". It is through this protection lens, founded on provincial, national and international historical protection precedents, that the Alliance provides its statements and findings. As a Christmas present, this report is ultimately for the spirit of protection that once pervaded the intent of Rossland City authorities, documented in provincial government and City records.

The research, writing and production of this second report was performed and completed through volunteered time and personal finances of its author. Thanks to: Rossland City councilor Laurie Charlton in retrieving old City records; Bill Micklethwaite for old correspondence and report records; and to the Rossland Stewardship Society (previously, Citizens for Responsible Development) in providing access to related reports and records.

Cover Page: *Copy of the May, 1940 Watershed Reserve map over Rossland City's three drinking watersheds, Topping, Hanna and Murphy Creeks. Photo inset of Lands Minister Wells Gray, 1941.*

¹ A Ministry of Forests Reserve file on Rossland's Watershed Reserves, and Department of Highways' file related to the early 1960s highway construction north of Rossland City.

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EXECUTIVE SUMMARY

THE TOPPING CREEK WATERSHED RESERVE: A PROVINCIAL CAN OF WORMS

This research report concerning the history of Rossland City's drinking Watershed Reserve tenures has hopefully achieved two important outcomes.

- It provides a refreshed and much needed perspective on critical matters largely forgotten by Rosslanders and the provincial government, due to the misplacement, loss, shuffle and burying of records over a period of decades.
- With their legislative significance, these tenures may assist Rosslanders to re-determine related deliberations with regional and provincial governments over Crown Land Use planning issues and development proposals in Topping Creek and the City's other affected drinking watershed sources. This may also include examining the implications of their apparent omission from critical resource planning documents over time.

The report covers many issues that span over a period of some seventy years. These include commercial forestry, a provincial highway proposal, the Nancy Greene Recreation Area (1969-1995), private land subdivision proposals, commercial ski and development proposals, solicitor advice, the *Nancy Greene Highland Forest Management Plan*, and City reports.

There are at least four important findings or themes which not only concern Rossland City's drinking Watershed Reserves, but also the other many Reserves in British Columbia.

1. Rossland City has Watershed Reserve tenures that were established under the *Land Act*. The first such authenticated Reserve tenure was a collective Reserve over three headwater watershed sources, a contiguous boundary over Hanna, Murphy, and Topping Creeks registered on Legal Survey and Forest Atlas Maps, the government's central planning references. Its registered establishment dates back to at least 1940.

This collective Reserve, the records of which were kept organized in provincial government files, had apparently been forgotten about or accidentally overlooked by a provincial Task Force on B.C.'s community drinking watersheds (1972-1980) in 1973, an oversight that also extended to an unknown number of other provincial Watershed Reserves also previously established.

This Task Force was provided legislative authority under the *Environment and Land Use Act*, directly by way of a Deputy Ministers Committee, to establish Watershed Reserve tenures for provincial water users, Reserves which eventually totaled some three hundred in number by 1980. Each Reserve, which the Task Force later and newly defined as falling under one of three area criteria categories (in square miles), was accounted for and catalogued in an appendix to a final Task Force October, 1980 *Guidelines* document published by the Ministry of Environment.

The Task Force re-established Rossland's three Watershed Reserves with four more newly created Reserves, identified under a new single Lands Department file number: Topping, Hanna, Murphy,

Elgood, West Little Sheep, Little Sheep (and West Fork), and Josie Gulch Creeks.² These seven water sources were later identified in Appendix G of the 1980 Guidelines as Rossland City's Reserves, all grouped as Category One Reserves, designated for "maximum protection".

2. The former Superintendent of Lands (a position superseded as the "Director" of Lands in the late 1960s, and so on) was provided provincial authority to establish Watershed Reserves to protect Crown forested and non-forested lands for provincial licensed water users. In his correspondence records, the Superintendent of Lands clearly and repeatedly stated the definition of and legislative power over such Reserves. He stated to the City of Rossland and to affected parties proposing dispositions in the collective Rossland Reserve that the identified or bounded Reserve Crown land tenures were "withdrawn from all dispositions"³ and "alienation". The Superintendent's interpretation of blanket prohibition to land planning resource development and private ownership is critical for understanding the nature of Watershed Reserves today, the same *Land Act* legislation that also protects the familiar provincial Ecological Reserve tenures initiated since the early 1970s.

3. In addition to his provincial authority to establish Watershed Reserves, the Superintendent of Lands also had an important duty, through his administrative staff, to watch over the Reserves by way of an inter-departmental (later, inter-ministerial) referral system. These mandated, routine administrative mechanics are revealed in the Rossland Reserve file records that transpired over the course of three decades, where various departmental administrators sought approval for Crown land planning proposals with the Superintendent. In each case, when the Superintendent's staff checked the status of affected Crown lands on official maps, on which the Watershed Reserves were referenced by way of a file number and a required blue-lined boundary, the Superintendent would automatically and correctly respond by stating that the lands were "withdrawn from disposition". The records indicate that, with regard to the Rossland Collective Reserve, the Superintendent would usually notify the City of Rossland and affected government agencies of land use proposals submitted to his department, usually logging permits, proposals which were rejected.

Unfortunately, highly political circumstances in the early 1960s forced the City of Rossland to make an exception to its consistent protest against incursions into its sacred watershed lands. This came about in 1961 when the Department of Highways sought to construct a freeway connector through the middle of its collective Reserve, to link the City of Trail with the new highway between Castlegar and Christina Lake. The City would soon and later regret its concessionary decision, which brought about many related problems over time to not only its own drinking water, but also to other affected downstream water users, such as the community of Rivervale. One of these related problems was the new highway access helped facilitate opportunisms by the Forest Service to log the protected forest lands, the results of which not only disturbed water quality but also negatively effected water quantity. While its Reserve lands had logging access roads built through them and were logged in the 1960s, Rossland City continued to complain, to little avail.

According to the records, in 1963 the commander and chief of the Forest Service began to act like an outlaw by breaking both the inter-departmental referral rules and contravening the *Land Act*. Chief Forester F.S. McKinnon openly snubbed the Superintendent of Lands by deceptively stating to his underling staff that the "withdrawal of dispositions" in Rossland's "so-called" Reserve – vis-

² It is not known if any or all of these four additional watershed sources had previous Reserve status histories.

³ As defined, a disposition is any Crown land use license or permit.

à-vis commercial logging permits and licenses, and later transfer of said withdrawn lands to the forest harvesting land base – was a complete “misunderstanding”, and suggested that staff help persuade the City of Rossland otherwise. The Chief Forester not only sidestepped the authority vested in the Superintendent of Lands, but he apparently also broke the law, and enjoined his staff to do the same. According to an originating memo from the Chief Forester’s office in December 1960, this deception was also apparently and successfully applied elsewhere to an unknown number of other provincial Watershed Reserves, intrusions met by a host of bitter public complaints.

4. Beginning in the 1960s, the Watershed Reserves were more uniformly ignored by government administrators, primarily those within the Forest Service. As a direct result of this and other misdirections by the Forest Service to water users, the meaning and legislated directive of these Reserves began to be lost and misunderstood by the public. Soon, even provincial administrators, in charge over or familiar with the Reserves, succumbed to the new directive. As evidenced in City of Rossland correspondence records and reports from the early 1970s following, its Watershed Reserves were sometimes being referred to but left dangling, undefined and misunderstood as to their creation, administrative planning function and legislative significance.

The significance about the active status of a *Land Act* Watershed Map Reserve of Crown lands that bounds the Topping Creek watershed is that any and all development and disposition proposals on, or proposed alienation of, these Crown lands, which a provincial government agency actually accepts as a consideration, must be acknowledged and specifically referred by the provincial government to the City of Rossland and to the development proponent, including a summary to all parties concerned of the Reserve’s legislative purpose.

From a telephone discussion with the Kamloops Regional office of Agriculture and Lands in early July, 2008, such an explanatory referral to the City of Rossland had not as yet transpired with respect to the proponent’s proposal for a golf course and residential/hotel multi developments on Crown lands in Topping Creek, which included the alienation or privatization of Crown lands. This was substantiated by the fact that the Regional Lands agency in Kamloops had no such referrals on file, because, as the agent responsible for the proposed developments stated, the agency was unaware of the Watershed Reserve tenure over Topping Creek at that time. There are two important questions arising from this omission:

- Why had the Reserve tenure status data not been on file with or supplied to the agency in charge of Crown land planning?
- If this agency had the information, would the proper referrals and proper legislative interpretation of the Reserves have been made?

The fact that the provincial government had not yet informed the City of Rossland about development proposals because of the Topping Creek Watershed Reserve status (a concern now under investigation by Agriculture and Lands) is both troubling and consistent with what government administrators have generally failed to do over a period of many decades. As described in the author’s 2006 book, *From Wisdom to Tyranny, A History of British Columbia’s Drinking Watershed Reserves*, this conforms to measures meant to hide or obfuscate these Reserves. In other words, should the government finally acknowledge the Reserve and begin to willingly accept its

fiduciary responsibility to inform and remind the City of Rossland, as the holder of the Watershed Reserve, of the legislative directive to protect the said lands from Crown land dispositions, this proper notification directive would open up an unwanted can of worms, the flood gate for disposition referrals in all the provincial Watershed Reserves, and, perhaps, a public inquiry.

Of the several important matters from documents revealed and discussed within this report is the validation that, at a previous period, the provincial government had largely maintained its mandated trust with the public, cohesively identified in the old guarded public motto, the “obedient servant”. What began to unfold in the 1960s following is that this “servitude” maxim, which many government staff proudly stood by on the protection of the public’s drinking watersheds, particularly the Department of Health, began to dissipate and shift away from the good of the general public into what would become a significant and protracted public deception – hence, the title of this report.

The relationships of integrity which were to be provided to Third Order governments – municipalities, townships, villages, improvement districts, regional districts, etc. – by provincial government administrators were being slowly eradicated, transferred to the commercial domain of the private business sector and its shareholders. As this manufactured shift slowly took on more dominance, coincided with the establishment of regional district governments beginning in the late 1960s, the public became more alarmed and dissatisfied, because, in the case of drinking watersheds, the provincial government was failing to uphold its end of fiduciary responsibility in their overall protection. The primary reason behind the prevailing subversive activities within the Forest Service and the eventual tainted effects within regional and municipal governments is largely due to the fall and demise of the conscientious public servant formula, replaced by underhanded facilitations that endorsed various opportunisms.

It was made quite evident in the 2008 calendar year that Rossland City Council favoured the developer. It not only acted against the concerns of many of its citizenry, as evidenced through a local citizenry petition, but also against the City’s historic position to protect its drinking watersheds, the latter of which went unaccounted for in related planning documents and in the Official Community Plan. The problem of proper public representation, informational accountability, and decision-making on controversial land planning issues, is not only a significant problem for Rosslanders, but for many, or even all, other B.C. communities.

Ultimately, licensed community drinking watersheds should remain protected, no matter what a third order government Council, provincial or federal administration or resource interested lobby group may attempt otherwise. As re-confirmed recently by the global report, *Running Pure: The Importance of Forest Protected Areas to Drinking Water*,⁴ and more recently recommended by December 3, 2008 summary report, *Climate Change Adaptation and Biodiversity*, from Simon Fraser University’s Adaptation to Climate Change Team (ACT), fully land resource protected drinking watershed sources are critical resource commodities, an invaluable asset, particularly during a time of global climate crisis.

As documented, Watershed Reserves were created as instruments for perpetual public good to protect forested and non-forested Crown lands within community drinking watersheds. There is nothing more plain and simple about their proper function and purpose for British Columbians.

⁴ A collaborative report by the World Bank and the World Wild Life Alliance for Forest Conservation and Sustainable Use, August, 2003.