

Bulk Water Removals & Exports Task Force



Under dire future circumstances, to meet growing water demands, deal with water scarcity and stress, and create opportunities for economic development, should Canada and the United States reconsider current agreements prohibiting the removal and export of water from the Great Lakes Basin?

Committee Overview

The Bulk Water Removals and Exports (BWRE) Task Force is a futuristic, scenario-based International Joint Commission (IJC) body responsible for discussing, deliberating and providing advice on proposed bulk water removals and exports along the border between the United States and Canada.

The year is 2015. The global economy has spiralled into a full-fledged economic depression. Economic hardship, coupled with extreme climatic change causing temperature variations and severe drought conditions, has led many governments to reconsider their water management policies. As a result, the United States and Canada, together with relevant state and provincial governments, have agreed to reopen the debate around the possibility of bulk water removals and exports, despite progressive efforts between 1999 and 2009 to prohibit this kind of activity.

Created in 2015, the BWRE Task Force is responsible for helping the IJC explore whether bulk water removals and exports should be permitted in the context of the two possible scenarios. In the first scenario, a lucrative proposal has been put on the table to alleviate water stress in Asia via exporting bulk water from the Great Lakes. In the second scenario, federal governments are considering the possibility of alleviating drought conditions in the United States through a set of proposed diversion projects. Appealing to some and enraging others, these controversial scenarios mirror previous bulk water proposals involving transboundary waters between Canada and the United States, although the economic and climatic hardships of 2015 are beyond what we have endured to date.

While acknowledging recent bi-national agreements put in place to limit bulk water removal and export, BWRE Task Force members will consider whether the circumstances in 2015 would create an impetus for new management frameworks and agreement amendments. The task force will discuss and evaluate implications for the North American Free Trade Agreement (NAFTA) and assess the costs and benefits of commodifying water for profit versus securing the human right to water and protecting the environmental integrity of watersheds. In doing so, the goal of the task force will be to provide advice to the IJC and help draft responses to the private and public interests seeking permission to export and/or divert water from one basin to another. Task force members will explore whether private and public bodies have an economic right and/or moral imperative to provide or refuse water to other jurisdictions and basins, and what consequences might result.

Introduction

Over the last century, water has been diverted for hydroelectric power generation, agricultural irrigation, municipal water supply, and other purposes. In Canada, power generation has been responsible for 97 percent of the volume of inter-basin diversions of water. These diversions produce and transmit hydroelectricity for sale in the economy, but do not involve the sale of water itself. In comparison, inter-basin diversions in the United States have been mainly for irrigation and municipal water supply. In both Canada and in the United States, these projects take place most often *within* international political boundaries, not across them.¹

On occasion, requests have been made over the years to divert, transfer, remove and/or export large amounts of transboundary water, either between two local watersheds or subwatersheds (intra-basin transfers) or between two basins (inter-basin transfers). These include proposals for physical water diversions, but also the withdrawal and export of water to other countries, although the latter have never been approved. One reason is that that bulk water removals from drainage basins can reduce the resiliency of a system and its capacity to cope with future water stresses, and also introduce invasive species and diseases to receiving waters.² Such removals have the potential, directly or cumulatively, to harm the health and integrity of a basin and therefore must be examined, assessed and implemented with caution, despite large economic and social benefits to industry and communities. While environmental protection is a primary concern, there are also international trade agreements and increasing demands on water to consider. Recent agreements have been put in place in Canada and the United States to prohibit bulk water removals and exports, however; changing political, economic, environmental and social circumstances may require a deeper look into this untapped potential in the future.

Under the *International Boundary Waters Treaty*, the IJC is responsible for helping the United States and Canadian governments prevent and resolve disputes over the use of the waters they share. To assist with this mandate, the IJC undertakes investigations on issues or problems at the formal request (via a “reference”) of the United States and Canadian governments. A reference requires the IJC to report back to the two governments, stating their findings and recommendations publically on a particular issue. In this case, the federal governments and the IJC have the authority to approve uses and diversions of boundary waters that may affect water levels or flows. It is in a set of proposed scenarios for 2015 that the IJC has been called to determine the best course of action going forward with respect to controversial bulk water removals and exports.

Key Terms

Basin (or Great Lakes - St. Lawrence River basin): describes the watershed of all the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec (See Map 1).

Boundary waters: include shared waters (including lakes and rivers) that have the Canada – United States border running through them.

Bulk water export: refers to taking water and shipping it to other countries for profit – whether in bottles, by tanker or pipeline, or by diverting rivers and building canals.

Bulk water removal: broadly refers to large-scale removal and transfer of water out of its basin of origin by man-made diversions (such as canals), tanker ships or trucks, and pipelines. It is not necessarily exported out of the province or country, but is "exported" from its basin of origin. This does not include small-scale water removal, such as water in small containers or bottles.

Consumptive use: means that portion of the water withdrawn or withheld from the basin that is lost or otherwise not returned to the basin due to evaporation, incorporation into products, or other processes.

Inter-basin diversion or transfer: refers to the removal of water from a watershed so that it is not then available for in-basin use (between two basins)

Intra-basin diversion or transfer: refers to the removal of water from the watershed of one of the Great Lakes into the watershed of another Great Lake (within the basin).

Diversion: means a transfer of water from the basin into another, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, truck or rail. This does not apply to water that is used in the basin to produce a product that is then transferred out of the basin or watershed.

Watershed: describes a land area draining into a common watercourse or water body; also called a catchment area, drainage basin, river basin, or basin.

Withdrawal: refers to the taking of water from surface water or groundwater.



Map 1: Great Lakes and St. Lawrence River Basin

Source: www.ijc.org/rel/boards/cde/finalreport/figure1eng.jpg

Background

The controversy around water removals and exports can be traced back to a number of key events:

1960s: In 1963, a decision by the United States Supreme Court in the case of *Arizona v. California et al.* failed to resolve conflict over the flow of the Colorado River, in terms of allocating disputed water between the two states.³ This case led to the southwest considering new and more distant sources of

water. Around that same time, droughts and low water levels were creating problems for ship navigation and hydropower generation on the Great Lakes and for municipal water systems along the Atlantic Seaboard. In combination, these events triggered proposed bulk water removal and export schemes, including several involving international destinations.

Of particular note, a giant megaproject was conceived in the 1960s called the Great Recycling and Northern Development (GRAND) Canal. The GRAND was a scheme proposed by the private sector to divert water from twenty rivers flowing into James Bay in northern Quebec, with a series of dams and canals transporting the water south to the Great Lakes and beyond to the United States. This megaproject never came to fruition, but the notion of bulk water diversions has since become the subject of considerable debate.

1985-1987: The IJC conducted a study in 1985 on consumptive water uses, diversions, and bulk removals, including export, from the Great Lakes. That same year, hearings were held in Canada during a country-wide inquiry into the development of a new water policy. These hearings confirmed widespread public opposition to major water diversions and export. The inquiry's final report distinguished between small exports (including container shipments and transboundary agreements between neighboring communities) and large-scale exports with greater impacts.⁴ As a direct result, in November of 1987, Canada tabled a new Federal Water Policy which opposed large-scale export of water, with exceptions allowed for small-scale exports regulated closely by provinces. The reason for the newfound federal opposition and policy, was largely due to public opposition, but also due to water shortages in some regions, and acknowledgement of the harm diversion projects could have on the environment and to northern communities.

1988-1989: During the summer of 1988 widespread drought gripped the continent and Senators from the southern United States led an effort to have the United States Army Corps of Engineers triple the diversion of water from the Great Lakes at Chicago to keep barges afloat on the Mississippi River.⁵

In August of 1988, the Government of Canada tabled Bill C-156, known as the *Canada Water Preservation Act* for first reading. The bill would have prohibited, without exception, any export (or diversion into boundary waters for the purpose of export), of water above the average daily rate of one cubic metre per second or annual volume of 20,000 cubic decameters. It would have permitted each province to consider licensing exports below this level, after undertaking environmental impact assessments and setting terms and conditions. Unfortunately, within a few weeks of introducing the bill, the federal government called an election and Bill C-156 was never reintroduced. It is important to note the Canada-United States Free Trade Agreement took effect shortly thereafter on January 1, 1989.

1998: Almost ten years later, in 1998, a California company called Sun Belt filed suit under Chapter 11 of the NAFTA, after the Canadian province of British Columbia banned the export of bulk water. Sun Belt sought to export Canadian water to California and sued for \$10.5 billion in damages because it would no longer be able to carry out that exchange.

Also in 1998, the Government of Ontario issued a permit to the Nova Corporation to export water in tankers from Lake Superior to Asia. This resulted in vocal public concern about possible large scale bulk water removals from the Lakes. This discontent forced Ontario to cancel the permit, triggering negotiations between Ontario, Quebec and the eight states surrounding the Great Lakes over bulk water removals (which eventually led to an agreement and compact, noted in the next section on agreements).

International Joint Commission

These bulk water proposals also resulted in the IJC receiving a related reference in February 1999. The Canadian and United States governments were concerned that their water management principles and

measures were no longer enough to ensure the sustainability of their shared waters. The two governments therefore asked the IJC to examine whether bulk water removals should be allowed and provide recommendations for the protection of transboundary waters, particularly the Great Lakes. Building on the IJC's work in 1985, the reference involved looking at: existing and potential consumptive uses of water; diversions of water in and out of the basin, including bulk removals for export; cumulative potential effects of diversions and removals; and the laws and policies in place at the time to protect the sustainability of water in transboundary basins. The IJC was also asked to provide advice on additional research work required to understand the impacts of consumption, diversion, and bulk removal of water.

In response to this request, the IJC established a bi-national, interdisciplinary study team. Members from each country were appointed to work in the spirit of consensus, not as representatives of their own countries or organizations. The IJC worked to put forward interim recommendations, including an immediate moratorium on all bulk water removals, and carried out a public consultation process to gauge support. Twenty public hearings were held, involving hundreds of presentations and submissions from governments, experts, interest group representatives, and citizens.

The hearings highlighted general opposition to all forms of bulk removals, although some acknowledged the possibility of exports to meet humanitarian needs. The precautionary approach was advocated, in light of climate change and other uncertainties like aquatic invasive species and groundwater and surface water interactions. The hearings also revealed public concern that international trade laws could prevent protection of the Great Lakes Basin. This view was not shared by the Canadian and United States governments and experts who indicated that international trade agreements do not prevent governments from protecting the waters of the Great Lakes Basin. The public, and some experts, remain concerned.⁶

In 2000, the IJC issued a seminal report entitled *Protecting the Waters of the Great Lakes*. The IJC found that only one percent of the waters of the Great Lakes are renewed each year and the "removal of water from the basin reduces the resilience of the system and its capacity to cope with unpredictable stresses, such as those created by climate change." It therefore recommended that governments take measures to ensure removals of water from the basin do not endanger the integrity of the Great Lakes.⁷

In 2004, the IJC was asked to review the recommendations it made in its 2000 report. The IJC reconfirmed their original recommendations and also asserted that "nothing prevents Canada and the United States from taking measures to protect their water resources and preserve the integrity of the Great Lakes Basin ecosystem." Such measures would be permitted as long as there was no discrimination against applicants from other countries, and water management policies were clear and consistent. Canada and the United States should not be compelled by trade laws to endanger the Great Lakes.⁸

Relevant Agreements

Several agreements have been created or amended to respond to the issue of bulk water removal and export. These include the International Boundary Waters Treaty Act, the United States Water Resources Development Act, the Canada-Wide Accord on Bulk Water Removals, the Great Lakes Charter Annex, as well as the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, and its associated Water Resources Compact.

Amendments to the International Boundary Waters Treaty Act

The Boundary Waters Treaty (BWT) of 1909 provided mechanisms to help prevent and resolve disputes, primarily concerning water quantity and quality along the Canada-United States boundary. In Canada, the original International Boundary Waters Treaty Act (IBWTA) was passed in 1911 to implement the

BWT. In the fall of 1999, the Canadian government introduced amendments to the IBWTA which would give it authority over water-related projects that could affect levels and flows of boundary waters, specifically the Great Lakes. Passed in 2001, these amendments included a specific prohibition on bulk water removal (above 50,000 litres per day) from all boundary waters on the Canadian side, with a few exceptions (water used to operate vessels, stabilize ships, fight fires, or assist with humanitarian needs). The prohibition did not apply to water diversions out of tributary rivers or groundwater, or to diversions on the United States side of the basin.⁹

Water Resources Development Act

In the United States, the *Water Resources Development Act* of 1986 prohibited the diversion of Great Lakes water unless approved by all eight Great Lakes state governors. Amendments to this act in 2000 further encouraged the Great Lakes states, in consultation with Ontario and Quebec, to develop and implement a standard for making decisions concerning the withdrawal and use of Great Lakes water.

Canada-Wide Accord on Bulk Water Removals

The Canadian Council of Ministers of the Environment (CCME) is an intergovernmental forum comprised of environment ministers from Canadian federal, provincial, and territorial governments. In November of 1999, CCME members agreed to prohibit the bulk removal of surface and groundwater from the Canadian portion of major basins. This Canada-wide Accord was a formal instrument designed to require that *all* provincial governments implement legislation, regulations or policy to prohibit bulk water removals, including for domestic purposes or export. Most Provincial Ministers across the country signed the Accord, placing accountability for implementation with each individual jurisdiction.¹⁰ Although Quebec did not endorse the Accord, the initiative inspired provincial legislation across Canada and provided some assurance that bulk water removals would not occur.¹¹ In 1999, Ontario enacted a regulation which generally prohibits transfers out of its portion of the Great Lakes and the St. Lawrence River basin. Since then, Quebec has also generally prohibited transferring water outside of the province. In fact, it just passed a bill prohibiting the transfer of water out of the St. Lawrence River Basin, with some exceptions.

2001 Annex to the Great Lakes Charter of 1985

In June of 2001, the eight Great Lakes states and Ontario and Quebec developed an annex to their 1985 Great Lakes Charter. Annex 2001 was a good-faith arrangement that established principles for the protection and management of Great Lakes water resources. It committed the parties "to develop and implement a new common, resource-based conservation standard and apply it to new water withdrawal proposals from the waters of the Great Lakes Basin".¹²

In January of 2005, the Canadian government indicated to the Council of Great Lakes Governors that proposed agreements to implement Annex 2001 "(did) not afford a sufficient level of protection to the waters of the Basin and need(ed) to be strengthened in a number of respects." The Canadian government also encouraged the Council of Great Lakes Governors in the United States "to afford the same level of protection and certainty as (was) afforded by the Canadian government, provincial and territorial governments, which together have banned removals of waters from the basin." In December of 2005, the Great Lakes Charter Annex Implementing Agreement was signed by all of the parties. Although it asserted a ban on diversions from the Great Lakes, the Annex allowed for diversions to straddling communities and counties just outside the Great Lakes Basin, including the large Chicago diversion. This water is used primarily for drinking water, not irrigation.

Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement, and Great Lakes - St. Lawrence River Basin Water Resources Compact

Perhaps the most influential of all the agreements, in December of 2005, the Great Lakes Governors from the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin, and the

Commonwealth of Pennsylvania, together with Premiers from Ontario and Quebec, put forward two historic agreements to protect the Great Lakes-St. Lawrence River Basin.¹³ First, the *Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement* (previously called the 2001 Annex to the Great Lakes Charter of 1985) was again a good-faith agreement that committed all of the above parties to: adopt and implement measures to prohibit new or increased water diversions with some exceptions; adopt and implement measures to manage and regulate exceptions; and regulate withdrawals and consumptive uses. Second, the *Great Lakes - St. Lawrence River Basin Water Resources Compact* (the Compact), was a congressionally approved arrangement for the eight US states that created the Great Lakes Commission and “provide(d), among other things, for joint or cooperative action to promote the orderly, integrated, and comprehensive development of the water resources of the Great Lakes Basin and to plan for the welfare and development of these water resources.” The Compact sought to prohibit bulk exports.

Status

As of October 3, 2008, Great Lakes water cannot be diverted outside the Basin as a result of President George W. Bush signing a joint resolution consenting to the Great Lakes-St. Lawrence River Basin Resources Compact noted above. This new law, effective December 8, 2008, sets common standards but gives states flexibility in meeting them. Ontario and Quebec have adopted similar policies. The next step for the Compact involves setting up regional goals and programs to manage and conserve water within two years, with progress reviewed every five years. A state could be sued if they fail to comply, however; the Compact does not specifically regulate the Great Lakes. It only sets the stage for this work within the governments around the Lakes.¹⁴

While there are no active proposals for diversions outside the Great Lakes Basin, except to communities on the edge of the basin, the situation could still change. Demand for water continues to increase. The economy could continue to spiral downward and climate change could continue to be a wild card.

Committee Scenarios

The waters of the Great Lakes are essential for the health and well-being of the Great Lakes Basin ecosystem and for the nearly 40 million people who rely on the lakes for drinking water, food, work, and play. In the context of a failed economy and troublesome climate and drought conditions in 2015, keeping the IJC’s 2000 and 2004 report recommendations in mind, the goal of this task force is to draft responses to those seeking permission to export from one basin to another under two scenarios:

Scenario #1: A multinational company has presented a lucrative proposal to export bulk water from the Great Lakes in a large plastic bag called a “Spragg Bag” which floats behind a ship. Transported to Asia and sold for profit, this proposal would be lucrative for both Canada and the United States, given the escalating price of water, and the fact that freshwater is scarce and in even higher demand in 2015.

Scenario #2: Parts of North America have already experienced water shortages and it is anticipated this is only the beginning. In scenario two, the task force will explore and provide advice on the possibility of exporting water from the Great Lakes to help alleviate drought conditions in the southern United States as well as just outside the Great Lakes Basin. This would involve constructing a large pipeline (see GRAND Canal proposed in past as example) as well as a series of smaller diversions from the Great Lakes, which would pump water out of the basin for a host of water needs, particularly drinking water for regions close to the Basin, but also for agriculture and industry in the southern states. This set of

proposed diversion projects is worthy of consideration as North America experiences the worst drought period on record in 2010 through to 2015.

Task force members will explore whether private and public bodies have rights and imperatives to provide water to other jurisdictions, and what economic, political, social and ecological consequences might result from permitting or prohibiting bulk water removals and exports under different scenarios.

Perspectives and Roles

The following provides a summary of some of the main perspectives involved in this discussion as well as possible roles. In representing these perspectives, members of the task force will research their positions and express their respective viewpoints and advice during the sessions, noting the need for consensus building.

A. IJC Commissioners

There will be an equal number of Commissioners and staff on the task force from each side of the border. Commissioners will be familiar with the range of benefits, concerns and perspectives linked to the bulk water removal and export issue, and prepared to answer questions about the IJC's previous work as well as facilitate the process of providing recommendations and drafting formal responses to the proposals.

B. United States Government and the Government of Canada

The United States population continues to migrate southward and westward to coastal regions and to arid states. Parts of the United States, particularly the southwest, have recently experienced serious water shortages. In addition, communities just outside the Great Lakes Basin in Wisconsin, Illinois, Indiana and Ohio are increasingly seeking new water supplies, adding additional pressure to the already overly tapped basin.¹⁵

With fewer opportunities for developing new sources of water, Americans are being forced to use water supplies more efficiently. Other possible solutions involve diverting water from Canada and the shared Great Lakes.

Unfortunately, there is a myth of water abundance in Canada. The reality is Canadian and American freshwater are similar at roughly 7% and 6.5% respectively.¹⁶ Unfortunately, there is no surplus of water in the Great Lakes region with population levels increasing and renewable water already shared by the two countries under various treaties. There is less pressure on water north of the basin, but these rivers flow northward. Reversing the flow of these rivers would be expensive and cause hardships for (and justifiable resistance from) Aboriginal communities.

Canada has not yet exported freshwater in bulk to the United States or any other country. The Canadian public continues to reject any suggestion that their water is "continental". Within Canada's bulk water strategy, the federal and provincial governments have worked cooperatively to adopt a watershed approach as a key principle in water policy and legislation to avoid being discriminatory against other countries' proposals to import their water. The watershed approach recognizes the linkages of water



systems and the need to manage water within drainage basins rather than on a river-by-river, lake-by-lake or political boundary basis. This required provinces and territories to amend their laws or regulations to prohibit bulk water removal from watersheds in their jurisdictions.

By way of interpretation, NAFTA and other international trade agreements do not create new obligations for Canada to sell its water, nor do they limit its ability to adopt laws for managing and protecting its water resources based on a watershed approach. Under these trade agreements, water in its natural state – in a lake or a river, for example – is not a tradable good, product or commodity and is therefore not subject to the provisions of these agreements.¹⁷

While strategies prevent bulk removal of water from its natural state,¹⁸ Natural Resources Canada has stated that Canada is “not immune” to freshwater challenges, alluding to the fact that “ongoing issues, such as bulk water exports, high domestic water use, and climate change, suggest Canada must be prepared to reconcile uncertain supplies with growing demands.”¹⁹

C. Aboriginal Peoples and Indian Tribes

In the past, Aboriginal Peoples and Indian tribes have opposed water exports and have had grave concerns that bulk water removals and diversions could significantly affect their treaty rights. Depending on the diversions proposed, it could also require relocation of Aboriginal Peoples and First Nations. It is important to engage Aboriginal Peoples and governments, not as just another set of stakeholders but as a level of government that must be involved in decisions that affect shared waters.²⁰

D. State/Provincial Governments

All state and provincial governments must develop/amend and implement their own legislation, regulations, or policy to prohibit bulk water removals. Under the Compact, the Great Lakes states are currently developing policies.

In Canada, the federal government seldom challenges how provinces manage their water. British Columbia, Newfoundland, Quebec and Ontario have all considered bulk water shipments in the past, but none of these proposals have been carried out. If they had been, the problem could have been in setting a precedent, where other entrepreneurs could have followed, resulting in a much larger cumulative effect. Some provincial governments have chosen to use political, rather than watershed boundaries in their laws and regulation, despite having voluntarily agreed to follow a watershed approach. As resource owners, it is believed provinces outside the Great Lakes Agreement and Compact could break from the voluntary arrangement they have with the federal government to further their own trade interests.²¹

E. Environmental Protection & Advocacy

The environmental impacts associated with inter-basin diversions, transfers and removals of bulk water are not well understood, but evidence points to significant concerns. Inter-basin surface water transfers alter the hydrological flow of both basins involved, changing water flows and levels as well as groundwater tables. Diversions and removals inevitably introduce parasites and invasive species, which can threaten ecosystems and local economies.²² Bulk removal also represents lower water levels and permanent loss of water to a watershed, particularly when looking at the cumulative effect. The watershed or drainage basin is widely recognized as the fundamental unit for protecting the quality and quantity of freshwater resources. Note too that diversions from one lake, or groundwater source, can impact other interconnected bodies of water, including other lakes. For example, groundwater aquifers that flow into Great Lakes watersheds are currently being depleted, inhibiting the natural recharge rates of

surrounding lakes. This puts into question whether diverting water just outside these watersheds should be permitted, given the depletion already taking place of interconnected groundwater sources.

Many environmental advocates believe prohibition of bulk water removal represents a step in protecting the health and integrity of drainage basins by: recognizing that intra-basin uses are a priority; preventing the introduction of invasive species into the receiving basins; helping to sustain the biological diversity and productivity of ecosystems dependent on fresh water; and helping to ensure sustainable use of water, particularly in light of climate change. If permitted, it is worth noting too that different bulk water removal projects will have varied environmental consequences (i.e. impacts of larger pipeline projects vs. smaller diversions to nearby regions).

F. Social and Political Advocacy

Arguments in favor of bulk water export tend to highlight monetary gains, economic development, urban growth, enhanced agricultural production, and the provision of humanitarian aid. The opposing view, often on environmental grounds, but also social and political viewpoints, acknowledges that water is more than an economic good. It is the basis for all life, not just human needs and wants. It is a common good that should be held in a public trust. There is also no substitute for water. Some note it should therefore not be traded like any other commodity, nor should it be priced or privatized as though it can be bought and sold to the highest bidder. This is consistent with protecting the human right to water.²³ Refusing to divert and transport water to basins in other countries also allows a nation to remain sovereign with respect to its water resources, protecting them for future generations.

On the flip side, humanitarian efforts may require nations to rethink how they can help water stressed and water scarce regions in North America and around the world. While most social advocates do not promote bulk water exports as a solution to the international water crisis, this may be explored as conditions change and water scarcity and pollution levels increase. This could create both an opportunity to make a considerable difference in the availability of drinking water or agricultural production, as well as a potential loophole around existing legislation preventing exports.

G. International Trade

The debate on water exports gained momentum with the signing of the Canada-US FTA in 1989 and NAFTA in 1993, raising questions about: whether water in its natural state is considered a tradable good subject to these trade rules, how best to describe the relationship between bulk water removal and chapter 11 (investment) of the NAFTA; and whether allowing the removal and export of some water creates a precedent, compelling governments to allow the removal and export of all water.²⁴

In a joint declaration of December 1993, Canada, the United States and Mexico stated that the NAFTA does not apply to water in its natural state in lakes and rivers because the water has not at that point “entered into commerce and become a good” for purposes of the NAFTA. The Canadian federal government has consistently taken this position with respect to the NAFTA. Yet critics feel, given water shortages, water in its natural state could be covered by the NAFTA and that only an agreement amendment, together with federal legislation banning water exports, would protect the Great Lakes.²⁵

H. Research Institutes & Think Tanks

Some research institutions, think tanks, academic journals, and consultancy firms have strongly advocated putting water up for sale, while others have been adamantly opposed. Examples illustrating a range of perspectives include the Brookings Institution, the Government of Canada’s Policy Research Initiative,

the C.D. Howe Institute, the Global Water and Energy Strategy Team (GWEST), the Program on Water Issues (POWI) at the University of Toronto's Munk Centre for International Studies, and the Montreal Economic Institute, among others.

Questions to Consider

1. How might a dire context challenge recent agreements prohibiting bulk water removals? Is bulk water export a viable option today? If not, what scenario would make it so?
 2. What are the key arguments in favour and against bulk water diversions and transfers?
 3. If bulk water removals and exports are recommended, what are the implications? Should there be exceptions? If bulk water removals and exports are not recommended, are there any exceptions? Can we deny water from those in need? What constitutes need: humanitarian requirements, drinking water, sanitation, economic development, food production, energy generation, etc.?
 4. How should the United States, Canada and others deal with water shortages: slow the rate of climate change; conserve water and/or increase water efficiency; manage water differently; desalinate water from oceans; protect and restore water bodies; other solutions?
 5. To protect a resource with national importance and prohibit exports, should federal governments overrule states/provinces that act independently in their own economic interests?
 6. Why are water containers and bottles not considered a form of bulk water removal? Given the recent public outcry against bottled water, could water bottling be prohibited in a similar vein to bulk exports? How strong is the voice from the bottling industry? How is bottled water different from exporting “virtual water” in the form of soft drinks or food products?
 7. How have other jurisdictions handled water wealth and shortages and the matter of exporting/importing water?
- * Please make a note of other questions that could be shared for consideration and debate.

Position Paper

Once positions and roles are assigned and confirmed, participants will be asked to prepare a short position paper on the topic, each scenario, and their perspective. During the conference, members of the task force should remain open to the possibility of Interest Advisory Group members voicing key concerns and considerations throughout the process.

Resources

Agreements

- Council of Great Lakes Governors - overview of several agreements: www.cglg.org/projects/water/index.asp
- Government of Canada. *An Act to Amend the International Boundary Waters Treaty Act* <http://dsp-psd.tpsgc.gc.ca/Collection-R/LoPBdP/LS/362/c15-e.htm>
- CCME Accord (1999). www.scics.gc.ca/pdf/accord.pdf
- MNR (2005). Technical Fact Sheet (on Charter Annex and agreements) <http://www.mnr.gov.on.ca/200062.pdf>

IJC

- IJC Reference (1999): <http://www.ijc.org/rel/boards/cde/resp.html>
- IJC (2000). *Protection of the Waters of the Great Lakes*. www.cglg.org/projects/water/docs/IJC2000Report.pdf
- IJC follow-up review of recommendations in 2000 Report (2004) www.ijc.org/php/publications/pdf/ID1560.pdf

Background

- *Article: The Fate of the Great Lakes* (1997) www.greatlakesdirectory.org/zarticles/102802_great_lakes2.htm
- Quinn, Frank (2007). *Water Diversion, Export and Canada-US Relations: A Brief History*. Program on Water Issues, Munk Centre, Univ. of Toronto. www.powi.ca/pdfs/events/powi20070910_12pm_Water_Diversion.pdf
- Resources Kit on the Great Lakes - St. Lawrence River Basin Water Resources Compact (2005).

www.cglg.org/projects/water/CompactEducation/GLCompactResourceKit-10-18-07.pdf

- Environment Canada: www.ec.gc.ca/water/en/manage/removal/e_remove.htm
- Department of Foreign Affairs and International Trade (1999). *Bulk Water Removal and International Trade Considerations*. www.canadainternational.gc.ca/san_francisco/bilat_can/bulkwater-massifs_deau.aspx?lang=eng
- *Bulk Water Removal and the NAFTA*. <http://dsp-psd.tpsgc.gc.ca/Collection-R/LoPBdP/BP/prb0041-e.htm>
- Nikiforuk, Andrew (2007). *On the table: Water, Energy and North American Integration*. www.powi.ca/pdfs/events/powi20070910_9am_On_the_Table.pdf
- Policy Research Initiative: various briefing notes on business case for exports, bulk exports outside of NAFTA, and water as a commodity. https://policyresearch.gc.ca/doclib/BN_SD_ExportingWater_200501_e.pdf
- Council of Canadians: www.canadians.org/water/issues/policy/map.html
- Overview of Canadian provincial legislation: www.parl.gc.ca/information/library/PRBpubs/prb0213-e.htm

Positions & Roles

- Note: tailored research is required to obtain more info about each position.
- IJC Summary of Public Hearings – Round 1 (1999): www.ijc.org/rel/boards/cde/summaries.html
- May be helpful to refer back to IJC report (2000): www.ijc.org/php/publications/html/finalreport.html

General Links

- *International Joint Commission*: <http://www.ijc.org/>
- *Boundary Waters Treaty*: <http://bwt.ijc.org/>
- *Great Lakes Commission*: <http://www.glc.org/>
- *Great Lakes Information Network*: <http://www.great-lakes.net/>
- *Great Lakes Environmental Research Laboratory*: <http://www.glerl.noaa.gov/>
- *Env. Protection Agency - Great Lakes National Program*: <http://www.epa.gov/greatlakes/index.html>

Endnotes

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