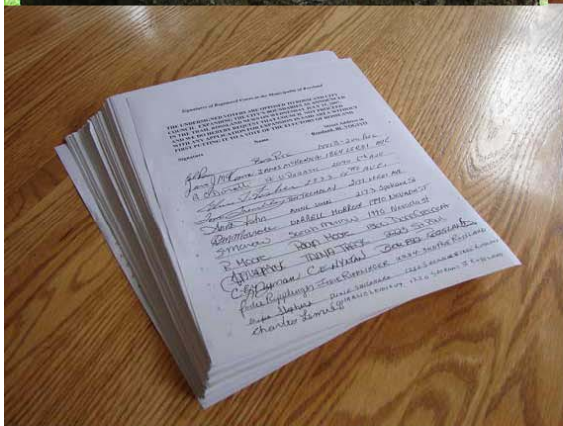


THE TOPPING CREEK CRISIS:

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.

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.