

6 June 2018

Jennie Aikman  
Regional Director, South Coast Region  
BC Parks  
Ministry of Environment  
PO Box 220  
Brackendale, BC V0N 1H0  
BY FAX: 604 930 7119

**Re: Proposed Amendment to Tetrahedron Provincial Park Boundary**

Dear Ms. Aikman:

We write to object to BC Parks' current process and proposals to remove the park designation from some or all of Tetrahedron Provincial Park (the "Provincial Park"). In our view, BC Parks is taking a one-sided approach to the SCRD's request to amend its Park Use Permit.

While we are not necessarily opposed to measures to use Chapman Creek in ways which enhance the water security of the SCRD, we are opposed to a process and approach that rushes to that conclusion, that fails to consider the impacts on the Park, or that does not critically consider alternative approaches to addressing water scarcity.

We believe that BC Parks needs to hit pause on the current process and instead develop a process that critically examines the region's water needs and does not assume that the SCRD's water needs justify the removal of the Park designation from some or all of the Park.

**Chronology**

Since 1978 or earlier, the Sunshine Coast Regional District has had a water licence authorizing the construction of a weir and associated infrastructure on Chapman Lake for water storage (Conditional Licence 50724, the "storage licence"). The Storage Licence is used to allow flow of water into Chapman Creek to be then used by the SCRD under a series of other licences. (Conditional Licences 16599, 22345, 65258, 69217, 69999, and 107474, collectively the "use licences").

Tetrahedron Provincial Park was created in 1995 as a result of recommendations of the Land Resource Plan process, which involved multiple stakeholders and public consultations, and as part of the Province's Protected Areas Strategy.<sup>1</sup> One of the key purposes in creating the park was to protect the headwaters of Chapman Creek and the SCRD's water quality.

A Park Management Plan was finalized in 1997 and (because of legal restrictions on activities in a park) a Park Use Permit was issued authorizing continued use of the Storage Licence and the weir. This PUP has since been amended and updated, most recently in 2014.

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<sup>1</sup> Tetrahedron Provincial Park Management Plan, 1997, p. 2.

The Park Management Plan clearly contemplated the possibility that the SCRD might one day wish to access additional water from Chapman Lake and that it might be necessary to review legal options to allow this. The legal meaning of those portions of the plan are discussed in more detail below.

In 2000 the *Protected Areas of British Columbia Act*<sup>2</sup> designated the Park as a Class A Park, meaning that the boundaries of the park can only be modified through an Act of the Legislature.

In April 2016, the SCRD applied for an amendment to the PUP, and for a new Water Licence, to allow for the extraction of water directly from the Lake. The potential impacts on the park include, in the short-term blasting and trench building to build a permanent pipeline through the park, as well as an increased extraction of water from the Lake during times of drought, with the resulting loss of ecological values.

Initially BC Parks appeared willing to consider the requested PUP amendments. However, in August 2017 I wrote, on behalf of the Sunshine Coast Conservation Association, pointing out that the proposed amendment would be contrary to the Park Act and the Protected Areas of BC Act. According to our files, we never received a direct response to that letter.

As a result, BC Parks and/or the SCRD initiated a “process” to consider options for the removal of land from Provincial Park.

In November 2017, BC Parks wrote to the SCRD to provide an update on the PUP amendment request, stating:

BC Parks is evaluating the options with respect to the water supply improvements proposed in Tetrahedron Park by the Sunshine Coast Regional District, including options for a public consultation process on the possible options. This is consistent with the Tetrahedron Provincial Park Management Plan (1997) which indicates that “[w]here regional water supply improvements are proposed, an impact assessment and comprehensive public consultation process will be developed.”

In April 2018, BC Parks clarified that the options it was considering were limited to removing the park designation for some or all of the park and re-designating the lands in a manner that would allow for the SCRD’s request to be granted.

BC Parks is preparing to initiate a public consultation process on options to enable the province to consider a permit to authorize the Sunshine Coast Regional District’s proposed Chapman Lake water supply expansion project. ... Two options identified are: 1) cancelling the Class A park designation under the Protected Areas of British Columbia Act and re-establishing the lands as a protected area under the Environment and Land Use Act with the necessary powers to authorize community water supply infrastructure upgrades; or 2) deleting an area totaling approximately 130 hectares containing Chapman and Edwards lakes from Tetrahedron Park and re-establishing those lands as a protected area under the Environment and Land Use Act with the necessary powers to authorize community water supply infrastructure upgrades. Both options will require an act of the legislature.

### **Amending park boundaries**

As a matter of law, the parks listed in the Protected Areas of BC Act are supposed to be protected in perpetuity. As then-Environment Minister, Joan Sawicki, explained in 2000:

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<sup>2</sup> Protected Areas of British Columbia Act, S.B.C. 2000, c. 17.

[E]stablishing parks and ecological reserves in schedules in an act in front of this Legislature provides **the highest possible protection to these areas for permanent retention of their boundaries**. Time and time again -- and we certainly heard it through the extensive legacy consultation that happened throughout British Columbia -- British Columbians are clear about that. They want to know that for **those areas that we have put in protected status, their boundaries are secure forever**. [Emphasis added]

Notwithstanding this legislative directive, BC Parks has developed a *Park Boundaries Adjustment Policy* that outlines when and how a person may apply to amend the boundaries of a park, and the Minister of Environment has shown a willingness to ask the Legislature to enact amendments to the Protected Areas Act where proposed boundary adjustments have been through the policy.<sup>3</sup>

In the usual course of things, the SCRD, if it wishes to proceed with the water system, should have applied under the Park Boundary Adjustment Policy for amendments to the Provincial Park. However, BC Parks staff have apparently taken the view that the Park's Management Plan mandates an *ad hoc* process leading to a possible boundary adjustment.<sup>4</sup>

Moreover, BC Parks seems to have designed this process based on a narrow reading of the Tetrahedron Provincial Park Management Plan, which appears to assume that the Province has a positive obligation to pursue options to make Chapman Lake available for any water system needs identified by the SCRD. Consequently, BC Parks have not invited the public to comment on the option of leaving the land in the park and not developing the expanded water system, but only on options for removal of the land.

#### **Legal effect of the 1997 Management Plan**

While we agree that the 1997 Management Plan does contemplate the possibility that the park designation and/or legal restrictions on park use may be reviewed to accommodate SCRD access to Chapman Lake, we submit that the Management Plan does not suggest that such review will automatically result in a change in the park designation. Any suggestion that the Crown has any obligation to repeal or replace the park designation is incorrect in law, both on a correct reading of the Management Plan and given the statutory framework.

The 1997 Management Plan acknowledges that the Park was created to accommodate a range of values. The desire to protect Chapman Lake from logging while allowing for some future flexibility in relation to water systems was an important goal, but the plan also protects the Parks's "natural and wilderness values", "educational and spiritual values" and the integrity of the ecosystem.

BC Parks, in describing its current review, appears to have quoted selectively from the Management Plan, highlighting sections of the Plan that emphasize a process for the purpose of accommodating SCRD water

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<sup>3</sup> We do not endorse the Park Boundaries Adjustment Policy. It is open to the government to have a policy mandating how an individual may apply to change a law that affects them, but as a general rule this is not done. Indeed, amendments to the law intended to benefit a particular company or individual are not generally considered good practice. On the one hand, the Park Boundaries Adjustment Policy does provide some transparency and standardization to what would otherwise be backroom lobbying efforts to modify park boundaries. On the other hand, the existence of such a policy invites applications and normalizes the idea that the law establishing park boundaries can be modified, which undermines the Legislative intent of the *Protected Areas of BC Act*.

<sup>4</sup> It is not at all clear to us why following the Park Boundary Adjustment Policy would not be consistent with the public process mandated under the Plan.

system requirements, while ignoring sections that suggest that the SCRD's goals must be balanced against these other values.

For example, in an April 2018 letter to the SCRD, BC Parks quotes a section of the Management Plan related to developing an "impact assessment and comprehensive public consultation process" to address options that might remove the park designation, but drops a key sentence that emphasizes that: "Retention of the park's natural and wilderness values will remain a high priority."

**Consider all options** - The Management Plan does not guarantee the SCRD that any water system proposal will result in lands being taken out of the park. Rather, it speaks of "seeking" a decision and options that "may affect the existing park status." The Impact Assessment and the public consultation mandated by the Plan are not merely to procedural requirements to be satisfied, but information gathering to allow the Minister to decide where or not to make changes to the park status. While BC Parks does recognize that the Minister, Cabinet or the Legislature might ultimately decline to modify the park designation, the fact that the options being consulted on do not include the option of not modifying the park boundary continues to be confusing.

**Impact Assessment** - According to the Management Plan, an Impact Assessment is supposed to be a key part of the removal of land from the park and of the public consultation. This would help reassure the public that the impacts of the proposed water system on other park values can be addressed. However, in BC Parks' background<sup>5</sup> on its process, it identifies an impact assessment as being prepared after the land is removed from the park and a park use permit is under consideration:

If the Legislature approves a re-designation, BC Parks would be in a position to consider a park use permit application for water supply improvements from the SCRD. Any park use permit application is subject to review under the BC Parks Impact Assessment Process, including completion of a detailed environmental impact assessment. The permit authorization process helps ensure the preservation and maintenance of protected area values and the recreational opportunities they provide. BC Parks can apply permit conditions such as restricting the use of any additional water capacity to emergency use during droughts, and other conditions that reduce future dependence on Chapman Lake water.

Not only does this seem inconsistent with the plan,<sup>6</sup> but it means that both the SCRD and the public are in the dark as to what the impacts of the project on the park will ultimately be, and what constraints will be put on the water system (which could in theory affect the SCRD's desire to proceed with it). As a result, the public is being asked to comment on options without highly relevant information.

**Consideration of alternatives** - The Park Boundary Adjustment Policy makes it clear that before land will be removed from a Park: "Proponents must consider and document alternatives that would avoid a protected area boundary adjustment." In our submission this must be part of any public process seeking to avoid unnecessary impacts on the Park and to consult the public in the decision of whether or not to change the park status.

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<sup>5</sup> <http://www.env.gov.bc.ca/bcparks/PBAPProcess/current-applications/tetrahedron/docs/tetrahedron-park-public-information-paper.pdf?v=1527179459533>

<sup>6</sup> We do note that an environmental assessment of the proposed expansion was done, but that this was not intended to be an impact assessment and did not focus on the parks' values in particular.

To the extent that BC Parks is still of the view that the Management Plan in some way binds it to re-designate land in the park, it is worth noting that the Protected Areas of BC Act, which was enacted in 2000, indicates a clear legislative intent to protect Tetrahedron Provincial Park in perpetuity. An Act of the Legislature would override any contradictory legal requirements arising from the 1997 Management Plan.

The question of whether or not to remove land from the Park will ultimately be a decision of the Legislature – not of BC Parks and not even of the Minister. As such, we would hope that the Minister would want to reassure the Members of the Legislative Assembly that any process leading to legislation to repeal or replace the park status of Tetrahedron Park was thorough and transparent, considered all available alternatives, and demonstrated that no alternatives to removing the park designation existed.

### **The Siphon Option**

We are advised that BC Parks may be of the view that West Coast Environmental Law and/or SCCA threatened litigation against BC Parks and/or the SCRD for the existing practice of extracting water in emergency circumstances from the park. We are quite shocked that this may have been suggested, as our correspondence clearly indicates that we have been concerned throughout about the proposed expansion of infrastructure, and not the occasional use of a siphon in times of emergency.

We trust you will retract any statements made by BC Parks staff suggesting that we have threatened litigation if the current practices continue, as those statements are incorrect and prejudicial.

### **Conclusion**

We are opposed to any process that presupposes that lands should easily be removed from a park or that fails to consult the public on changes to park status. We believe that alternatives, including water conservation, must be fully canvassed and impacts to the park fully examined before any decision should be made on the SCRD proposal. It is our sense that the current process is rushing towards a recommendation that the park boundaries be removed out of some sense that this was promised in 1995 when the park was created and without consideration of the full range of values protected by the Park.

Sincerely,



Andrew Gage,  
Staff Lawyer

cc. George Heyman, Minister of Environment and Climate Change