
West Fernie Water Distribution

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Date: April 8, 2009

Executive Summary

Water Distribution in West Fernie has a history of political and jurisdictional tension. The City of Fernie is currently the de facto party responsible for providing potable water in the neighbouring unincorporated community of West Fernie. City of Fernie administration commissioned this report to clarify the history of its relationship with West Fernie and to recommend a preferred model for service delivery in the future.

The research for this study was conducted through reviewing 50 years of archived materials from the City of Fernie's files, and through qualitative interviews with a cross-section of current stakeholders from the City of Fernie, West Fernie, and various local and provincial government offices. The main themes that came out of the document review and related interviews were cost, fairness and safety. All solutions to the West Fernie water distribution problem had to take these themes into account.

Ten factors affecting service delivery options in West Fernie emerged from the research. Five factors are relatively recent: the suspension of the West Fernie Waterworks District (WFWD); changes to Provincial boundary extension policies; changing demographics; new census numbers; and the wide adoption of smart growth policies. Five factors have been developing for decades: governance and accountability issues over the water distribution system in West Fernie; deteriorating pipes in the ground; the moratorium on new water connections that prevents development; potential health and safety issues; and general antagonism between the various stakeholders.

These factors have interacted to create a situation where proposed solutions fail to garner public support, and policy decisions to remedy water distribution system concerns in West Fernie are delayed or deferred. This report attempts to resolve the present policy inertia by identifying and evaluating three options:

- A. *Transfer the West Fernie water service to the City.* Under this option, the WFWD would be dissolved and its assets transferred to the City.
- B. *Let the Regional District of East Kootenay initiate the process of renewing water and sewage service in West Fernie.* This option would have the RDEK raise the money for new water and sewage infrastructure, and then incorporate the renewed community into the City.
- C. *Boundary Extension.* This option involves the annexation of West Fernie in its entirety through a boundary extension into the City prior to infrastructure renewal.

Although all three options are feasible, Boundary Extension is the most sustainable and accountable solution over the long-term, addressing political and jurisdictional tensions as well as health and safety issues. The recommendation of the report is Option C – Boundary Extension.

Despite being a politically difficult option, it provides the most utility to the citizens of West Fernie, rationalizes the City's current boundaries, and will eventually put to rest historical grievances between the communities. This option also gives the City the most control over an infrastructure renewal process managing both costs and timelines.

However, the financial cost of restructuring will be significant, and could be a political deterrent in selecting this option. Determining a fair portioning of costs will likely be difficult. Securing contributions from provincial public infrastructure programs would ease the tax bite, and make restructuring more palatable.

Before this option proceeds to a formal restructure study, it is recommended that Fernie City Council gathers more primary information on the West Fernie water distribution system such as an updated health study and baseline assessment of the infrastructure deficit. It is also recommended that a strategy be developed regarding how the information from this report is released.

Many citizens already consider West Fernie as part of the City and see a boundary extension as inevitable. West Fernie is centrally located, has beautiful mountain views and is close to the river and municipal park system. A boundary extension of West Fernie creates the greatest opportunities for smart growth, redevelopment, and eventual community harmony for the City of Fernie.

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Introduction

The provision of potable water is something that most citizens take for granted in Canada. Fortunately we have the technology, expertise and public health regulations, which make the availability of safe drinking water in most communities a non-issue. However the system is imperfect: health emergencies such as the outbreak of a waterborne illness infected an estimated 2,700 people and killed seven in Walkerton, Ontario. Examples such as this remind us that a safe and reliable water supply is essential for our quality of life.

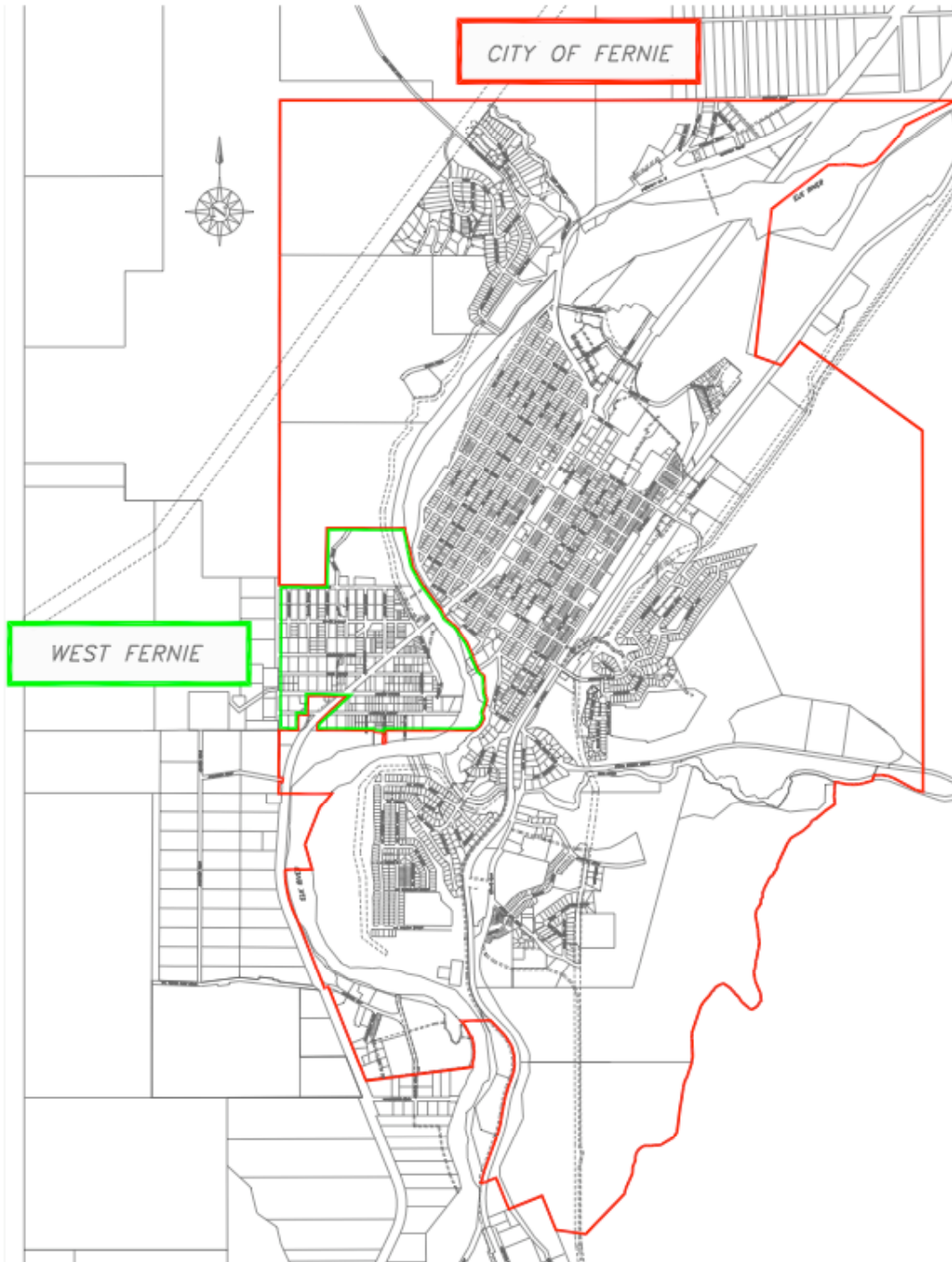
The City of Fernie requested a study to determine the preferred service delivery model for the provision of potable water to the community of West Fernie, an unincorporated area adjacent the City within the Regional District of East Kootenay (See Map: Figure 1). The City of Fernie has been providing water to West Fernie for over 50 years, and, over time, other services were supplied to the community including, solid waste and recycling collection and fire protection. However these services have been provided under agreements that are unclear as to the parties' respective rights, duties and obligations. Legal opinions of the agreements confirm their inadequacy. This has led to misunderstandings and tension between the parties. Furthermore, the aging and leaky water infrastructure in West Fernie has the potential to have significant health consequences as well as hefty replacement costs.

The contemporary situation changed in that one of the parties, the West Fernie Waterworks District (WFWD), has been rendered non-functioning due to poor governance. There is an opportunity for the City of Fernie, with the support of the Province of British Columbia, to remodel service delivery to citizens of West Fernie and deal with outstanding issues of water quality and providing capital infrastructure upgrades to the West Fernie water distribution system.

The report will delve into the background of the local water distribution issue and then outline the methodology of how the research results were obtained. The results include: a narrative chronology of the history of the water distribution relationship between West Fernie and the City; feedback from local and provincial stakeholders; and research into the legislative framework and current water delivery models in British Columbia. Through a discussion of contemporary factors elicited from the report's findings, the report's options, recommendations and conclusions are made.

The study's goal is to clarify the history of water provision in West Fernie, present a number of service delivery options, and recommend to the City of Fernie a way forward.

Figure 1: Map of the City of Fernie including West Fernie



Background

In British Columbia, Water Improvement Districts were created to deal with collective water supply and security in rural areas of the Province. In West Fernie, the West Fernie Waterworks District (WFWD) was atypical in that soon after its water supply infrastructure was built in the 1950's, it handed off supply services as well as service charge collection to the neighbouring City of Fernie. In subsequent decades the provision of fire protection, garbage collection and recycling was added to the contractual relationship, and although part of the City's relationship with West Fernie, were not the focus of this study.

West Fernie currently has no sewage system, and uses septic fields for the 210 dwellings that comprise the community. As the capital infrastructure of the water supply system ages there have been concerns that water potability could be compromised.¹ A health study in 2001 found no significant health risks to the population from the water supply at that time.² Replacement of the water infrastructure in West Fernie has been contemplated for some time, and studied extensively.³

In 1995 a West Fernie referendum on amalgamation with the City of Fernie, was defeated. The main driver of the referendum was the renewal of West Fernie's water supply infrastructure, with the addition of a sewage system and consequent road renewal. In 2002 a plan to create a local service area of the Regional District of East Kootenay (RDEK) responsible for the water and sewage in West Fernie, also failed in referendum. During the 1990's the City of Fernie grew past West Fernie, as well as annexed commercial land in West Fernie near the highway; it has provided water and sewage services to these new parts of the City.

Conflicts between the City of Fernie and the WFWD have tended to be economic in nature, with regards to who pays for what and disputes over service charge levels. It is important to note that annual property taxes in West Fernie are approximately 1/3 less than in the City of Fernie, and that West Fernie residents enjoy many of the City's public facilities as free riders. Furthermore there is dispute over the historical interpretation of events that have led the City and West Fernie to where they are today.

¹ West Fernie Committee of Concerned Citizens. Report: West Fernie - State of the Service Systems. Compiled, June 2000.

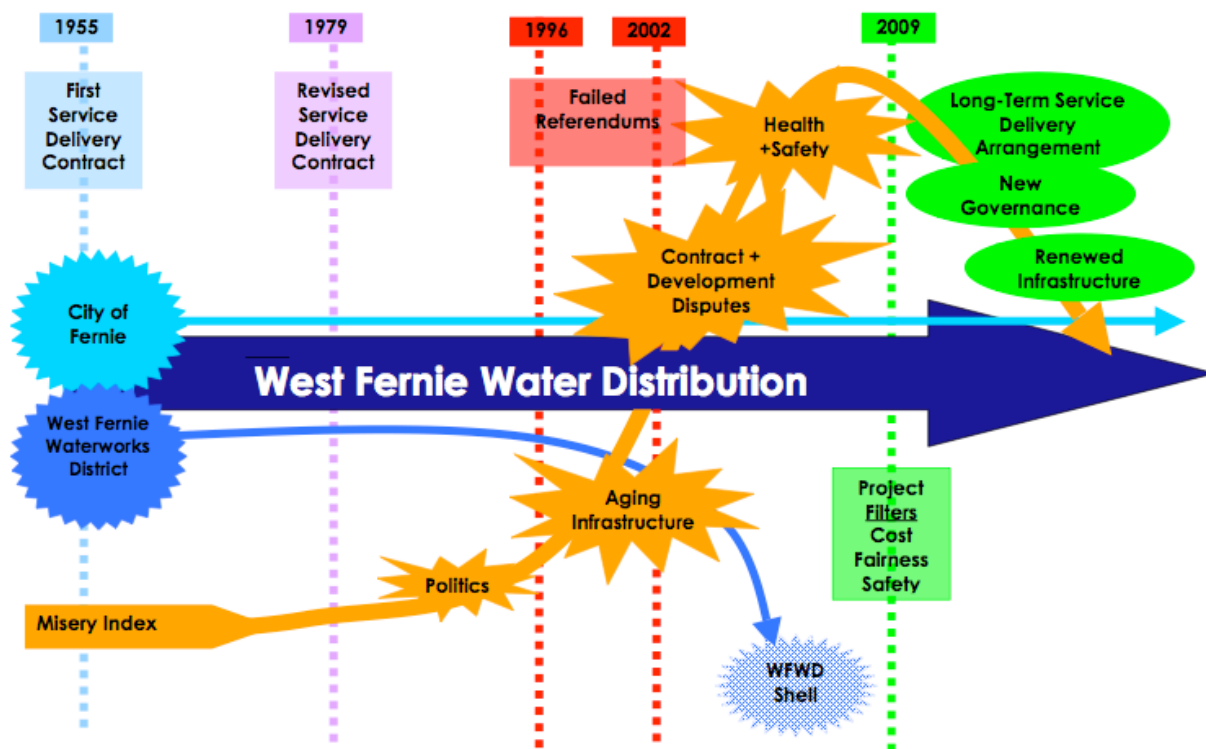
² Byron, D. Public Health Inspector, East Kootenay Community Health Services Society. Review of West Fernie Water Quality and Sewage Disposal: Correspondence to L. Crane, Administrator, Regional District of East Kootenay. Dec 6, 2001.

³ Regional District of East Kootenay (RDEK), *Fernie Area land Use Strategy*. October 6, 2006. 34pp.

The British Columbia government no longer favours Water Improvement Districts as the governance vehicle for collective water provision in rural areas. In 2006, the Province froze the WFWD as an entity on a governance issue: it had not been holding regular annual general meetings.⁴

A visual representation of the situation is presented below (Figure 2). This conceptual framework distills the fundamental elements in this research as well as highlight desired outcomes. The horizontal axis of the framework is “time.” This brings to the reader’s attention, historical milestones as well as the two main players in the history of water distribution in West Fernie: the City of Fernie and the WFWD. The vertical axis describes the “misery index” and is a subjective illustration of the general dissatisfaction with the status quo as an increasing number of problems come to bear on the water distribution system in West Fernie.

Figure 2: Conceptual Framework - West Fernie Water Distribution



Despite many of the stakeholders’ unhappiness with the status quo, the current political situation favours inaction, due to the high cost of fixing the water infrastructure deficit that has grown relatively unchecked. It is a modern day

⁴ Paget, G., Deputy Inspector of Municipalities, Local Government Infrastructure and Finance, Ministry of Community Services. Correspondence to D. Hamilton, Officer, West Fernie Waterworks District. June 6, 2006.

“tragedy of the commons” whereby the lack of regulation and maintenance over the use of a common resource, leads to its eventual demise: where the short-term interest of cost avoidance overrides the long-term interest of sustainability.⁵ However City administration recognizes that the situation cannot endure indefinitely and in 2008 commissioned this study to create options for the City of Fernie in how to continue to deliver prudent and sustainable water service to West Fernie.

⁵ Hardin, G. (1968). *The Tragedy of the Commons*. Science. December 13, 1968. Vol. 162. No. 3859, Pp 1243-1248.

Methodology

This project has different components and several deliverables. They were:

- Create a narrative of the history of water distribution in West Fernie from 1950 to present, through archived primary sources;
- Research the legislative framework and history of Water Improvement Districts in British Columbia;
- Develop a conceptual framework of West Fernie Water Distribution;
- Conduct qualitative interviews with a diverse cross-section of current stakeholders;
- Propose three viable options for the City of Fernie with respect to the future of water service delivery in West Fernie.

Research for the history narrative was conducted primarily by sourcing archived materials from the City of Fernie's files. The files comprised 50 years of history with regards to the water supply and distribution arrangements in West Fernie, including the contractual relationship between the parties, previous studies and official correspondence between various individuals and government bodies. Additional contextual information was sought through qualitative interviews of stakeholders who had been active with the issue in former times.

The legislative framework was established through documents such as the *Local Government Act*, *Community Charter* and the *Drinking Water Protection Act*, as well as through conversations with Ministry of Community Development officials. Other regional water service delivery models were investigated, particularly the dissolution of other British Columbian Improvement Districts, to provide insights to the contemporary Fernie/West Fernie situation.

A conceptual framework was created to help illuminate the issue of water distribution in West Fernie as well as the desired goals and outcomes of the research. The framework identifies key moments in the history of the issue as well as its actors.

Qualitative interviews were held with 27 stakeholders using a prepared set of open-ended questions to develop discussion. Sample questions are included in Appendix A. Ethical guidelines were developed and approved for interviewees through the University of Victoria's Human Research Ethics Board. Several stakeholders were contacted more than once to elicit more detail in their comments or to answer additional questions. Stakeholders with a diversity of opinions were solicited from several key groups.

The key stakeholder groups were:

- City of Fernie officials (n=7)
- Ministry of Community Development (n=1)
- RDEK officials (n=2)
- Interior Health officials (n=3)
- West Fernie residents (n=8)
- Fernie residents (n=6)

Additional data sources included other files from the City of Fernie such as the City's financial statements, budgetary information and planning documents, whose access permission was granted by City officials.

Strengths and Weaknesses of the Methodological Approach

The use of qualitative interviews and extensive primary research provided valuable, relevant and "rich" information. Rich in the sense that the history of water distribution in West Fernie is complex and the occasionally contradictory information gathered from stakeholders allowed for a nuanced understanding of both the issue's history and its contemporary challenges. The anonymity of the interview process helped with candor as the issue of water distribution in West Fernie is emotionally charged for some: the ability to speak frankly in confidence allowed people to say more than they would in a public context.

A weakness of the methodology is that any attempt to construct a "true" history from archived sources was based on a subjective analysis of the material. Missing details needed to be inferred, and there was the potential to simplify variant understandings of the past. Interview subjects were not randomly selected but were chosen by the researcher because they were known to have an opinion or perspective on water distribution in West Fernie, such as former West Fernie Waterworks District trustees. There is potential that the subjects interviewed were not representative of general public sentiment. Finally, as in most studies there were time and resource constraints faced by the researcher.

However, despite these shortcomings, the research offers enough data from multiple perspectives to enable the City of Fernie to make informed decisions about how to proceed with water distribution in West Fernie.

History

To fully comprehend the complexity of the water distribution issue in West Fernie, one needs to have an accounting of the relationship between the City of Fernie and the West Fernie Waterworks District (WFWD) over the past 55 years. This history section highlights the main events and flashpoints between the City of Fernie and the WFWD, including the eventual dissolution of the latter. This section of the report is referenced mainly through historical correspondence between water distribution stakeholders. The history is split chronologically into sections: the early years from 1954-1975, the contract negotiations from 1975-1985, the conflict and research studies from 1986-1995, the referendums from 1996-2002, and the present day status quo from 2003 to today.

Early Years (1954-1974)

The WFWD was constituted in 1954. At that time there were public health concerns about the high density of wells and septic systems in the community. Through consultations with the Provincial Government and the City of Fernie, West Fernie residents concluded that installing a water distribution system was the solution needed. The first action of the WFWD was to authorize the execution of a contract with the City of Fernie for the supply of water to a water distribution system that the WFWD would construct.⁶

In 1955 the WFWD initiated the construction of the water distribution system by way of a 25-year loan from the Provincial Government of \$52,000.⁷ Fernie City Council approved a 30-year contract for water supply to WFWD distribution system that November.⁸ The financial arrangement between the parties was laid out in the contract. The WFWD annually determined the parcel tax required for water supply service charges, system maintenance costs and debt payments, and the City of Fernie collected those monies in monthly installments from the West Fernie residents.

In 1956 garbage collection was added to the WFWD jurisdiction and another arrangement with the City was negotiated.⁹ In 1962, an annual fire protection agreement was negotiated between the parties, whereby West Fernie paid \$1000 plus the costs of any fire fighting that occurred.¹⁰ At the same time, the

⁶ West Fernie Waterworks District Bylaw No. 1. Aug 20, 1954.

⁷ West Fernie Waterworks District Bylaw No. 2. May 28, 1955.

⁸ The Corporation of the City of Fernie and West Fernie Waterworks District Memorandum of Agreement. Mitchell & McKay: Barristers & Solicitors, Fernie B.C. Nov 28, 1955.

⁹ West Fernie Waterworks District Bylaw Petition to Amend Letters Patent. Approved July 20, 1956.

¹⁰ The Corporation of the City of Fernie and West Fernie Waterworks District Memorandum of Agreement For Fire Protection. Hislop, McKay & Lazenby: Barristers & Solicitors, Fernie B.C. August 30, 1962.

parties worked out the terms for repairs to the West Fernie water works system, which basically was the cost of labour, equipment and materials of any repair.¹¹

Contract Negotiations (1975-1985)

In 1975 the WFWD approached the City to take over the West Fernie water distribution system. The City agreed and in doing so assumed \$6300 of the outstanding capital infrastructure debt.¹² West Fernie residents ratified the arrangement that fall, and the contract was signed on December 30, 1975.¹³ The system was turned over to the City the next day at midnight. It is important to note that the contract read “the City shall assume full control and authority over the water distribution system” – which can be interpreted as a transfer of ownership. This contract also established rate equality between West Fernie water utility users and City users.¹⁴

This 1975 arrangement ran into problems however. The City of Fernie had collection issues with a few West Fernie utility users and did not have the jurisdiction to properly collect arrears. The question of the continued existence of the community as separate from the City was debated. The informal consensus was that property owners of West Fernie favoured autonomy.¹⁵

Consequently, in 1979, a new agreement was struck. Ostensibly the new agreement was to enhance the fire protection arrangement for West Fernie for insurance grading purposes. From the perspective of the Insurance Bureau of Canada, the agreement would effectively “remove the political boundary between the two areas for fire protection purposes.”¹⁶ However the agreement also triggered the reactivation of the Improvement District. A clause in the new contract had the WFWD acting as a guarantor so that any outstanding funds owed to the City would be paid. Furthermore the services supplied by the City to West Fernie were listed as, fire protection, water supply and garbage collection. Notably absent was any mention of control and authority over the water distribution system, which would become a point of contention in future negotiations between the City and the WFWD.¹⁷

¹¹ The Corporation of the City of Fernie and West Fernie Waterworks District Memorandum of Agreement for Repairs to the West Fernie Waterworks System. Aug 27, 1962.

¹² City of Fernie City Council Minutes, Oct 14, 1975

¹³ The Corporation of the City of Fernie and West Fernie Waterworks District Memorandum of Agreement for Transfer of the West Fernie Waterworks System. Majic, Patel & Leffler, Barristers & Solicitors, Fernie, B.C. Dec. 30, 1975

¹⁴ Ibid.

¹⁵ Ferguson, A.O. Administrative Officer, Ministry of Municipal Affairs and Housing, Province of British Columbia. Correspondence to M. Slavens, Secretary, West Fernie Waterworks District. June 22, 1979

¹⁶ Piper, A. H. Supervisor, Insurers' Advisory Organization. Correspondence to B. Woodward, Treasurer, City of Fernie Mar. 15, 1979.

¹⁷ The Corporation of the City of Fernie and West Fernie Waterworks District Service Agreement. Mar. 26, 1979

Conflict and Research Studies (1986-1995)

By 1987, the WFWD was looking for ways to cease being. In its 1987 Annual General Meeting a motion was passed to surrender all Letters Patent to the Ministry of Municipal Affairs. The Trustees of the WFWD wrote “ we feel that [the 1975] agreement covers all aspects of the Waterworks for years to come, accordingly we see no reason to maintain a Board of Trustees.”¹⁸ Despite wanting to disband the WFWD, West Fernie residents were not yet willing to join the City. The City at that time said that West Fernie was welcome to join at any time, and both sides declared themselves happy with the status quo. The Province’s response to the WFWD in 1989 was that they had three options: to transfer their responsibility to the RDEK through the creation of a local service area; to join the City; or maintain the status quo.¹⁹

However by 1990 the relationship between the City and the WFWD began to strain. Increased service rates were beginning to chafe: West Fernie residents thought that they were paying too much, and the City thought the charges were too low.^{20,21} New developments in West Fernie needed water connections and were the source of financial, legal, and logistical disputes. The City was reluctant to install new water mains needed to service these properties due to the expense and perceived lack of jurisdiction as interpreted from the 1979 agreement. It was determined that established connections in West Fernie often trespassed on private property, the system was not properly mapped, and that water flows in West Fernie were not necessarily sufficient for fire protection.²²

This caused hardship for property owners trying to establish a water connection in West Fernie, and in March 1992 the city established new policy on the protocol for new connections.²³ By July, Fernie City Council had dealt with several

¹⁸ Sedrovic, N., West Fernie Waterworks District Secretary-Treasurer, Correspondence from the WFWD Board of Trustees to Mr. R. I. Rounds, Manager, Improvement District Section, Administrative Officer, Ministry of Municipal Affairs and Housing, Province of British Columbia. October 20, 1988.

¹⁹ Rounds, R. I., Manager, Improvement District Section, Ministry of Municipal Affairs and Housing, Province of British Columbia. Correspondence to Mr. M. Slavens, Chairman, West Fernie Waterworks District. April 26, 1989.

²⁰ McGale, K., Deputy Treasurer, City of Fernie. Correspondence to Mr. M. Slavens, Chairman, West Fernie Waterworks District. December 7, 1990.

²¹ Murdy, C., MacKenzie Murdy & McAllister Barristers and Solicitors. Legal opinion on the West Fernie Waterworks District Agreement for C. J. Dean, City Administrator, City of Fernie. July 17, 1991.

²² Mulholland, A., Mayor, City of Fernie. Correspondence to Robin Blencoe, Minister, Ministry of Municipal Affairs and Housing, Province of British Columbia. May 13, 1992.

²³ Fernie City Council. Policy Resolution #5.1.1. West Fernie Water Service Connections. March 16, 1992.

problematic water connection issues in West Fernie and resolved that further proliferation of the West Fernie waterworks system would be severely curtailed.²⁴

Also in 1992, the City extended sewer services to Smitty's Restaurant, a business located on the highway in West Fernie through a localized boundary extension.²⁵ Complicating the boundary extension was the Province's reluctance to contribute grant money to the project, as well as cash payoffs needed for easements on neighbouring West Fernie properties.^{26,27} This annexation antagonized the WFWD but there were hopes that a Provincially funded West Fernie restructure study could resolve legal and operational ambiguities in authority and financial responsibility, providing clearer direction for the future. The Minister of Municipal Affairs, Recreation and Housing, Robin Blencoe, attempted to address the uncertainty in the relationship between the City and the WFWD. He observed that the WFWD was the responsible party for water provision in West Fernie and the City was but a contract water supplier.²⁸

In the mid-1990's three studies informed the restructuring process under the supervision of the West Fernie Restructure Committee, comprised of ten representatives from West Fernie, the WFWD, the City and the RDEK. Sussex Consultants wrote the 1993 Fernie Restructure Report and a follow up West Fernie Restructure Study – 1995 Update. Their conclusion was that the City should expand to include West Fernie and then commence work on a sanitary sewer system, water infrastructure upgrade, drainage improvements and road reconstruction for the community.²⁹ Kerr Woods Leidal Associates Ltd., Consulting Engineers assessed the cost of this work and estimated that the total would be \$3.5 million, although 50% of the sewer, and water system upgrade and up to 75% of the road reconstruction was pledged to be paid by the Province.³⁰

²⁴ Bridarolli, J. City Clerk, City of Fernie. Correspondence to W. McNamar, Administrator, Regional District of East Kootenay and Mr. M. Slavens, Chairman, West Fernie Waterworks District. July 20, 1992.

²⁵ Mulholland, A., Mayor, City of Fernie. Correspondence to Robin Blencoe, Minister, Ministry of Municipal Affairs and Housing, Province of British Columbia. May 11, 1992.

²⁶ Blencoe, R. Minister, Ministry of Municipal Affairs and Housing, Province of British Columbia. Correspondence to A. Mulholland, Mayor, City of Fernie. June 17, 1992.

²⁷ Fernie City Council. Minutes of an In-Camera meeting of the Standing Committee of the Whole Council, Section 3.1.1. June 22 1992.

²⁸ Blencoe, R. Minister, Ministry of Municipal Affairs and Housing, Province of British Columbia. Correspondence to A. Mulholland, Mayor, City of Fernie. July 3, 1992.

²⁹ Sussex Consultants Ltd. *Fernie Restructure Study: 1995 Update*. November 1995.

³⁰ Kerr Woods Leidal Associates Ltd. *West Fernie Restructure Study: 1995 Cost Update, Sewer, Water & Roads*. November 1995.

The major assumptions of the updated report were that:

- West Fernie's water system needed upgrading no matter what;
- West Fernie would pay for the upgrades through parcel taxes;
- All restructure assistance grants received would go towards West Fernie upgrades;
- Borrowing for the upgrades would be obtained at 9% interest over 20 years.³¹

The Province created further incentives for the boundary extension by offering an additional \$350,000 grant and a commitment to pay any extra policing costs the boundary extension would trigger for five years.³²

Referendums (1996-2002)

A boundary extension referendum in West Fernie was held in April 1996 and was defeated: 60 voting for the boundary extension and 129 against. Two of the WFWD trustees resigned shortly thereafter along with the secretary-treasurer of the district.³³ Descriptions of why the referendum was defeated largely cite economic reasons and a general feeling of inequity and mistrust between West Fernie residents and those in the City.³⁴

Catching many by surprise, the City immediately endorsed a resolution for a moratorium on additional service connections in West Fernie.³⁵ By May the Province determined that the City had two options: renegotiate a new contract with the WFWD, assuming a full slate of trustees could be found; or transfer service delivery to the Regional District. The City explicitly preferred the latter.³⁶

By July 1996, City Council unanimously adopted the policy that service to West Fernie would cease at the end of the year unless there was a boundary extension, or the RDEK took over service delivery.³⁷ Unfortunately the RDEK declined the offer stating, "that the water distribution system is substandard and lacking the required legal easements across one or more privately owned properties, all of which represents an inherent and unacceptable liability to the

³¹ See Note 24.

³² Ibid.

³³ Slavens, M., Secretary-Treasurer, West Fernie Waterworks District. Correspondence to Mr. R. I. Rounds, Manager, Improvement District Section, Ministry of Municipal Affairs and Housing, Province of British Columbia. April 16, 1996.

³⁴ Ross, P. *An Analysis of the Service Agreements between the Corporation of the City of Fernie and the West Fernie Waterworks District*. August 1999.

³⁵ Bridarolli, J. City Clerk, City of Fernie. Correspondence to Mr. N. Aasen, Chairman, West Fernie Waterworks District. April 16, 1996.

³⁶ Tamblin, A. J. Executive Director, Municipal Financial Services, Province of British Columbia. Correspondence to Mr. A. Jenkins, Treasurer, City of Fernie. May 28, 1996.

³⁷ Bridarolli, J. City Clerk, City of Fernie. Correspondence to W. McNamar, Administrator, Regional District of East Kootenay. July 30, 1996.

RDEK.” Consequently, they declared that a boundary extension was their preferred option.³⁸

Thus an increasingly messy situation saw the Province urging the City to work out a solution with all parties.³⁹ Meanwhile a new slate of WFWD trustees was elected at a special general meeting. At that meeting there was also approval of a tax bylaw for the purpose of legal assistance, to challenge the City on failing to pay for the maintenance of the West Fernie water distribution system.⁴⁰ In October the City was advised that there were new trustees at the WFWD, and in November a newly elected City Council agreed to continue service to the WFWD through to December 31, 1998.⁴¹

Early in 1997, the Province denied the approving of the tax bylaw and forbade the WFWD from legal action against the City, arguing that different levels of local government were not allowed to litigate against each other.⁴² The next few months were even more difficult as the WFWD and the City could not settle on a new agreement. City administration learned about the 1975 agreement through their negotiations with the WFWD, which had been forgotten and no record of the agreement remained internally.⁴³ In addition there were disputes over service rates, and then the relationship was further soured when the City began to annex more property in West Fernie for commercial development. The WFWD in response petitioned against the boundary extension and placed their own moratorium on new connections to the water distribution system.⁴⁴

Municipal Affairs and Housing Minister, Michael Farnsworth, in August 1997, stepped into the fray and cajoled the RDEK into entertaining the prospect of creating a local service area for West Fernie. In addition, he put forth \$20,000 worth of research funding to move the process along.⁴⁵ The alienated WFWD

³⁸ See Note 29.

³⁹ Miller, D. Minister, Municipal Affairs and Housing, Province of British Columbia, Correspondence to J. Bridarolli, City Clerk, City of Fernie. Nov. 19, 2006.

⁴⁰ See Note 29.

⁴¹ Bridarolli, J. City Clerk, City of Fernie. Correspondence to Mr. B. Joseph, Chairman, West Fernie Waterworks District. April 4, 1997.

⁴² Rounds, R. I., Manager, Municipal Financial Services, Ministry of Municipal Affairs and Housing, Province of British Columbia. Correspondence to Ms. D. Hamilton, West Fernie Waterworks District. April 18, 1997.

⁴³ Bridarolli, J. City Clerk, City of Fernie. Correspondence to Mr. C. Murdy, Principle, MacKenzie, Murdy and McAllister Barristers and Solicitors regarding legal opinion on the validity of the 1975 agreement. March 13, 1997.

⁴⁴ West Fernie Waterworks District, Correspondence to Mr. W. McNamar, Administrator, RDEK, regarding Notice of Moratorium on Water Connections. Sept 15, 1997.

⁴⁵ Farnsworth, M., Minister of Municipal Affairs and Housing, Province of British Columbia. Correspondence to J. Ogilvie, Chair RDEK. August 19, 1997.

critiqued the process as expensive and unnecessary, preferring to continue negotiating an agreement with the City.⁴⁶

In January 1999, the RDEK hired Dave Wilson to act as a facilitator for the *West Fernie Water Supply: A Facilitated Process for Issue Resolution*, as well as hired GPEC consulting to update the engineering cost report for a water distribution system replacement in West Fernie.⁴⁷ In December 1999 a public meeting was held where Mr. Wilson recommended the creation of an RDEK local service area to address the inadequate water distribution system. His report estimated the capital cost at \$2.4 million and notably did not include sewers – only renewed water infrastructure and roads.⁴⁸

The next 18 months proved to be extremely divisive. A new citizen's group formed in West Fernie called the West Fernie Committee of Concerned Citizens (WFCCC).⁴⁹ Fueled in part by the Walkerton tragedy in May 2000, the WFCCC strongly supported a capital infrastructure upgrade only if it included a sewage system. Their position, different from that of one of the WFWD Trustees, was that the leaky pipes, possible cross-connections, variable water pressures and density of septic systems in West Fernie could compromise water quality and have potentially tragic consequences.⁵⁰

The Public Health Inspector took the allegations seriously and initiated a review of West Fernie's drinking water quality and sewage disposal issues. His report published near the end of 2001 concluded that drinking water quality was being maintained, no failures of sewage systems were observed during the study period, nor was there septic contamination of ground water.⁵¹ However, he also noted that the status quo was problematic: the study occurred in a relatively dry year with most of the suspected failures and seepages likely related to seasonal surface and subsurface draining. The review recommended that West Fernie have a sewer system installed and that the water works system be replaced and upgraded.⁵²

⁴⁶ West Fernie Waterworks District, Correspondence to Hon. M. Farnworth, Minister of Municipal Affairs and Housing, Province of British Columbia. Sept 22, 1997.

⁴⁷ Crane, L., Administrator, RDEK Area A. Correspondence to Hon. J. Kwan, Minister of Municipal Affairs, Province of British Columbia. January 8, 1999.

⁴⁸ Regional District of East Kootenay, West Fernie Water Distribution System Public Meeting Agenda and Information Package, December 2, 1999.

⁴⁹ West Fernie Committee of Concerned Citizens. Report: West Fernie - State of the Service Systems. Compiled, June 2000.

⁵⁰ West Fernie Committee of Concerned Citizens. Editorial. Published in The Free Press, July 4, 2000

⁵¹ Byron, D. Public Health Inspector, East Kootenay Community Health Services Society. Review of West Fernie Water Quality and Sewage Disposal: Correspondence to L. Crane, Administrator, Regional District of East Kootenay. Dec 6, 2001.

⁵² Ibid

Concurrently the City of Fernie was exploring boundary restructuring driven by a discussion between the City and Fernie Alpine Resort, the latter seeking access to the City's sewage treatment facility after encountering problems with their own system during the 2000/2001 ski season.⁵³

Gary Williams and Associates prepared a Phase 1 Boundary Restructure Study in November 2001, which included a financial analysis of restructuring. The report stated that annexing West Fernie failed the financial test: meaning that revenues generated from taxes would be less than the costs of providing service to the area. Fernie Alpine Resort, on the other hand, passed. However, by that date the ski hill had gone ahead with a sewage treatment plant upgrade of \$1.7 million.⁵⁴ As a result they were no longer interested in a boundary extension. The Williams report concluded that boundary extensions continue to occur in West Fernie on a block-by-block basis, and not to proceed with a full boundary restructuring study at that time.⁵⁵

Also concurrently the RDEK was moving forward in organizing a referendum to support the creation of a local service area (LSA) to rebuild the West Fernie water distribution system, as recommended in the Wilson report. The City would still provide water supply but the LSA would eliminate the need for the WFWD by operating and maintaining the new system.⁵⁶

The RDEK had resolved not to intervene on the sewage issue despite the potential synergies that would exist with replacing the water infrastructure. This created editorial fireworks amongst and between the RDEK, the WFCCC, the WFWD trustees, and the Province.^{57, 58} Furthermore, the City was vacillating on whether or not West Fernie could have access to its sewage treatment facility without a boundary extension.⁵⁹

The LSA referendum was held on June 24, 2002. The question was, "Do you support the establishment of a RDEK service to operate the water distribution in West Fernie?" The referendum failed: the vote was 12 in favour, 74 opposed.⁶⁰ The Province, which had been following the proceedings with interest, as well as fielding a fair number of angry letters, acted. Dale Wall, the Assistant Deputy

⁵³ Williams, G. & Associates. City of Fernie: Phase 1 Restructure Study. November 2001.

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ RDEK, West Fernie Services Public Information Meeting. February 7, 2002.

⁵⁷ Barnett, D. Chair, West Fernie Committee of Concerned Citizens. Correspondence to Hon. G. Campbell, Premier. Province of British Columbia. Feb 22, 2001.

⁵⁸ Ross, P. Trustee, West Fernie Waterworks District. Correspondence to G. Abbott, Minister, Ministry of Community Women and Aboriginal Services, Province of British Columbia. September 17, 2001.

⁵⁹ Jenkins, A., Administrator, City of Fernie. Correspondence to L. Crane, Administrator, Regional District of East Kootenay. April 30, 2002.

⁶⁰ Knowlson, E., Chief Election Officer. Regional District of East Kootenay. Official Results of the West Fernie Water Distribution System Other Voting. June 24, 2002.

Minister in the Local Government Department, wrote to both the City of Fernie and the WFWD outlining the options for governance of the water service in West Fernie.⁶¹ The five options were:

1. Status quo
2. Appoint a Receiver
3. Transfer Service to the RDEK
4. City Boundary Extension
5. Transfer Service to the City

The Province was explicitly opposed to the status quo, wrote that option 2 was an interim step to the dissolution of the WFWD, and given the failed referendums of 1996 and 2002 made options 3 and 4 unlikely. As a result they recommended option 5, transfer the water service to the City as a municipal service outside its boundary, concurrent with dissolving the WFWD.⁶² The Province's letter was brought forward to Fernie City Council at its October 15, 2002 meeting. Council passed a resolution to authorize and direct staff to enter into discussions with the Ministry regarding the options and to report back.⁶³ Ultimately though, no decision was made because West Fernie was not seen as a priority issue.

Present Day Status Quo (2003-current)

The issue of water distribution and supply was relatively quiescent until 2006, when the River Rock Lodge Corporation required an unused WFWD right of way to be discharged from its lands. The development was to be on lands formally in West Fernie that had been annexed by the City. However the WFWD was obstructionist in granting the discharge. It intended to use its consenting power as a negotiating lever for increased financial support from the City in new operating agreement discussions.⁶⁴ The Ministry of Community Services became involved and froze the WFWD because of poor governance. They determined that in the absence of three consecutive Annual General Meetings (AGMs), the WFWD no longer had any elected Trustees. The WFWD received this notice formally one week before a scheduled 2006 AGM.⁶⁵ Legal proceedings eventually secured the discharge for the City and the developer.⁶⁶

⁶¹ Wall, D. Assistant Deputy Minister, Local Government Department, Ministry of Community, Aboriginal and Women's Services. Correspondence to A. Jenkins, Administrator, City of Fernie. August 6, 2002.

⁶² Ibid.

⁶³ Melcer, T., Deputy Clerk, City of Fernie. Correspondence to D. Wall, Assistant Deputy Minister, Local Government Department, Ministry of Community, Aboriginal and Women's Services. October 21, 2002.

⁶⁴ Hamilton, D., and Ross, P., Trustees, West Fernie Waterworks District. Correspondence to Mayor and Council, City of Fernie. April 24, 2006.

⁶⁵ Paget, G., Deputy Inspector of Municipalities, Local Government Infrastructure and Finance, Ministry of Community Services. Correspondence to D. Hamilton, Officer, West Fernie Waterworks District. June 6, 2006.

⁶⁶ Purdy, G., Barrister & Solicitor, Majic, Purdy Law Corporation. Correspondence to D. Cockwell, Director of Operational Services, City of Fernie. June 12, 2006.

Derek Trimmer of the Ministry wrote to the City in May 2006 requesting action with respect to a new service arrangement for West Fernie water supply and delivery. He reiterated the options presented in 2002 and concluded that the primary options were now either to appoint the City as receiver, or transfer the water service to the City. In the former the WFWD would remain a corporate entity, however the City would assume all of its powers. In the latter the WFWD would be dissolved and the City would provide a service outside of its boundary.⁶⁷ Fernie City Council received the Ministry's letter at its May 29, 2006 meeting, and requested staff to prepare an analysis of the various options.⁶⁸

The WFWD protested their frozen status formally and through a petition to the Lieutenant Governor of British Columbia signed by 110 West Fernie residents.⁶⁹ They argued they were not aware of time limitations, and that they missed the AGM deadline by a matter of weeks.⁷⁰ However, Minister of Community Services, Ida Chong, would not indulge the petitioners, and in a letter written in October 2006 referenced the 1975 agreement between the City and the WFWD as proof that the WFWD was redundant as an entity.⁷¹

In the summer of 2007, through conversations with Allan Chabot, Chief Administrative Officer of the City of Fernie, this author was engaged to write a report about West Fernie water supply and distribution options for the City. The report is also an academic project as part of the Masters in Public Administration program at the University of Victoria. Work on the project commenced formally in January 2008.

⁶⁷ Trimmer, D., Director, Local Services Branch, Ministry of Community Services. Correspondence to A. Chabot, Chief Administrative Officer, City of Fernie. May 23, 2006.

⁶⁸ Melcer, T., Director of Corporate Administrative Services, City of Fernie. Correspondence to D. Trimmer, Director, Local Services Branch, Ministry of Community Services. June 6, 2006.

⁶⁹ West Fernie Waterworks District, Petition to the Lieutenant Governor of British Columbia to allow for the election of trustees and to refrain the Deputy Minister of Municipalities from dissolving the improvement district. June 2006

⁷⁰ Ross, P. Former Trustee, West Fernie Waterworks District Correspondence to I. Chong, Minister, Ministry of Community Services, Province of British Columbia. September 1, 2006.

⁷¹ Chong, I. Minister, Ministry of Community Services, Province of British Columbia. Correspondence to P. Ross, Former Trustee, West Fernie Waterworks District. October 20, 2006.

Interviews

In addition to the historical account of water distribution in West Fernie, a contemporary look at stakeholder opinion was gathered. This section is a synopsis of the data collected from qualitative interviews of different key stakeholder groups. In total 27 individuals contributed to the information in this section, although their comments are blended and presented anonymously within their own stakeholder group.

The stakeholder groups for the purpose of this research were determined to be: Interior Health, the Ministry of Community Development, the Regional District of East Kootenay (RDEK), the City of Fernie, the City of Fernie's Fire and Emergency Services Department, and West Fernie citizens including former WFWD Trustees. Both the RDEK and the City of Fernie are represented by elected and administrative officials, and in the case of the City of Fernie, citizens as well. A list of interview questions that facilitated the discussions can be found in Appendix A.

Interior Health Authority

"The best solution would be for West Fernie to get a municipal sewer system and a replacement of its existing water distribution infrastructure."

Interior Health is of the opinion that the water distribution system and sewage disposal situation in West Fernie is unsatisfactory.

The last time the department conducted a review of West Fernie water quality and sewage disposal concerns was in 2001. Although they did not detect contamination in the water supply at that time, they recommended that a sewer system be installed and that the waterworks system be replaced and upgraded. These recommendations stand today.

All water distribution systems have health risks, but the health authority says that risks are often difficult to quantify. Active monitoring by the City of Fernie ameliorates the risk of a contaminated water supply in West Fernie. This monitoring can detect larger intrusions of contaminants into the water supply. Small intrusions might not show up on the radar. This has the potential to make a small number of people ill, particularly if the affected individuals have weakened immune systems. The causes of these illnesses might never be traced back to a contaminated water supply.

Water pressure within the distribution system is another barrier to contamination. However, the nature of any system is that pressure transients occur, potentially

allowing for infiltration. Water main repairs, for example, are a source of risk because of the pressure changes that occur as a result of the repair.

The department understands that cost has been an obstacle for infrastructure renewal in the community, but notes that health regulations have changed when it comes to sewage disposal. Many of the current septic systems in West Fernie that are effectively grandfathered would not meet current health regulations.

If these septic systems fail, residents are required to get a new system installed by a certified operator at an expense of up to \$30,000. Additionally, properties need sufficient land for their septic fields and the fields should be located above the 20-year floodplain. Not all properties in West Fernie could pass the litmus test of these new regulations. Consequently, the department thinks that a sanitary sewer system is the best solution and, in the long run, the most cost effective for residents.

Interior Health also noted the limitations of their 2001 study. The study was conducted in a relatively dry year, with most suspected failures and seepages likely related to seasonal surface and subsurface drainage.

The former Public Health Inspector, who wrote the 2001 study, noted that he did not sample private properties, where contamination might have been present. He had to survey the community from the road. Anecdotally, he had heard residents complain of occasional sewage odors in the community but did not detect any himself during the study.

According to Interior Health, the geography of West Fernie is less than ideal for on-site sewage disposal. The geology of the soils as well as its high water table, plentiful spring runoff, slope issues, and proximity to the river complicates the use of septic systems. Interior Health also described potential environmental contamination to ground water and river systems in West Fernie even if the water distribution system is unaffected.

When asked about the potential for a health emergency on the scale of the Walkerton disaster in West Fernie, the Inspector replied that water delivered under pressure has a very low likelihood of contamination. However, he added that saturated sewage in the ground creates unknowns, and conceded that a health emergency from water contamination was a remote possibility.

Finally, for some landowners in West Fernie there is a financial incentive to either live with septic system problems and/or not report septic system repairs (that are illegal). Sewage disposal records are kept by Interior Health, which captures information on new constructions, repairs and alterations. Although the department could not easily come up with an exact number of records filings in West Fernie in recent years, their perception is that the number is very low. This

is incongruous with the fact that the community is long established and that aged septic systems (greater than 30 years) tend to fail.

Interior Health's conclusion is unequivocal: from a public health perspective the best solution would be for West Fernie to get a sanitary sewer system and a replacement of its existing water distribution infrastructure.

Ministry of Community Development

"In an ideal world, the City would step up to the plate and determine some kind of program for infrastructure renewal in West Fernie."

The Province is of the opinion that the City of Fernie should act on the West Fernie Water Distribution issue. The Province's suspension of the West Fernie Waterworks District (WFWD) in 2006 created a freedom of choice for the City in how it wants to proceed. However, the Province does not support the resurrection of the Improvement District as a policy choice, nor does it feel the status quo can be maintained indefinitely. Indeed, the Province is keen to remove the WFWD from its books completely. To understand this position, a short history of Improvement Districts (IDs) is needed.

The Province created IDs after World War I to support rural agricultural development in the Okanagan. As collaborative associations of land and landowners, they worked well and spread all over the Province. By the 1960s, the Province was looking for a new rural governance structure and spearheaded the creation of Regional Districts, which consolidated government service provision, and added public service accountability to service delivery. In the 1970s as Regional Districts matured, the Province moved IDs from the Water Act to the Municipal Act (now Local Government Act), where they seemed more appropriately housed.

By the 1980's the Province had stopped permitting the creation of IDs, due to the degree of sophistication that was necessary to meet enhanced water regulatory requirements. Volunteer trustees were not necessarily qualified or equipped to govern IDs. Large IDs can and did hire staff to run their districts professionally. However, small IDs, and ones on the borders of municipal water providers, have seen steady attrition, as they get absorbed into their respective Regional Districts or nearby cities and towns. In the past 20 years the number of IDs has fallen from 327 to 233, and the Province expects this trend to continue.

The Province describes the Fernie-West Fernie history as unique. As an ID, the WFWD outsourced water supply and fee collection almost immediately after its creation. After the failed referendum in 2002 to create a Regional District Local Service Area, the Province wrote a letter to the City analyzing several policy options they felt the City had. Again in 2006 after the City's legal tussle with the

WFWD, and the ID's subsequent freezing, the Province issued the City another letter exploring options.

Many of the options in some manner have the City taking responsibility for the West Fernie water distribution system: either as receivers of the WFWD's powers, through service delivery outside its boundary, or through a boundary extension. The Province seems relatively indifferent to which option is chosen and is waiting for the City to act.

In an ideal world, the Province says the City would step up to the plate and determine some kind of program for infrastructure renewal in West Fernie. They note that capital infrastructure costs typically fall to recipients of that service, in this case the residents of West Fernie. Notwithstanding issues of the distribution system's ownership, they state that planning for infrastructure renewal should have been part of the management process for West Fernie all along.

Contemporary public sector accounting regulations in the Province are getting stricter, forcing financial reserves for capital replacement. Thus, it is unlikely that a community would find itself in a similar situation in the future. Indeed, the Province believes the magnitude of the water infrastructure issue in West Fernie is profound. The Province feels it has sided with the City throughout its conflicted history with the WFWD, and now would like to see the City, as the senior level of government in the area, take responsibility for the water distribution system in West Fernie. They say that grant monies are available for infrastructure upgrades, particularly for the construction of a new sewer system. Unlike the 1970s, the City also has the legal authority to collect on outstanding utility bills, for services provided outside of its boundary.

They acknowledge that resolving the situation will be expensive and do not see a low-cost alternative. They see immediate cost-savings and increased capacity in the water distribution system by upgrading the leaky West Fernie pipes. They also conjecture that a water infrastructure renewal program might also consider installation of water meters at the same time as another capacity building exercise. Even though there has been resistance to metering water in Fernie in the past, the Province says the future of infrastructure grants might be tied to environmental conservation initiatives such as these.

With the WFWD suspended there is an accountability issue for West Fernie citizens in regard to their water system. There is no obvious governing body to which they can take complaints or resolve issues. Disputes among homeowners about water line easements, for example, get passed through the various government authorities in the region, to little effect. This situation is untenable in the long term.

Lastly, the Province has powers which, if invoked, allow it to act unilaterally. It has not happened since the 1970s, but the Province unilaterally redrew the

boundaries of Nanaimo, Kamloops, Kelowna and Prince George, to eliminate a number of dysfunctional IDs. Understandably this kind of infringing power was extremely unpopular, and unlikely to happen today, but is theoretically possible.

Regional District of East Kootenay

“West Fernie is changing and it is time to have all parties work together to help the citizens there get a better water system.”

The Regional District of East Kootenay (RDEK) believes that ultimately West Fernie needs to be incorporated into the City of Fernie through a boundary extension.

As the governing body for the community, the RDEK also feels a responsibility to come up with a plan for water distribution infrastructure renewal and sees itself as the agency which would work collaboratively with the City of Fernie and the Province to find the solution to the community’s current situation.

Both the RDEK Administrator and the Area A Director (the elected representative serving West Fernie) believe that general distrust in West Fernie of the City is a barrier to resolving the problems of aging infrastructure and are of the opinion that the RDEK is the logical party to revisit the issue. They envision a plan whereby the RDEK spearheads water distribution infrastructure renewal and the installation of a sewer system, and at the end of construction hand off the community to the City.

Misinformation and poor delivery killed the renewal process in the past and in recent years there has been little appetite to revisit it. However, the RDEK cites changing demographics in the community as an opportunity for change. New property owners, many of whom are young families, are not comfortable with the status quo, and appear to be more politically engaged than previous owners.

The RDEK sympathizes with the City’s position that the aged infrastructure in West Fernie is an unappealing burden when contemplating a boundary extension. They theorize that the RDEK might be able to better recruit provincial and federal funding for new infrastructure. Attracting the greatest possible public contribution to the expensive renewal project is seen as a key to its success. The scope and cost of the project is such that it would be very difficult for the property owners in West Fernie to fund it exclusively themselves.

The RDEK has managed an analogous project. The community of Panorama Heights, just outside the municipal boundary of the City of Cranbrook, needed water infrastructure renewal. In this case the project was contracted and completed by the RDEK, with the explicit understanding that when the project was finished, it would be handed off to Cranbrook in a boundary extension. In this case the RDEK was the project manager of the infrastructure renewal. For

West Fernie, they foresee a possible scenario of sharing these duties with the City of Fernie, if the City wanted more control and oversight over the renewal program.

Additionally, the RDEK has come into more financial resources through a new industrial mine tax sharing agreement. They are interested, in principal, in supporting an infrastructure renewal program for West Fernie with a portion of these monies: paying for new engineering or cost studies of the project for example.

They acknowledge that short-term thinking has the potential to derail the process, as it has in the past. The financial reality of an eventual boundary extension is daunting. West Fernie taxes are at a discount relative to the City's. The RDEK would like to work collaboratively with the City to determine a gentle transition for residents of West Fernie into the tax base of the City.

The RDEK recently commissioned a Fernie Area Land Use Strategy, which was published in October 2006. The report is used to assist in evaluating proposals for land use change in the unincorporated areas adjacent to the City. The report acknowledges the development constraints in West Fernie due to its steep slopes and the fact that most of the community exists within the 200-year floodplain of the Elk River.⁷² The report states, "The general feeling is that eventually this area should become a part of the City of Fernie. However, there are many impediments to annexation, such as servicing, flood protection and road upgrade requirements that will require addressing prior to incorporation."⁷³

Furthermore, the report recommends that the community be annexed in its entirety as opposed to the piecemeal, or single property, annexations that have occurred in the past. This position differs from the gradual block by block annexation that had been recommended in previous restructure studies.⁷⁴

City of Fernie

"The West Fernie water infrastructure deficit will be very expensive to address and there is little incentive for us to take it on."

Positions within the City are complex and varied when it comes to the issue of West Fernie. Two competing but not entirely contradictory themes emerge when talking to Fernie citizens, politicians, and public servants.

⁷² Regional District of East Kootenay (RDEK), *Fernie Area land Use Strategy*. October 6, 2006. 34pp.

⁷³ Ibid. Page 10.

⁷⁴ Williams, G. & Associates. City of Fernie: Phase 1 Restructure Study. November 2001.

The first is a sense of duty and neighbourliness, which acknowledges that for many purposes there is no real difference between residents of Fernie and West Fernie. The second theme is one of fiscal prudence and caution: the idea that the City should not pay for West Fernie and its problems, sometimes accompanied with a sense that there has been too much indulgence granted to the community already.

Paradoxically, an idea that is held by all who were interviewed is that West Fernie has to, at some point, become part of the City through a boundary extension. Although some residents express a lack of understanding of what the ramifications of a boundary extension would be, most hope that it will be cost free. City of Fernie residents uniformly are confident in the safety of their water distribution system and have no concerns about water quality, although some wish that municipal water did not have to be chlorinated.

There is a perspective on City Council which believes that the West Fernie issue has dropped off the radar because there have been no recent problems. Another perspective is that, if West Fernie is given a sewage system managed by the City, then a large incentive for West Fernie to join the City will be removed, as it would be far easier and less expensive to hook up a new sewage system to the existing municipal sewage treatment facility than create a second facility for the community of West Fernie.

City administration understands that the West Fernie file is under mild pressure from the Province for resolution, and they are looking to resolve it fairly and prudently. City Council seems more reticent; indeed they fail to see a political upside in resolving the issue, and feel it is a low priority issue. Moreover, there is sentiment in both the administration and Council that the Province is trying to reduce its own liability by coaxing the City to act. Furthermore there is a sense that the RDEK has somehow gotten off the hook for any responsibility for the situation, past and present.

Different perspectives exist within the administration on what the future should be, and what costs could and should be borne. City Operations acknowledge that the crumbling infrastructure in West Fernie adds to the overall operating and maintenance costs of the municipal water system. The City spends a disproportionate time fixing leaks in the West Fernie water distribution system when compared to the City as a whole.

Furthermore, maintaining the West Fernie distribution water system creates tricky jurisdictional issues. For example, who is the party responsible for road repair in West Fernie after a leak is fixed? This tends to get resolved by horse-trading between the City, the RDEK and Ministry of Transportation and Highways. Sometimes the City simply absorbs the cost.

Another issue is the genuine hardship that some West Fernie residents face when they cannot change or establish a new water connection onto their property. Sometimes these residents petition the City administration, or City Councillors directly to intercede. Currently nothing effective can be done, and the tragedy of inaction unfolds to everyone's discomfort.

There are some hurt feelings in the City about how hard residents in West Fernie fought against a boundary extension in the past. Moreover there is a sentiment of bitterness amongst some City residents because West Fernie residents have discounted property taxes relative to the City, yet are free riders on Fernie civic amenities. For these reasons, many Fernie citizens are resistant to any charitable advances towards West Fernie.

The City has developed a bad reputation in West Fernie, through aggressive negotiations, threats, and bullying letters, particularly in the mid 1990s. In the late 1990's, the City's own financial house was not in order, with reportedly tight cash flows, and the need to operate on a line of credit for part of the year. Boundary extensions in this context could be seen as a tax base grab by suspicious observers.

There is also the widespread notion, supported by research in 2001, that Fernie Alpine Resort (the Ski Hill) is the community that needs to be absorbed in a boundary extension for its potential tax revenues: West Fernie is the poor cousin, and would only be a drain on municipal coffers.⁷⁵

Yet, interestingly there are those in the City who acknowledge West Fernie's development potential. They believe strongly that the nature of the community would change rapidly with proper services, and that current tax revenues from the area are not indicative of future returns.

City of Fernie Fire & Emergency Services

"We have got the community covered."

The Fernie Fire Department provides a basic level of support to the community of West Fernie, consisting of fire suppression, and first responder service to "called in" emergencies. This level of service differs from the City of Fernie, whose citizens also receive building inspections and fire prevention education. Building inspections for fire prevention are, reportedly, not done at all in West Fernie.

According to the Fire Department, the hydrants in West Fernie are maintained to a higher standard than in the past. However the number and spacing of the hydrants is not optimal for fire suppression.

⁷⁵ Williams, G. & Associates. City of Fernie: Phase 1 Restructure Study. November 2001.

Additionally because of the aging water distribution system infrastructure, the Fire Department must use a different protocol when hooking up to hydrants in West Fernie. They have to use smaller diameter hoses than in the City for fear of collapsing the lines in the ground, which has happened on occasion. Non-optimal spacing requires the Fire Department to use longer hoses at times, which creates friction loss and reduces the volume of water available to fight fires.

Despite these obstacles, the Fire Department believes it can provide the service required, and have adapted protocols and training accordingly. However, there are some who believe that there are some properties in West Fernie, for example, those higher on the bench, which would have marginal water flow, insufficient for fire suppression. The Fire Department disagrees and says that they “have got the community covered.”

In the Fire Department’s ideal world, the water distribution infrastructure in West Fernie would be replaced with larger volume pipes, additional hydrants installed, and the spacing of hydrants rationalized.

West Fernie

“We want the situation improved, but not at any cost.”

Viewpoints amongst the residents of West Fernie are exceptionally diverse. The only common ground amongst those interviewed is the idea that a boundary extension into the City of Fernie is inevitable, and that over the past several years the demographics of the community have been changing. In this section five representative perspectives are explored.

Typically the new residents in West Fernie are described as young families, who have moved into the area to take advantage of the community’s discounted property values, relative to the City, as well as its central location. One resident who fits this description said that she did not know West Fernie was not part of the City when she moved there four years ago. It came as a surprise to learn that her property was in the jurisdiction of the RDEK and had a crash course on what septic fields are and how they worked.

She is concerned about the environment in West Fernie and thinks it needs to be cleaned up, including proper zoning to get rid of community eyesores. She is also concerned about water quality and worries that the ground water is contaminated, citing the sewage smell of the area during summer months. This is a particular concern because of her young children. She is keen to join the City and expects to pay increased property taxes and service fees, within reason. She also expects her property value to go up when she is part of the City.

A second resident who had been living in West Fernie since 1968 noted the constant patching that the City has to do on the water lines in West Fernie. He knows that the water lines are too small and need replacing. He would like to be on a sewer line, but would not be excited about taxes going up. If any upgrades were to happen, he would want to know that there was a Provincial contribution to the infrastructure costs. This resident enjoys West Fernie because of its differences from the City: less crowded, quieter, and less expensive. Flooding is a big issue for his family and his neighbours. In 2007 he had a sump pump running 22 hours at one point to avert damage to his house. Many people he knows have had their basements fully flooded causing significant damage. He estimates that there are approximately 30 old car bodies still acting as septic tanks in the ground in West Fernie, and noted that other unorthodox materials such as railway ties were often used for septic tanks in earlier days.

A non-resident property owner in West Fernie said he believes that a boundary extension is the only solution for the community. Citing the Fernie Area Land Use Strategy Study and the Province's smart growth policies, he thinks that the community should be absorbed, and the water infrastructure replaced, along with new roads and sewer. Additionally he identified the dike in West Fernie as needing attention, not only to protect the community but also to protect the City's riverbank interests. This resident said he thinks that the ingredients for a Walkerton type disaster are present in West Fernie. The recipe, in his opinion, is a porous water system in a floodplain, tiny undersized lots, and too many septic systems that have never been checked and would not be allowed today. He added that there is a lot of open and underdeveloped land in West Fernie that would be lucrative for subdivision and development charges for the City, if the community was taken in by a boundary extension. He worries that the lack of political will to create positive change in West Fernie is exacerbated by the short electoral terms of City Councillors who are not motivated to find long-term solutions to policy problems, as well as the City's current urban planning protocol, which in his opinion favours spot, or reactive, zoning,

Another long-time resident of the community cited a litany of broken promises from the City and the Province to West Fernie. He acknowledged many of the infrastructure problems in West Fernie but believes that current residents should not have to pay for previous civic administrations errors and mendacity. Despite a general feeling of distrust towards the City, he said that a boundary extension is inevitable. Fairness to the residents of West Fernie is a priority for him; it is his opinion that businesses interested in redeveloping the community should pay the lion's share of infrastructure renewal costs. He also believes that the City should not grow into the agricultural land reserve; instead densification of communities such as West Fernie makes sense. However, he cautioned that West Fernie has some particularly unstable sections due to steep slopes and floodplain issues.

A fifth perspective is from a West Fernie resident, who was born and raised in the Fernie area. He talked about how disappointed he was at the failed referendum

in 2002 to create a local service area of the RDEK for infrastructure renewal. As a result of the Walkerton disaster there were significant public monies available for water safety infrastructure projects at that time, and the deal the WFWD had worked out would see residents pay a nominal \$50/month for a new water distribution system, sewer system and roads. He does not feel that the same deal will come to West Fernie residents again. This resident has recently encountered the Interior Health's new septic field installation regulations as a result of a planned addition to his home. He found that the new septic field he would require was going to cost between \$15,000-\$35,000, depending on which system he chose. Fortunately he was able to successfully petition the RDEK that his water usage was not going to change, thereby negating the need for a new field. He suspects that many of his neighbours choose not to deal with the RDEK when it comes to septic issues, and feels the community would be much better off with a sewer system, as septic fields can collapse at any time. However, he would only be willing to pay an extra tax for this if it was modest. In his mind, having to pay City taxes would be the bigger issue in a boundary extension.

Interview Summary

The stakeholder groups interviewed brought a variety of perspectives to the issue of West Fernie's water distribution as well as contextual information with regard to the relationships between stakeholders and the history of the issue. It is important to note that there is a pluralism of opinion within each stakeholder group. For example, some West Fernie residents distrust the City of Fernie explicitly while others cannot wait to be a part of it. Some interviewees had a distinctly pragmatic perspective, while others were idealistic. Nonetheless, in many of the interviews there was a sense of hesitancy or denial when contemplating solutions to the outstanding problems with water distribution in West Fernie. For many, the fact that a solution is needed was reluctantly acknowledged, but many interviewees did not want to dwell on solutions for fear that a way out would be politically or financially costly.

The next section will distill the themes that emerged from the interviews and relate the themes to recent and historical events in order to generate some policy options and a route forward to address the uneasiness that the West Fernie water distribution system induces.

Discussion

The historical synopsis and key stakeholder interviews form a dialogue with each other that in this section will be developed further. Several ideas emerge in the data that can be condensed into three themes: cost, fairness and safety. All solutions to the West Fernie water distribution problem have to take these themes into account.

Cost

Infrastructure renewal is expensive. Throughout the history of West Fernie water distribution the largest conflicts have been over costs, both capital and operating of the water distribution system. The debate over distribution system ownership is largely a smokescreen for who is responsible for costs. As the system ages in the ground the repair or replacement cost increases due to both increased fragility of the pipes in the ground as well as inflating material and labour costs. The historical position of the WFWD was that the City was responsible for capital replacement of the distribution system, while the City maintains that they are bulk water service providers only. Interestingly, some of the interview respondents noted that cost is a recurrent issue in the Elk Valley, whereby there is a perceived culture of cost avoidance. Supporting this notion, both referendums for water infrastructure renewal were predicated on a significant financial contribution from the Province, so that local government bodies and citizens would not have to shoulder the cost burden exclusively. The same sentiment, that the Province needs to contribute heavily for infrastructure renewal, is present today in all local stakeholder groups.

Fairness

Related to cost and how it is apportioned, fairness is a theme that emerged strongly from the data. From the City's perspective, interview subjects talked about how West Fernie residents were free riders on civic services and generally subsidized by City of Fernie taxpayers. From West Fernie's perspective, some believe that they have been systematically taken advantage of, through continued subsidization of the City's infrastructure costs through their utility payments. This situation is ironic in that both sides perceive a similar infraction from the other and this sentiment of injustice pervades the discussion of the issue. These historical and contemporary grievances erode trust between the parties and make every solution potentially fraught with opposition. This lack of trust has been fundamental in why no solution has been found to date.

Safety

There are stark differences of opinion based on the same historical events and published studies when it comes to the issue of safety of the water supply in West Fernie. Some interview subjects believe that a Walkerton type situation is imminent while others believe that the system is inherently safe and stable. The health experts interviewed sit squarely on the fence. In addition, there are concerns that fire and emergency services do not have an adequate and reliable water supply for fighting fires, which the City's emergency services department refutes. Considering the seriousness of health and safety issues with respect to the public good, more certainty is required.

Recent Factors

These themes form a framework for evaluating potential solutions to the outstanding issues of the West Fernie water distribution system. The next part of this report will explore ten factors, half of which are new since the last referendum and half that have been present for most of the history of the conflicted relationship between West Fernie and the City.

There is no easy or perfect solution in moving forward. To determine what are the best options from which the City has to choose, one must look at a number of key factors surrounding the issue. Five factors have changed since the last referendum in 2002 for the City to consider.

1. The West Fernie Waterworks District (WFWD) is a shell

The Province's freezing of the WFWD in 2006 took out the player that caused the most friction with the City over the history of the West Fernie water file. This has given the City breathing room to make a decision on how it would like to proceed. Any decision made would most likely face reduced resistance without the public opinion locus of the WFWD.

2. Boundary Extension Policies

In September 2002, the Province updated its municipal boundary extension criteria, the procedures by which municipalities annex land. The *Local Government Act* does not require the consent of owners/residents located within the area of the boundary extension.⁷⁶

Boundary extensions generally will not be implemented where it is clear that a majority of owners/residents within the area of the boundary extension object. However, exceptions to this may be made where overriding provincial or local

⁷⁶ British Columbia Ministry of Community Services, *Municipal Boundary Extension Criteria*. September 2002 (Revised July 2005).

interests exist, such as resolving public health concerns or environmental protection issues.

The case could be made in West Fernie, that there are health and environmental issues worthy of this exception. Public servants in Interior Health would support this claim. Furthermore the Ministry of Community Development has an overriding interest in eliminating the ID from the Province's books and rationalizing water service in the area.

The size of West Fernie is relatively large and consequently a boundary extension would face ministerial review. There is a political reality that the Minister of Community Development ultimately might not back a forced boundary extension, but this possibility is remote as the Ministry is keen on resolving the issue and can cite other jurisdictions in the Province where opposition to proposed restructuring was organized and vociferous, but permitted anyway.

Furthermore, Fernie has been successful on more than one occasion in annexing commercial land in West Fernie, despite opposition within the community. Interestingly, the citizens of Fernie themselves are able to block annexations. If 10% of municipal electors object, for example over cost concerns, they can petition the City to prepare a vote on any proposed boundary extension.⁷⁷

3. The Changing Demographics in West Fernie

All communities change, and there has been a gradual turnover in households in West Fernie. Anecdotally, most people describe the change as more young families moving into the community, with elderly residents moving or passing on. The new owners are not necessarily invested in maintaining the status quo and appear eager to improve their community. The RDEK reports that new West Fernie residents in their 30s are showing up in increasing numbers to town hall meetings and the like. Moreover these individuals seem more interested in public policy and planning issues than their more established neighbours.

This demographic change has been enhanced because of economic prosperity in the City of Calgary, 300 km away. Vacation housing demand from Albertans has dramatically increased the cost of home ownership in the region, triggering some long-time residents to cash in their appreciated home equity to move to less expensive locales. Census numbers confirm the demographic change, which portray West Fernie as a growing community. The 2006 census records the number of residents in West Fernie as 462.⁷⁸ Furthermore, West Fernie is a younger community, with a lower median age and fewer seniors, than the City of Fernie.⁷⁹

⁷⁷ Ibid.

⁷⁸ Dimitrova, N., Data Dissemination Officer, Statistics Canada. E-mail correspondence, August 8, 2008.

⁷⁹ BC Stats, *2006 Census Profile, Fernie, C: A City located in East Kootenay*, October 2007.

4. The City of Fernie Census Numbers and Policing

The population of the City of Fernie, from 2006 Statistics Canada data, is 4217.⁸⁰ Population growth has been on a downward trend, contracting 14% over the past ten years. Indeed the 2006 census numbers came as a bit of surprise, as the City had been forecasting a significant population increase, approaching or surpassing the 5000 person mark.^{81, 82}

Any municipality reaching 5000 residents assumes responsibility for its own policing, and must enter into a new contract with provincial RCMP, or form a municipal police department. Entering into a new RCMP contract, the City would be required to hire an additional officer, additional support staff, as well as fund increased ancillary expenses.⁸³ Consequently Fernie’s proximity to the 5000-person limit has been an economic factor in considering boundary extensions in the past, and continues to be relevant. An influx of new residents has the potential to change the police force required and increases the City’s proportional share of policing expenses.

Table 1: Recent Statistics Canada Census Results for the City of Fernie and West Fernie^{84, 85}

Census Results (Year)	1996	2001	2006
City of Fernie	4,898	4,611	4,217
West Fernie	420	386	462
Total	5318	4977	4679

5. The Adoption of Smart Growth Principles in B.C. and Fernie

Both the Province and the City have adopted “smart growth” planning principles, which encourage compact, mixed-use communities, increased densification of urban areas, and reduced development of rural land at a municipality’s borders.

⁸⁰ Ibid.

⁸¹ City of Fernie, *Community Profile and Business Guide*. 2005. Pg. 6.

⁸² City of Fernie, *Official Community Plan Bylaw No. 1923*. 2002. Pg. 15.

⁸³ Police Services Division, Ministry of Public Safety and Solicitor General, *Policing the City of Fernie: Policing Information Package, Emerging Municipalities - 2006 Canada Census*. September 2006.

⁸⁴ Dimitrova, N., Data Dissemination Officer, Statistics Canada. E-mail correspondence, August 8, 2008.

⁸⁵ BC Stats, *2006 Census Profile, Fernie, C: A City located in East Kootenay*, October 2007.

The Government of British Columbia rewards municipalities who implement smart growth principles through their Green City Awards program. Initiated in 2006, the awards are an incentive worth \$2,500,000 over five years.⁸⁶

The City of Fernie has, to a large extent, organized its official community plan around the same principles: explicitly identifying the prevention of urban sprawl as a means of protecting the local environment, and encouraging development and redevelopment in urban areas.⁸⁷

West Fernie is obviously urban in nature with densification potential. Its proximity to the city centre of Fernie makes the community a good base for alternative transportation such as walking or cycling. Indeed, West Fernie is much closer to the city centre than many of Fernie's newest communities, such as the recently approved boundary extension for the proposed "Cedars" development: 120 acres at the far edge of the City's border. The absence of West Fernie in the City's municipal boundary creates an outsized dent in its relatively contiguous borders, and challenges the rhetoric in the City's official community plan.

Ongoing Factors

In addition to these five recent factors, there are long-standing problems with the West Fernie water distribution status quo.

6. Issues of Accountability

With the WFWD frozen, there is no body accountable to citizens if they have issues with the water distribution system. However, even before it was frozen, the City and WFWD squabbled continually about system ownership, costs, responsibility and jurisdiction.

These issues surface when West Fernie neighbours have a dispute over water supply, or when an easement is required. There is no body to make a decision or grant the easement. Eventually these issues percolate up to the RDEK and then up to the Ministry of Community Development, which does not want to deal with such local, and relatively picayune, concerns. Even when the WFWD was operating it did not always function well. In 2006, before the ID was frozen, an easement discharge dispute became litigious.

It is fundamentally undemocratic and administratively worrisome for West Fernie residents not to have a governing, responsible party for their water distribution system.

⁸⁶ Ministry of Community Development, *Green City Awards Program Description*. Accessed July 15, 2008 from www.greencityawards.gov.bc.ca.

⁸⁷ City of Fernie, *Official Community Plan Bylaw No. 1923*. 2002.

7. Attenuated Water Distribution System Renewal

In 1995, in anticipation of the first West Fernie referendum, Sussex Consultants wrote, "The water system in West Fernie needs rebuilding. Pipes are undersized and deteriorating, and there are serious concerns about the reliability of water flows for fire fighting and potential contamination due to infiltration."⁸⁸

It was an emergency in 1996 and 13 years later nothing has been done to ameliorate the situation. Fortunately, no disaster has happened. Apart from questioning the alarm of the consultants, one wonders how long the system can sustain itself with band-aid repairs.

The City of Fernie acknowledges the water system in West Fernie is leaky, which wastes treated municipal water. Consequently, the system is inefficient, and in the short term less expensive to repair than replace. At some point in the future, logically, the economics should reverse and replacement should be less expensive than repair.

Through the ownership squabbles of the last three decades both the WFWD and the City effectively washed their hands of committing to any kind of long-term maintenance plan. A capital reserve fund should have been built for the entire life of the system.

Former trustees for the WFWD argue that they contributed to this fund for decades, paying equivalent utility rates as Fernie citizens to the City. They point out that the City fixes its own water distribution infrastructure with the monies collected from the utility exclusively. Indeed, the water distribution costs are a fraction of the utility fees paid; the remainder is invested in capital renewal.

The City counters that the fees collected from West Fernie residents in many years does not even cover the cost of maintenance for their community's leaky pipes. Furthermore there are precedents in the City where individual communities have paid a separate levy for infrastructure renewal to fund extraordinary capital replacement projects. The Annex, another river-hugged community in Fernie, recently finished paying off a 25-year water infrastructure debenture.⁸⁹

8. Development Moratorium

There has been a moratorium on new water connections in West Fernie for over a decade now. This is an elementary building block of residential development and redevelopment. Individuals who buy a property in West Fernie without an

⁸⁸ Sussex Consultants, 2006. Quoted in *West Fernie – State of the Service Systems*, compiled by the West Fernie Committee of Concerned Citizens, June 2000.

⁸⁹ Hendricks, J., Director of Financial and Computer Services, City of Fernie. E-mail correspondence, April 30, 2008.

existing water connection have to find their water elsewhere. Consequently, there is undeveloped land in West Fernie, as well as land for sale, waiting for the moratorium to be lifted. Growth in West Fernie is stagnant and not permitted to redevelop in a natural way.

Property values are suppressed in West Fernie. If a community sewer was installed and the water infrastructure replaced, residents would see their home equity increase. Ironically, the community would become less affordable, negating one of the factors why so many young families have moved in.

9. Health and Safety Concerns

Most people in Fernie and West Fernie have confidence in the safety of the shared water distribution system. Active monitoring, high pressure, and chlorination are all barriers to contamination. However, many people think putting West Fernie on a community sewer system would make the system safer.

There is a minority opinion that the water system in West Fernie is currently a disaster waiting to happen. In evaluating risk, most assessment models multiply the likelihood of a perceived threat with the severity of the threat's consequences.⁹⁰ However, the measurement of both of these quantities is very difficult to ascertain and the chance of error in a measure of these two concepts is large. Consequently it is not surprising that no health expert has been willing to quantify the risk of system failure to the West Fernie water distribution system to date. Even if the risk of disaster is small, another health concern is that low level contamination of the water supply in West Fernie could be making a minority of individuals unnecessarily ill every year: at levels so modest that healthcare workers cannot detect the cause.⁹¹

There are environmental considerations as well which could be ameliorated with a community sewer system. With the high density of West Fernie septic systems, particularly those that do not meet current regulations, ground water and river water contamination is probable. One health safety officer from Interior Health recalls dealing with problematic West Fernie septic situations where sewage had backed up inside someone's house and another time to the outdoor ground surface.

Fire protection seems reasonably assured in West Fernie with the current distribution system, but again, a replaced water infrastructure would make the system safer, more effective and reliable.

⁹⁰ Wikipedia, 2008. *Risk Assessment: Explanation*. Accessed July 15, 2008 from http://en.wikipedia.org/wiki/Risk_assessment.

⁹¹ Office of the Provincial Health Office, Ministry of Health Planning. *Drinking Water Quality in British Columbia: The Public Health Perspective*. October 2001.

10. Antagonism and Cost Shirking

Throughout the history of the West Fernie water file, conflicts between all parties boil down to economics, and a reluctance to pay for costs of the system.

The WFWD had the opinion that infrastructure replacement was taken care of by their 1975 agreement with the City, even though there is evidence that remorse over “transferring ownership” of the water distribution system to the City was one reason the 1979 agreement was written.

The WFWD also has had the untenable argument that because they pay and have paid equivalent fees as City utility users, they are entitled to equivalent services. This ignores the reality that they are not in an equivalent situation. For example, their water system is not properly mapped without appropriate easements and right of ways; it is not organized to the City of Fernie’s municipal standards. Furthermore the roads, which get dug up for repairs, are not under the same jurisdiction as the City.

The City of Fernie, on the other hand, took a relatively benign situation in the early decades and made militant and threatening gestures in later decades, alienating West Fernie residents in the process. Controversial actions included: having no record of the 1975 agreement on file in the 1990s, including denying its existence and intent; annexing parts of the community that were the most commercially viable; and threatening to cut off the water supply to West Fernie as a leverage tactic in contract negotiations. As the senior level of government in the area, the City of Fernie might have shown more leadership on the issue of infrastructure renewal in West Fernie. Of the two parties, the City has been the most administratively capable of solving this problem, and as the community’s water purveyor for over fifty years, a duty of care has been established.

Rhetoric from the conflict between the City and West Fernie still exists today in some individuals. The belief that West Fernie residents are free riders on the City’s public services, or the idea that the City has used West Fernie’s utility payments to subsidize their own infrastructure, are examples. Fortunately, the temperature of debate and disagreement has cooled in recent years. Opinions are not uniformly shared in either community, and the level of antagonistic behaviour has gone down.

That taxes in West Fernie are at a discount to the City remains complicating to the state of affairs. City residents wonder why they have to pay higher taxes; West Fernie residents want equivalent city services in their community but, for the most part, do not want to pay for them.

The selling feature of the past infrastructure renewal referendums was cost savings. Public infrastructure grants would cover two thirds of the bill if West Fernie residents could kick in the last third – seen as a partial free ride. The

same argument exists today: according to the Province, similar granting programs are available for infrastructure renewal. For further financial incentive, West Fernie residents have the added penalty of a costly expense when septic systems fail.

Moving Forward

The ten factors discussed above all drive the possible solutions for the water distribution system in West Fernie. Five factors are relatively recent: the suspension of the WFWD, changes to Provincial boundary extension policies, changing demographics in the area including the new census numbers, and the wide adoption of smart growth policies and rhetoric. Five factors have been developing for decades: governance and accountability issues over the water distribution system in West Fernie, the development moratorium that exists in the community, languishing infrastructure, potential health and safety issues, and general antagonism between the various stakeholders as a result of cost avoidance. Individual readers will weigh the factors differently depending on their own perspective and background.

The next section will explore three potential options for the City of Fernie on how to proceed. All of the options are viable and take into consideration several elements, including cost, fairness, safety, and complicating issues that could occur through implementation.

Options and Recommendation

The City of Fernie requested a study to determine the preferred service delivery model for the provision of potable water to the community of West Fernie. The need for proper governance of the water distribution system is linked to any future service delivery model. As a result, the policy issue is neither straightforward nor simple. Ideally, any service delivery model, would be inexpensive, fair, and would guarantee water safety and supply. Yet these goals can be in conflict. For example, to ensure the highest standards of safety for potable water in West Fernie, health experts recommend replacement of the current water distribution infrastructure combined with the installation of a community sewer system – an expensive proposition. Consequently, decision makers have to make difficult choices with respect to which goals for a water distribution system in West Fernie are most important to themselves.

The following three options address these the three themes of cost, fairness and safety in different proportions.

A. Transfer the West Fernie water service to the City

Section 13 of the *Community Charter* (CC) sets out the requirements for a municipality to provide a service, or services, to an area outside its boundary.

In this scenario, the WFWD would formally be dissolved and its assets, leaky as they are, would be transferred to the City. The City would have regulatory authority over the water system, which includes approving water connections, discharging easements, and establishing water policies in the area, such as summer watering restrictions for example.

If capital infrastructure upgrades were planned the City could undertake a borrowing bylaw to raise funds. As well, the City would be eligible for infrastructure grants. However, the City can only recoup this debt and subsequent interest charges through user fees: the City has no taxation powers in West Fernie under this option.

In the past Regional Districts had to provide consent for this transaction to occur, however with recent changes to the *Community Charter*, this is no longer necessarily the case.

The advantages of this option are:

- The City would have a high degree of control over the water system.
- The City would wield power, indirectly, over development and redevelopment in West Fernie.

- The City would be able to manage the costs and renewal timeline of the West Fernie waterworks system.
- The City would align its present service delivery area with its area of water system governance.
- The City has the power to set utility fees, at whatever rate it sees fit.

The disadvantages of this option are:

- West Fernie would still need a mechanism for accountability.
- There would be no community sewer system in West Fernie
- The City has no taxation options in West Fernie.
- The incentive will be to maintain the current water infrastructure system as opposed to renewing it.

To proceed with Option A, a City Council resolution would be needed to the effect that the City would provide water service to the West Fernie area outside its boundary. The resolution needs to identify the exact area to be serviced. The Ministry of Community Development would then implement the dissolution process of the WFWD and the transfer of the assets to the City.

West Fernie property owners are charged \$250.92 annually for the provision of water services. There are a total of 183 West Fernie properties being billed for total annual revenues of approximately \$46,000. This amount currently pays for both the distribution of water and cost of repairs and maintenance, and water testing.

If implemented this option should be established on a cost-recovery basis. In order to accomplish this, some City administrative time will be needed to total all West Fernie water system repairs and extraordinary expenses on an annual basis. Under Year 1 of this option, West Fernie residents will pay the same utility fees as Fernie City residents plus a modest and reasonable administration fee. However in Year 2, the payment schedule should reflect an adjustment to account for a shortfall or surplus of Year 1's expenses.

Here is a theoretical example:

Year 1 Payments	\$46,000	Current City Charge
	<u>\$4,600</u>	Administrative Fee
Total	\$50,600	
Year 1 Actual Costs	\$10,120	Water Supply
	\$75,000	Repairs and Maintenance
	<u>\$4,600</u>	Administrative Fee

Total	\$89,720	
Difference between payment and actual cost	\$39,120	
Year 2 Payments	\$50,000	Current City Charge
	\$39,120	Prior Year Shortfall
	<u>\$5,000</u>	Administrative Fee
Total	\$94,120	

This system of billing is virtuous in its fairness. West Fernie residents would only pay for exactly what services they receive. Theoretically, in years with low maintenance requirements, their utility fees could drop below what City of Fernie residents pay. However, it is likely that maintenance costs in West Fernie will likely go up as the system ages, not down. In this billing scenario, the City does not have to subsidize the expense of the West Fernie water system (except for carrying forward prior year expenses), which it reportedly does now.

Additionally, before a formal transfer of authority, it would be advantageous for the City to commission a through baseline assessment of the West Fernie water distribution system to quantify the infrastructure deficit. Under this scenario large-scale infrastructure upgrades would likely be discouraged by their prohibitive expense and difficulty in recovering costs from user fees. West Fernie water utility fees will likely increase annually, at a rate faster than the City's, based on increased maintenance charges. Consequently the community's tax advantage will erode over time, and will waken up the community to the fact that the water distribution system needs an overhaul, triggering political action such as working with the RDEK to create a multi-year parcel tax for infrastructure renewal, or seeking annexation from the City.

Increasing utility fees undoubtedly will anger some residents, but if the City provides its service with a high level of transparency and professionalism, then much of the hostility can be countered. Under this scenario it would be ideal if targeted repairs and upgrades for the worst sections of pipe could be undertaken. With this option the Province recommends a mechanism, such as a water advisory committee, in order that West Fernie residents might be involved in water service discussions and to provide the City a feedback mechanism. It is important to note that a committee such as this would not have decision-making powers, as it would primarily be a communication conduit. Additionally, a modest annual report to the community would be appropriate.

B. Let the RDEK initiate the process of renewing water and sewage service in West Fernie

Representatives from the RDEK claim that they are the more trusted party to lead in infrastructure renewal in the community of West Fernie. Moreover there is a growing interest in the administration of the RDEK to fix the West Fernie infrastructure deficit once and for all.

The main caveat to Option B is that it presupposes the eventual transition of the community into the City under a boundary extension, which would need to be negotiated in advance to assure civic consent because the RDEK is reluctant to operate West Fernie's water distribution system long term. This option would have the RDEK raise money through public and private means, invest in new water and sewage infrastructure, repair the roads, and then hand off the renewed community to the City.

The RDEK expects collaboration with the City throughout this process, and also some cost and expertise sharing where appropriate. Furthermore, the RDEK is interested in coming up with a kind of graduated taxation plan, so that West Fernie residents are not hit with an extraordinary property tax hike in one calendar year.

The advantages of this option are:

- The City would have less financial and administrative risk.
- The City would face reduced political tensions.
- The City would be able to coordinate, to some extent, the engineering and structural aspects of the renewal program to its satisfaction.
- Infrastructure renewal would likely proceed.

The disadvantages of this option are:

- The City would have less control over the entire process and need to work collaboratively with the RDEK and West Fernie residents.
- The City is locked into a future boundary extension.
- Possible delays to restructuring as a result of differing renewal agendas and communication gaps.
- Risk that West Fernie residents will reject the RDEK's proposal, meaning a fall back to the status quo.

To proceed with this option, the City of Fernie and the RDEK would have to agree on the terms of West Fernie infrastructure renewal and a transition plan. In addition the RDEK would have to begin a process similar to the referendum in 2002 where West Fernie residents voted down a proposal to create a local service area for the purpose of renewing their infrastructure.

The RDEK says it has learned from the presentation errors to the community in the past. This time the referendum would be staged in a respectful, open and honest process that would reduce concerns and mistrust in the process. Moreover, the new demographics in the community are thought to be another reason why a repeat of the negative vote would not happen today.

A successful vote would dissolve the WFWD and make the RDEK the formal owner of the West Fernie water distribution system. This option has a risk of time delays, as there are two levels of local government, the City and the RDEK, who need to establish their communication protocols as well as mobilize their respective administrations to accomplish infrastructure renewal.

If West Fernie citizens reject the RDEK's proposal, they face continued uncertainty in their water distribution system with respect to its safety and reliability. Furthermore, the cost of eventual system renewal will continue to rise and the development moratorium will remain.

C. Boundary Extension

The third option is the annexation of West Fernie in its entirety through a boundary extension into the City. Although this scenario poses a certain amount of financial risk, it clarifies the relationship between the City and West Fernie and addresses a number of outstanding issues.

The division between the communities is a historical artifact. Residents of the City and of West Fernie stand together on most issues and function as a single community in reality. Every person interviewed for this study unanimously described West Fernie's ultimate fate is to be part of the City. Furthermore the City's permanent population is shrinking, despite housing requirements growing to meet the demand of vacation homeowners. The addition of West Fernie's population into the City would reestablish the population the City had ten years ago, bolstering its political significance in the regional and provincial landscape, and reduce free rider consumption of City services.

The Ministry of Community Development would endorse this option. The freezing of the WFWD has created an overriding provincial interest in resolving the issue of water distribution in West Fernie. It is unlikely, unless City Council or the citizens of Fernie request it, that any vote on restructuring would be held.

The advantages of this option are:

- The City would have a high degree of control over the water system.
- The City would wield power, directly, over development and redevelopment in West Fernie.

- The City would be able to manage the costs and renewal timeline of the West Fernie waterworks system.
- Clarity of governance relationship as well as elimination of accountability and free rider issues.
- The City would have taxation powers in West Fernie and the greatest flexibility for funding infrastructure.
- The City would have an expanded tax base.

The disadvantages of this option are:

- The financial liability of the deficient or lacking infrastructure in West Fernie.
- Municipal services to West Fernie could initially be costly as the community transitions to City standards.
- Political heat from individuals or factions opposed to the boundary extension.
- Risk that West Fernie would defeat a municipal local service area initiative after annexation.

Undergoing a restructuring process of this magnitude is largely prescribed by the Province and involves forming a restructuring committee and conducting a restructure study. Previous restructure studies occurred in 1995, leading up to the defeated referendum in 1996, and in 2001, a preliminary restructure study to explore the opportunity of annexing Fernie Alpine Resort along with West Fernie. The first study recommended a boundary extension of West Fernie, the second did not.

If implementing this option it will be important for the City to secure early commitments for infrastructure dollars from other levels of government, including provincial dollars for a restructure study. Costs, and who pays for what, are central issues to the history and current context of the West Fernie water file. Maximizing contributions from other players would add momentum for restructuring; indeed most Fernie and West Fernie residents are hoping for a “free ride,” although both acknowledge its improbability.

Notably, even with a boundary extension, the City is not required to bring services to West Fernie to the City’s standards all at once. Projects could be staged, and there is no direct requirement that a sewer system has to be installed just because West Fernie is part of the municipality, although for many a sewer system is desperately wanted.

Assuming the boundary extension proceeded, the Provincial Cabinet would dissolve the ID and legally change the municipal boundary. Then the City would likely create a local service area in West Fernie to raise monies for any infrastructure replacement that it sees fit. This could be passed as a City Council initiative: uneventful as long as 50% of the owners of properties representing at least 50% of the assessed value of land in West Fernie did not petition against it.

If this was the case, the debenture could be put to a referendum of the West Fernie property owners directly. In the event that a referendum was defeated, the City could suspend services until sufficient monies or support were raised, forcing residents to make alternative arrangements.

Recommendation

Although the largest in scope and impact, Option C is recommended because of its clarity, obviousness, and utility. The City has a strong administration currently; it would be timely to initiate the process now to capitalize on this strength. All three options presented are viable, however Option C is the most responsive to the ten factors explored in the discussion section of this paper.

Factors that Options address	Option A	Option B	Option C
WFWD Shell	+	+	+
Boundary Extension Policies			+
Changing Demographics		+	+
Census Numbers			+
Smart Growth Principles			+
Accountability Issues		+	+
Water Distribution System Renewal		+	+
Development Moratorium		+	+
Health and Safety		+	+
Antagonism and Cost Sharing	+	+	+

Option A creates clarity around the service arrangement of water provision in West Fernie, rationalizes the payment structure, and replaces the quasi-legal and murky arrangement that currently exists.

Option B does the same but adds a plan for infrastructure renewal and a program for its implementation, creating a healthier and safer community in the process. However Option B adds risk to the timeliness of infrastructure renewal as a result of two levels of local government needing to coordinate on a capital project while also negotiating terms of agreement to establish an eventual boundary extension.

Option C achieves what both other options do and engages the larger community holistically. This option allows for smart growth and redevelopment to proceed with fewer barriers. Furthermore, the addition of West Fernie residents to the population of Fernie stems the community's population decline, and gives West

Fernie residents political accountability rights in the City through the municipal electoral process.

The economics of restructuring is the most delicate factor, but not the only factor, in considering this option. This leads to short-term thinking and planning, eroding leadership as well as duty of care. Economic reductionism can lead to the “tragedy of the commons” whereby individuals want to be able to have as much as they can of a common resource, in this case water and its distributive pipes in the ground, but exploit the resource while neglecting to pay the full cost of its maintenance, renewal and supply. The solution to any tragedy of the commons is two-fold, the recognition of necessity and then some arrangement of compromise.⁹² It is a necessity that the people of West Fernie have a safe and reliable source of potable water. The problem is determining the cost-sharing compromise that will bring resolution.

The property tax differential in West Fernie is supported by a number of hidden expenses that are overlooked. Septic system failure, a factor that people can ignore to a point in the current regime is a significant homeowner expense, greater than \$15,000. The insurance differential between City of Fernie fire protection and none is on the order of \$1000 per annum. Lastly, there are numerous “free rider” public services that West Fernie residents get at a discount, such as leisure services and cultural amenities, whose subsidy is difficult to calculate.

Nonetheless, government acting responsibly would attempt to make the transition as smooth and as painless as possible for all of the parties involved. West Fernie residents will be hit with a double tax increase, in that not only will their property taxes go up because of an increased mill rate, but also their property values will rise when they become part of the City. The latter is a consequence of speculation that the land in West Fernie will become more valuable because of expected increasing service standards that the City will deliver. Exploring graduated tax increases, as well as marketing what Provincial property tax subsidy programs are available for seniors and low-income residents would be both prudent and kind.

This issue will continue to return to the City until restructuring one day happens. The history of the file contains at least six attempts to merge - some subtle, some obvious - in the last 30 years. Furthermore the amalgamation of West Fernie into Fernie is seen by most as a *fait accompli*; it is just a matter of when.

⁹² Hardin, G. (1968). *The Tragedy of the Commons*. Science. December 13, 1968. Vol. 162. No. 3859, Pp 1243-1248.

Next Steps

Due to the political nature of a boundary extension, it would be prudent to consider strategies on how Fernie City Council decisions unfold so as not to provoke extreme criticism or prolong the governance failure of the West Fernie water distribution system. What follows are five suggestions for commissioning specific studies, collecting and sharing information, and structuring the process.

1. Request a risk assessment study. The City should petition Interior Health to update its 2001 review of West Fernie Water Quality and Sewage Disposal with new data. An updated review should address possible groundwater contamination, the quantification of health risks with status quo water distribution and septic systems, and time estimates on how long the current set-up can be maintained. Decision makers would benefit from a more comprehensive picture of the safety of the water supply in West Fernie when considering options.

2. Baseline study of West Fernie water distribution system. The City should also commission a through baseline assessment of the West Fernie water distribution system to quantify the infrastructure deficit regardless of how they proceed. Such an assessment would give Council a rough idea of costs attached to system renewal and allow the City administration to imagine financing scenarios and timelines. West Fernie is not currently part of the City's long-term operations or capital investment planning.

3. Sequential release and gathering of information. Information from this report could be released in stages and used as a feedback gathering mechanism. For example, the history section is a fairly straightforward narrative, which could get citizens thinking about West Fernie and its past relationship with the City as well as the RDEK, preparing them for future action. A survey could be designed to take the pulse of public opinion in both the City and in West Fernie. It could act as another staging vehicle and a useful source of additional data.

4. Commission a restructure study. If the City became committed to a boundary extension of West Fernie, the next step would be to commission a formal restructure study. This includes the forming of a restructuring committee with broad representation from stakeholder groups. The committee would oversee the restructuring study and establish the study's terms of reference. They would also manage the public consultation process. In support of this option the Province would likely fund the restructure study through a Restructure Planning Grant in addition to providing their own staff to act as resources when necessary.

5. Identify timelines for study and decision. In due course, Fernie City Council should set a timeline for decision making on the issue of West Fernie, so as not to cause any further drift on the issue, and to take a positive step forward.

Conclusion

The goal of this report was to determine the preferred service delivery model for the provision of potable water to the community of West Fernie, for the City of Fernie. After extensive research in both the history of the City's relationship with West Fernie, and with current stakeholders in the area, three options for service delivery were developed.

The first option is the official transfer of West Fernie water delivery provision to the City. The second option is to support the RDEK in an attempt to upgrade West Fernie's water infrastructure and possible community sewer system installation. The final option, and the one recommended by this study, is a boundary extension of West Fernie into the City of Fernie.

The importance of the safety of water distribution system in West Fernie should be underscored. Those who are reticent about system upgrades because of cost should contemplate the cost of a health emergency that has potentially lethal consequences. This report makes no conclusions about the likelihood of this risk, because it is seemingly impossible to quantify. However, the prudence principle, suggests further investigation is required to ensure that current barriers to contamination of the water supply are sufficient, particularly as the system continues to age.

A boundary extension is likely the most politically difficult option given the history of the relationship between the City and West Fernie. However it provides the most utility to the citizens of West Fernie, rationalizes the City's current boundaries, and resolves a historical irritant that has been allowed to fester for decades. The financial cost of restructuring will be significant, and determining a fair apportioning of costs to the various parties difficult. Nevertheless, the City does not have to rush into a boundary extension and could pause to gather more information. They should, at a minimum, seek and updated health study as well as come up with a baseline assessment of the infrastructure deficit in West Fernie. In addition, it would be wise to consider a strategy in how to release the information from this report to the general public for best effect.

Ultimately, it is the conclusion of this research that a boundary extension creates the greatest opportunities for smart growth, redevelopment, and eventual community harmony between West Fernie and the City. The community is well located, has beautiful mountain views and is close to the river and municipal park system. Seen by some as a liability today, West Fernie could grow to become one of the City of Fernie's signature communities.

Appendix A

Sample Interview Questions

“Could you tell me a bit about your current position and role?” How long have you been working and living in the Fernie area?

“Are you aware of the recent debates about water service delivery in West Fernie? What is your perspective on the issue currently?”

“How have you been connected to this issue in the past?”

“How do you feel about the status quo?”

“What do you think needs to improve/what is fine?”

“West Fernie residents pay the same rate for water service from the City of Fernie as do City residents. In your opinion is this a fair and equitable rate?”

“Do you have any concerns about water quality in West Fernie/the City of Fernie?”

“How should the issue of capital infrastructure upgrades to the water distribution system in West Fernie be addressed?”

“Is there anything else you would like to say?”

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