



September 9, 2019

FLNRORD Reference 237167

Honourable Minister Doug Donaldson

Via email doug.donaldson.MLA@leg.bc.ca

Parliament Buildings
Victoria, BC

RE: REQUESTS BY SILVER STAR PROPERTY OWNERS ASSOCIATION (SSPOA) FOR OVERSIGHT OF UNREGULATED SEWER MONOPOLIES IN BRITISH COLUMBIA

Dear Mr. Donaldson,

We filed our brief with you just over 18 months ago and we have met with various civil servants and elected officials; however, there seems to be little progress on a solution to unregulated Wastewater Monopolies in BC. This issue has been before previous governments since 2002.

The SSPOA's brief referenced above is regarding the negative impact that the unregulated monopoly running sewerage services in our community is having. I have shown the link to the brief for ease of reference: <https://www.sspoa.ca/wp-content/uploads/2019/02/Silver-Star-Sewer-A-TIME-FOR-CHANGE-Mar.-5-2018.pdf>

The SSPOA did have some early conversations with several FLNRORD staff, including a meeting on November 23, 2018 with:

Tom Ethier, Assistant Deputy Minister, Resource Stewardship Division (RSD), Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD)

Ted White, Director and Comptroller of Water Rights, RSD, FLNRORD

David Morel, Assistant Deputy Minister, Environmental Protection Division, Ministry of Environment and Climate Change

During that meeting we were told that their agendas were very full and that it would be a few months before they could look at the issue. One of the subjects of conversation was "determining the quantum of the problem". On February 26, 2019 the SSPOA forwarded a spreadsheet to you, as well as the above-mentioned individuals. That spreadsheet is based on the Ministry of Environment data base, and showed 588 permits that have the same code as that of our wastewater operator at Silver Star. We indicated which of those permits are probable or possible private wastewater utilities.

That spreadsheet showed other communities besides Silver Star, such as Kicking Horse, Mount Washington, Fernie, Hemlock Valley, Apex and Big White ski resorts - as well as communities such as Fairmont Hot Springs, Windermere, Shuswap Lake Estates and Tobiano to mention a few, that are serviced by private, for profit, monopolies

As stated, this issue has been before government since the early 2000's and was formally requested to be addressed by the government of BC by the Union of BC Municipalities (UBCM) in 2002, 2005, 2007 and again in 2018. In the past there was a reluctance of the Liberal Government to intervene in private business, however it was our hope that your government would recognize the public interest in providing oversight of an unregulated, for profit, monopoly.

The residents at Silver Star have tolerated this situation for 19 years; in fact, we consider ourselves the poster child for the negative impact that an unregulated sewage utility has on a community.

We firmly believe that the only satisfactory way in which to address the catalogue of poor practice and lack of transparency that the current situation provides, is through Government action. We have shown ourselves willing and able to provide a very strong case for regulation and while we are committed to addressing this through the existing administrative channels, I am sure you can sense the frustration from our 1000 Silver Star taxpayers who just received a 15% retroactive rate increase with no explanation. Sewer rates are exceeding the property taxes in quantum and in the case of one commercial property, they are more than double their property taxes.

I have quoted the government responses to the repeated UBCM requests for regulatory oversight.

The Government response to the 2002 UBCM resolution was:

From the Ministry of Water, Land and Air Protection

"The Municipal Sewage Regulation was enacted on July 15, 1999 to provide dischargers of municipal sewage an opportunity to obtain an authorization under the Waste Management Act in a timely and efficient manner. The intent of the Regulation is to provide a performance-based approach to authorizing municipal wastewater discharges that protects human health and the environment, while eliminating unnecessary administrative costs to the dischargers.

Fees charged by private sewage system operators have not been regulated in the past under the Waste Management Permit system and were not considered when developing the Municipal Sewage Regulation. The issue, which led to the resolution, appears to be an isolated incident of a private system operator (Fernie Alpine Resort) charging excessive and unreasonable fees for hook-up of a subdivided lot and is not indicative of a general provincial problem.

Amending the Municipal Sewage Regulation to impose any type of prescribed fee structure designed to restrict commerce in the private marketplace would not be consistent with the government's priority to reduce the current regulatory burden for business in British Columbia."

The Government response to the 2005 UBCM resolution was:

“The Province will investigate this issue further in the next year, particularly in regard to the prevalence of the problem. The Ministry of Environment will consult with Ministry of Health while conducting this research. The Province will revisit the issue if research findings indicate a need for regulation.”

The Government response to the 2007 UBCM resolution was:

“The Ministry of Environment will consult with both the Ministry of Health and local governments while conducting this research. The Province may revisit the issue if research indicates a need for regulation. The MSR is currently under review, and the issues of the transparency and accountability of private sewage systems has been identified for consideration – this is the likely venue for addressing these issues.”

YOUR Government response to the 2018 UBCM resolution was:

From the Ministry of Forests, Lands, Natural Resource Operations and Rural Development

*“Ministry staff are aware of the request that the Province regulate and manage private sewer utilities in response to concerns about rates. Private sewer utilities are permitted under the Environmental Management Act and the Municipal Wastewater Regulation, however there is no provincial oversight body for the operation of private sewage utilities. Ministry staff have been working with the Silver Star Property Owners Association (SSPOA) to better understand the scope of the issue and what options could be implemented to address the concern. Some preliminary work has been completed, however more work is required to complete the assessment of the scope of the issue and what the resource implications would be to adopt a regulatory role in the management of private sewer utilities. Any review of options would have to consider governance structures, resource requirements, and how effectively the issue would be addressed. In addition, due to the way permitting is coded and tracked **the number of private sewage utilities is unknown. Ministry staff are also working to better understand how many private sewer utilities exist.***

From the Ministry of Environment and Climate Change Strategy

*“**The Province views local governments as best-suited to regulate sewer system services given the powers they have under the Local Government Act.** The provincial regulatory regime authorizes municipal wastewater discharges but does not regulate their financial charges. Local governments provide sewer system services and have the ability to customize the way the services are provided, regulated and financed. Under the Local Government Act, a regional district has the authority to prohibit the installation of sewage works provided by other parties (either a private utility or a municipality). This issue has come about due to a few private systems that appear to be unjustly charging fees. The Province will continue to monitor the issue; however, **at this time, it is not considering the regulation of private sewer utilities. The Province may revisit the issue if research indicates a need for regulation.** Although the provincial government does not regulate financial charges, local governments can by enacting applicable bylaws.”*

(emphasis added)

We compliment the author of the 2018 FLNRORD response as recognizing the issue, however the disappointing comment from the Ministry of Environment and Climate Strategy seems to reiterate the attitude since 2002 where successive governments have said “we will look into it”. Further, we would challenge the statement that the “*local government as best-suited to regulate private sewer system services*”, specifically to the rates charged by these monopolies.

We are strongly of the view that Provincial Government is the place for this much needed oversight to be exercised from. The Comptroller of Water, under the auspices of the British Columbia Utilities Commission (BCUC) seems to be exactly the right place for appropriate regulation. Private wastewater processing is the only utility not regulated in BC. The Water Comptroller and the BCUC have proved themselves to effectively balance the justified needs of owners of regulated businesses with that of their customers and the communities they serve. The SSPOA has firsthand experience with the BCUC and has successfully managed the escalation of natural gas prices in our community via the good offices of the BCUC.

We question how much effort the BC Government has made since 2002 to support the UBCM responses and “examine the issue”, especially considering in our 2018 meeting with government staff, we were told (reiterated in the statement above) that they have no way of quantifying how many private “for profit” sewer monopolies there are. The SSPOA through its own efforts estimates about 60 such utilities exist in BC.

Failure to achieve legislative changes (which we believe by changing the Water Utilities Act are not that substantive) leaves few alternatives for the SSPOA to pursue. Will it be necessary to proceed to court as was the case of public access through the Douglas Lake Ranch to Minnie and Stoney Lakes? In his ruling Justice Groves chastised a succession of provincial governments for allowing the public road on the ranch to remain locked for many years, despite pleas from the public for access.

“All governing parties have shown a lack of action to enforce the public good,” the judge stated in his ruling.

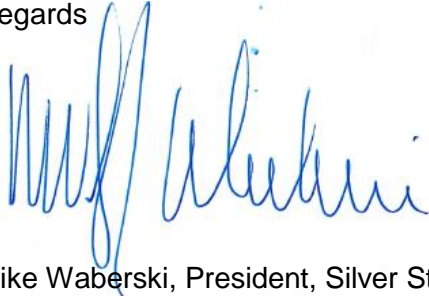
“What I am saying is that there is plenty of blame upon all politicians and all political parties who have governed this Province since 1990”.

“As such, I am not pointing a finger at any particular government individual but, again, it is most unfortunate that all governments holding the obligation of the public trust have failed to take any actions to prohibit what was an illegal obstruction of a public road by a corporate entity, for its own benefit”

In closing we ask your assistance in elevating this issue. Action is needed to enforce the public good, and as Justice Groves emphasized, the obligation of the public trust. I have copied most of the parties that we have interacted with on this matter over the last 18 months in hopes that this gains some level

of attention by the BC Government. In addition, I have sent this appeal to Mr. Don Wright as the head of the Public Service. I look forward to hearing from you. I can be reached at 250 307-6611 at any time.

Regards



Mike Waberski, President, Silver Star Property Owners Association

Copy: John Allan, Deputy Minister of Forests, Lands, Natural Resource Operations and Rural Development

Copy: Kenn McLaren, Ministerial Assistant to Minister Donaldson,

Copy: Minister of Environment and Climate Change Strategy,
Honourable Minister George Heyman

Copy: Honourable Andrew Weaver, BC Green Caucus

Copy: Amanda Shatzko, Electoral Area C Director, Regional District of North Okanagan, Vice Chair

Copy: Jared Wright, UBCM Director of Advocacy & Government Relations

Copy: Don Wright, Head of the Public Service, Office of the Premier

Copy: Tom Ethier, Assistant Deputy Minister, Resource Stewardship Division (RSD), (FLNRORD)

Copy: Ted White, Director and Comptroller of Water Rights, RSD, FLNRORD

Copy: David Morel, Assistant Deputy Minister, Environmental Protection Division, Ministry of Environment and Climate Change

Copy: Board of Directors, Silver Star Property Owners Association

Copy: Silver Star Sewer Action Fund Committee members

Copy: Matt Keen, Norton Rose Fulbright