

# Primer on water policy and trade issues.

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### WATER - THE JURISDICTIONAL ISSUES

Fresh water is a resource which falls largely under provincial jurisdiction. The federal government has a say when it comes to navigable waters, federal fisheries, environment and (prior 1989) international trade (before signing the FTA and the NAFTA, Canada could impose an export tax of any amount and for any reason if it wanted to deter or halt the export of a goo; these GATT rights were relinquished under the trade agreements). The Federal Government also shares jurisdiction with the United States over Boundary Waters - bodies of water that running along (not across) the international border (principally the Great Lakes and the St. Lawrence Seaway).

### WATER - THE GOVERNANCE ISSUES

In general, provinces have the responsibility to manage their share of Canada's water resource in the long-term (e.g. sustainable) beneficial interest of Canadians. They can license the right to use water (farmers, municipalities, industry, crown corporations, water bottlers). Place a term on the license. Charge licensing and withdrawal fees. Undertake public works. Enact legislation to protect the health and environmental priorities of communities.

### WATER - THE POLITICAL ISSUES

Provincial interpretation of responsibility with respect to the water resources under their jurisdiction will inevitably vary, consistent with the ideological positioning of the parties in power.

Theoretically, right wing governments, who by and large believe capital should drive resource sector decision-making, will tend to favour privatization and exploitation of water as a source of economic revenue. Left wing governments, more supportive of market regulation, will tend to impose outright bans on exports in response to existing environmental concerns. In a pre-NAFTA world, "liberal" governments might have tried to do both by imposing strict environmental standards and placing water exports under a crown corporation to capture revenues and minimize risk.

In Canada, the range in provincial approaches to the water/trade issue are evidenced by BC's outright ban on exports (reflecting the position of the majority of British Columbians) and Newfoundland's recent interest in tanker exports (Premier Grimes statement that revenues from water exports would be sufficient to finance a free University education for every student in the province).

### WATER - THE CONSTITUTIONAL ISSUES

As it turns out, Grimes appears to have overestimated the benefits accruing from water exports. But assuming a province felt the benefits were substantial and puts in place an evaluation process using community-built and fully transparent environmental/economic yardsticks and IF the public decision process is open, ethical and democratic and IF the province retains the right to cancel the project outright if it turns out to have been a bad decision, and IF the province has in place an effective mechanism to capture profits and retain control, who is to say that the economic benefits do not justify a foray down this export policy path? Under Canada's constitution, such decisions are meant to be made by the people of the province with jurisdiction over that resource - in this case, Newfoundlanders.

## WATER: THE POLICY ISSUES

Assuming a federal water policy with teeth to ensure strict guidelines (case-by-case, scrupulous process, short term licenses, small volume exports, continuous re-evaluation against improved measurement criteria), small scale water exports are within the “safe” public policy contemplation of the provinces. Particularly if undertaken by a crown corporation rather than by the private sector.

(Why a crown corporation? Because there is simply no good public policy reason why the private sector should be involved in any water export initiative. To the extent that significant monopoly/oligopoly rents accrue to water exporters, if and when exports pass community muster, such profits must go to lining the public's purse, not shareholders' pockets. A crown corporation would also maximize any revenues to be had because a monopoly, one-desk supplier would command a higher market price. Similarly, a crown corporation would minimize public risk by lower the cost of “shutting ‘er down” if exports prove to be a bad idea because there are no private sector profit rights to buy out.)

## WATER - THE CRISIS

The problem is, under the FTA and the NAFTA, “safe” public policy contemplation of water exports is fully impossible. NAFTA provisions such as National Treatment, a ban on export taxes, restrictions and prohibitions, agriculture provisions (exempting “22.01.9” - water - from the FTA and NAFTA environment provisions) and investor-state dispute mechanisms (Chapter 11) means Canada cannot turn off the tap. So long as the buyer wants it, we must provide it. If we cut back, we have to cut back Canadians by the same amount as Americans and make prices to both the same. If we cut them off, we have to compensate. We cannot under any circumstances interrupt “normal channels of supply”. Under NAFTA, a case-by-case evaluation policy is also impossible. Once a province permits exports, NAFTA's “best-in-province” treatment rights put the rest of the province's water at risk.

The federal government - by signing the trade agreements - has made it impossible for Newfoundland to exercise its constitutional rights in a manner consistent with public policy and at the same time has abrogated its (federal) responsibility to act in the breach (under the trade agreements, Canada gave up her right to embargo water exports through an export tax).

It is fortunate, in a way, that Newfoundland's interest in water exports has brought this all forward. Unfortunately, rhetoric has supplanted reason and the discussion is largely unfocused and inaccurate. Instead of accepting responsibility to solve the matter (a federal ban on exports till water is exempted from FTA/NAFTA), the federal government is at one and the same time denying there is a problem and making it far worse. (Bill C-6, An Act to Amend the Boundary Water's Act, which purports to ban exports “except where permitted” and vests water export licensing authority with the Minister of International Affairs.)

On a policy level, we are at an absolute crisis.

### One Example: Irrigation

Were Canada to decide to undertake an irrigation project to benefit - for example - southern Alberta farmers, Americans would be well within their rights under NAFTA to say "here's the extra \$2 billion our engineers say it will cost to build a bigger dam, American farmers have both an interest and a right in sharing in those irrigation benefits. Water is a good managed by the Crown (e.g. the provincial government) on behalf of the people. Under NAFTA, the Canadian government cannot make that good available to Canadian farmers to the exclusion of American farmers if American farmers wish to participate. The provinces can, of course, say “no” to sharing irrigation benefits with American farmers so long as Canadian taxpayers are prepared to fully compensate American farmers and agri-business (NAFTA Chapter 11) for profits denied.

## WATER - THE COMPETITIVE ADVANTAGE

Water, together with sunshine, soils, seeds and stewardship, is the stuff that food is made of. Canada's ability to sustainably produce food is inimically tied to retaining sovereign authority over our water resources. Providing irrigation benefits to American farmers undermines the competitive advantage water provides to Canadian farmers. It also results in displacement of Canadian product in domestic and international markets. (BC apple and potato producers have never recovered from the downstream irrigation benefits accruing to Washington farmers under the Columbia Treaty.)

## WATER - WHAT MUST NOW BE DONE

BC's water export legislation offers little security. It is simply an act of the legislature that can be changed at any time by provincial government's with more right-wing agendas or challenged (as indeed is already underway; Sun Belt's Chapter 11 case) by US interests.

The only solution is for the Canadian government to demand an explicit exclusion of water from the goods, services and investment provisions of the FTA and the NAFTA (not a renegotiation but a FIX) and to further advise our trading partners that Canada will not allow any existing or future trading agreements to impinge in any way on Canada's absolute sovereignty over our water resources.

Absent such an exclusion, there is no safe path; public policy cannot protect Canada's water resources and farmers' rights to a sustainable and affordable supply of water for irrigation are at substantive risk.

## WATER - THE ENVIRONMENT

Like it or not, we are where we are. The above outlines the constitutional jurisdictions of the parties. We need to work within an existing framework. But that is not to say that Canada's community of environmental scientists cannot have its full say, as indeed it must in the interests of all Canadians.

What is needed now is an immediate moratorium on new water export initiatives until water is exempted from the NAFTA.

It remains to open and democratic public policy discussion to determine whether the federal government should bind the province's hands with respect to water exports, and if so, by how much.

The only "safe" options are a strict federal government water export policy framework (small quantity e. g. tanker, short term, terminable or renewable at the option of the province) or an outright federal prohibition (prohibitive export tax) on provincial water exports.

## WATER - THE RESOLUTION

Want to be part of the solution? Take the following resolution to your next commodity meeting, get it passed, and send it off to Chretien with a copy to me. I will make sure we document the extent of farmer concern across Canada and follow through with a coordinated response.

Whereas retention of domestic sovereignty over water resources is of critical importance to Canada's farmers; and

Whereas water's inclusion under the goods, services and investment provisions of the NAFTA fully compromises Canadian sovereignty over water resources;

Therefore be it resolved that a letter be sent to Prime Minister Chretien demanding the following actions be taken to safeguard Canada's water resources for current and future generations:

- Canada must immediately demand an explicit exemption for water under the goods, services and investment provisions of the NAFTA (not a renegotiation but a fix);
- In the interim, Canada must place a moratorium on any new water export initiatives until such an exemption is in place;
- Canada must demand an explicit exclusion for water and water related services under the GATS — currently being negotiated in Geneva — and the FTAA, so the same mistakes are not compounded (both impose onerous constraints on public policy).