

#2223

CABINET COMMITTEE ON SUSTAINABLE DEVELOPMENT

DATE Feb. 21, 1991

SURVEY DATE Feb. 13/91

TIME 9:30

PLACE Cabinet Office - Victoria

MINISTERS

YES

NO

<u>Serwa (Co-Chairman)</u>	✓	
<u>Smith (Co-Chairman)</u>	✓	
<u>Weisgerber (Vice Chairman)</u>	✓	
<u>Couvelier</u>		✓
<u>Davis</u>	?	
<u>DeJong</u>	✓	
<u>Hanson</u>	✓	
<u>Johnston</u>	✓	leaving at 10:00 am.
<u>Michael</u>	✓	
<u>Parker</u>		✓ Terrace
<u>Richmond</u>		✓ Washington D.C.
<u>Savage</u>		✓ Holidays
<u>Strachan</u>		✓ Prince George
<u>Veitch</u>	✓	

0112-2

Water Commission on Economic Development  
February 21/91  
4. Modifications Water Licence Policies/Regulations - MIBI

The Ministry of International Business and Immigration is seeking Cabinet approval for a number of changes to existing Water Licence Policies and Regulations. These include:

- changes to increase fees to the province from bulk water sales;
- changes to assist bulk and bottled water exports;
- formation of an interministerial task force to develop a comprehensive plan for water resource licensing; and,
- a review by the Ministry of Crown Lands and Attorney General of Western Canada's contract with the Ministry of Crown Lands.

The submission is proposing to set a regulatory framework which promotes both bulk and bottled water exports in a compatible way, and which permits the province to collect a fair return on coastal water sold in bulk.

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It was noted that the Ministry has committed to come to a decision by February 22, 1991, on Snowcap Waters application to sell bulk water to the County of Santa Barbara. It was further emphasized that restricting any single bulk licence either for profit or not for profit will prevent foreign water bottlers from using bulk to undercut provincial bottlers. The potential for international bulk and bottled water sales is substantial.

A number of issues were raised relating to:

- economic versus trade options;
- philosophical arguments for the non-export of provincial water sources (Washington, Oregon do not export water to California); and
- public opposition to bulk water exports; and, environmental concerns.

The Committee recommended that the above mentioned Cabinet Submission on Modification to Water Licence Policies/Regulations be discussed as a full agenda item at the next scheduled Cabinet meeting.

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MINISTRY OF FINANCE AND CORPORATE RELATIONS

FINANCIAL IMPACT ASSESSMENT

**SUBJECT:** Ministry of International Business and Immigration; Water Licence Policies and Regulations.

(Submission Date: February 6, 1991.)

**FINANCIAL IMPACT:**

Background

- . The Cabinet submission is proposing to set a regulatory framework which promotes both bulk and bottled water exports in a compatible way, and which permits the province to collect a fair return on coastal water sold in bulk. Cabinet approval is requested for:
  - changes to the water licensing regulations to increase fees to the province from bulk water sales;
  - changes to the water licensing regulations to assist bulk and bottled water exports.
  - formation of an interministerial task force to develop within six months a comprehensive plan for water resource licensing; and
  - a review by the Ministry of Crown Lands and the Ministry of Attorney General of Western Canada Water's contract with the Ministry of Crown Lands.
- . The ministry is requesting that the first two items be resolved prior to February 22, 1991. The Ministry of Environment has committed to come to a decision by that date on Snowcap Waters Limited's application to sell bulk water to the County of Santa Barbara.
- . Restricting any single bulk license to either for profit or not for profit will prevent foreign water bottlers from using bulk to undercut provincial bottlers. The potential for international bulk and bottled water sales is substantial.

Gross Outlays

- . Unknown costs in auditing the end use of bulk sales to determine the applicable rate.
- . Undetermined expenses for the BC Trade Development Corporation to develop an export marketing strategy for the BC bottling industry.

Revenues/Cost Sharing/Recoveries

- . There will be an increase in General Revenues should higher rates be charged for bulk sales. For example, the export of 15,000 acre feet per year (AFY) would generate revenues of \$270,000 at current bulk water rental rates (\$18 per AFY). The proposed increase to \$36 per AFY would double that revenue.

Staffing

- . Additional staffing may be required for auditing the end use of bulk sales.

Financial Risks

- . None identified.

Indirect Effects

- . Since the government is not aware of the real world price of water and since no study has been undertaken to evaluate the implications of a price increase, the effect of arbitrarily doubling the existing bulk water rental rate from \$18.00 to \$36.00 per AFY is unknown.
- . Expansion of bulk water sales could modestly affect employment opportunities in some of the coastal regions.

**SOURCE OF FUNDS:**

- . Not identified.

February 15, 1991

**CABINET SUBMISSION**

**MINISTRY: MINISTRY OF INTERNATIONAL BUSINESS AND IMMIGRATION  
TRADE POLICY BRANCH**

**DATE: February 6, 1991**

**SUBJECT/TITLE: Modification of Water Licence Policies and  
Regulations**

**1. PURPOSE/DECISION REQUESTED**

Cabinet approval of:

- A. Changes to the water licensing regulations to increase fees to the province from bulk water sales.
- B. Changes to the water licensing regulations to assist bulk and bottled water exports. An export promotion program to assist provincial bottlers to export to foreign markets.
- C. Formation of an interministerial task force, chaired by the Ministry of Environment, to develop within six months a comprehensive plan for water resource licensing.
- D. A review by the Ministry of Crown Lands and the Ministry of Attorney General of Western Canada's contract with the Ministry of Crown Lands.

**2. BACKGROUND/DISCUSSION:**

SnowCap Waters Limited has an application pending before the Ministry of Environment for 15,000 acre feet/year to be sold to the County of Santa Barbara. The Ministry of Environment has made a commitment to come to a decision on this application by February 22, 1991.

There is a need to review Provincial water licensing regulations on bulk and bottled water exports as Snowcap Waters Limited or another British Columbia firm is likely to soon start exporting water.

**BULK WATER EXPORTS**

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Due to the relative abundance of coastal stream water, Cabinet decided in 1985 to permit the bulk export of water from coastal streams only provided it is surplus to local needs and the exporting can be accomplished without environmental damage. Seven licenses, each for a period of 15 years, have been issued under the bulk export by marine transport category. However, no bulk water is currently being exported from the coast.

Bulk tanker shipments and desalinization are the two options for foreign waterworks wishing to augment their water supplies. Last fall the city of Santa Barbara chose desalinization over tankered water (due to security of supply considerations) in a competition which included three tanker proposals from British Columbia firms. However, British Columbia is increasingly viewed as a viable supplier of bulk water by tanker to California which has been suffering from a prolonged drought. Although security of supply considerations are a major drawback, tankered water is the preferred source if available at a competitive price because of its purity and greater suitability for all uses.

It is likely the international bulk water market will grow considerably as the Middle East and other areas of the world look to incremental supplies. Due to the abundance of coastal water and easy access to it by tanker, British Columbia could become a major supplier of bulk water to water short foreign markets. Preliminary analysis suggests that the bulk water segment of the water market will experience much faster growth and has the potential to be many times larger than the bottled water market because water will be used for many uses, not just for human consumption.

It is not clear that water license fees for bulk water are too low now. As no exports are actually taking place, there is no benchmark to establish a price. However, given current international demand for bulk water and its projected growth, it is believed that the current prices do not reflect the economic rents in the resource. Currently British Columbia firms with bulk water licenses pay \$18 per Acre/Foot per year (AFY). One-half of this \$18.00 is paid every year as the annual rental rate regardless of whether they actually export or not. This "holding" cost (\$9.00 AFY) is still relatively low and it has not deterred British Columbia firms from obtaining bulk licenses in anticipation of the emergence of a strong export market.

#### **BOTTLED WATER EXPORTS**

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The sales of water bottled in British Columbia have grown rapidly and currently our industry exports \$8.5 million/year, most of which goes to the U.S., especially California. In the near term, further growth is expected in the U.S. and other countries. However, the mid to long term outlook of the industry is uncertain given the trend toward recycled containers. In the U.S. it is possible the industry will shift to the use of refillable containers using bulk dispensers at retail outlets.

There is concern that export sales of bulk British Columbia water might undercut the position of British Columbia water bottled in British Columbia. This argument assumes that bulk water will be bottled in foreign countries and will, as a consequence, partially undercut British Columbia bottled water. This is not viewed as a major problem for reasons discussed in the section on the British Columbia bottling industry below. Both the bulk and bottled water industries have significant export potential and should be promoted.

#### **Ground Water and Inland Stream Water Export Issues:**

Bulk and bottle water issues are not the only issues in water policy requiring attention. The provinces' export policies on water are not consistent with each other or with international trade rules. Several examples exist. First, ground water (which is often in short supply) is not licensed or regulated in any fashion and may, therefore, be accessed and used in B.C. or exported in bulk. The International Beverage Company is currently exporting British Columbia ground water in bulk for export to the U.S. for bottling. Second, water from interior streams is licensed and may not be exported without first being bottled. Third, British Columbia water used in the Province is sold at a much lower price than bulk water when exported.

Generally, the General Agreement on Tariffs and Trade and the Canada-U.S. Free Trade Agreement prohibit a government from requiring that natural resources be processed before they are exported. British Columbia's current export restriction on interior stream water is not based on conservation criteria which, if documented, could provide a basis for GATT and FTA consistent export restrictions. Therefore, our current licensing regulations would appear to be inconsistent with these rules. (The interpretation of these rules was evident in the 1989 panel ruling on salmon and herring.) These policies and regulations present a potential trade law problem which may have major implications for British Columbia water users. A detailed discussion of international trade law implications can be found in appendix 2.

**Summary of Issues:**

The current regulatory framework for licensing water exports is unacceptable for several reasons. The announcement of a bulk water sale to California (which is highly probable) will probably generate considerable negative public reaction because export prices are perceived to be too low and because the provincial government will be viewed as contributing to the demise of the British Columbia bottling industry.

The issues related to interior water are very complex and should be addressed in an integrated way after a thorough review. Therefore, it is advisable to limit any changes now to bulk water from the coast - the most immediate problem area. Thus, the current policies regarding water from interior streams and other non-coastal sources should remain in effect until a complete review is accomplished.

A coherent approach to exporting water in both its forms (bottled and bulk) should be adopted and the rate structure for bulk water should ensure a fair rent for the province. It is also advisable to make several technical changes in the bulk export category in an effort to reduce the chance that the Province will face an international trade law challenge in the near term. Finally, as discussed below, making policy changes on bulk water now may be easier to do than later.

**A. Options for Consideration:**

1. Change the water regulations to double the existing bulk water rental rate from \$18.00 for one AFY to \$36.00. The fixed charge of \$9.00 per AFY will remain unchanged. Firms not exporting bulk water will not see their fees increased. The variable charge for actual water used will be increased from \$9 AFY to \$27 AFY and will apply when deliveries of water occur. (This addresses concern that the price of export water is too low.)

It is important to note that these rent increases are not based on any hard economic evidence. The bulk water industry is a new industry in North America which involves considerable risk as with any new industry. Moreover, delivery costs in this industry are not well known so it is difficult at this point to determine the value of the water at its source. It would be necessary to hire a consultant to make these determinations.

2. Change the application of the Water Act to restrict any single bulk license to either "for profit" or "not for profit" purposes. Currently up to three uses are allowed for regular licences under the Water Act. (This facilitates the audit of "end use" i.e. "for profit" or "not for profit").

As noted in paragraph 3 below, all bulk shippers would be charged the higher rate, but would receive a rebate if an audit confirmed that water was completely sold to a "not for profit" waterworks. (This prevents a foreign bottler from using large tankers to "piggyback" water for bottling with water destined for waterworks, unless he wants to pay the high "for profit" price for all the water.)

3. Establish a two-tier pricing system within the bulk water category, of the Water Act license regulations, with a lower rate for sales by the licensee to "not for profit waterworks" users, . For these "not for profit" sales, the rate would be \$36.00/AFY, assuming the licensed quantity was taken. The rate for sales by the licensee to all other "for profit" users would be 25% higher.
4. Delete "export" from the bulk water export category. Our water license policies, even if modified as recommended in this submission, are not consistent with our international trade obligations. (Deleting "export" from the bulk category makes a trade challenge less likely as the discrimination is less apparent. Theoretically British Columbia water consumers could access water under the bulk category on the same terms as water destined for export.)
5. Add the words "in tanks" to the bulk category so that it is clear that water cannot be shipped in a pipe, diverted, etc., but must be transported in some form of container. This is consistent with Canada's view of our FTA obligations. (This change should alleviate public concern that Cabinet is considering bulk export sales by means other than tanks.)

#### **Impact on Existing Bulk Licence Holders**

It is expected the requested changes will have a minimum impact on existing bulk licence holders as no licensed bulk exports of water are occurring. Currently British Columbia companies are negotiating contracts for bulk water sales.

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It is difficult to determine all the impacts of a substantial rental increase as the Government is not aware of the details of the bids submitted to potential buyers, or the real world price for water.

Security of supply criteria, and "public good" economic arguments limit the ability to actually determine the true value of water. We do know that the current price of \$18 per acre foot is considerably below the delivered price (\$1500 per acre foot) that Santa Barbara county is apparently prepared to pay for bulk water. However, the costs of loading, shipping and off-loading bulk water are not known. If water sales prove to be buoyant, Cabinet has the option of increasing fees at a later date.

### **Promotion of the British Columbia Bottling Industry**

The British Columbia Trade Corporation is concerned that bulk water from the province will be shipped to U.S. sites, bottled there, and sold as "Canadian" or "British Columbia water" bottled in California. This is possible, but the risk minimized by several factors. With the recommended increase in the bulk license fees, noted above, the foreign bottlers would have to pay approximately 12 times as much for British Columbia water compared to the British Columbia bottler who can still avail himself of the low British Columbia industrial rate.

The possible advantages of locating bottling operations in the U.S. are not well understood. It is not clear, for example, if lower water costs will offset the perceived advantages of bottling British Columbia water in the U.S. at sites closer to the market. Several British Columbia bottlers also have bulk water permits which allow them to bottle in British Columbia or in the U.S. At this point, only one company International Beverage Company (Clearly Canadian) bottles water in the U.S., using British Columbia ground water.

Our bottlers' strongest marketing position is likely to be in the premium bottled water market where the "bottled at source" and the premium British Columbia quality logo can be used to command price premiums. This market is distinct from the low cost, no name bottled water market. Our penetration of the premium bottled water market has been promising to date but much greater sales would be possible with a coordinated approach to the U.S. market. To date the marketing of British Columbia bottled water in the U.S. has been limited to the individual efforts of the firms involved and no industry wide marketing effort has been attempted.

Finally, in the event our bottlers face unfair competition from U.S. bottlers selling their product as "bottled in British Columbia" or a product of British Columbia,

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British Columbia firms can use one of several U.S. consumer protection and fraud laws to prevent abuse of the British Columbia name.

**B. Option for Consideration**

Request the British Columbia Trade Development Corporation to develop an export marketing strategy for the British Columbia bottling industry.

**Review of Water Policy by the Ministry of Environment**

As noted above, there are a number of issues related to our water policies which need to be addressed. Last spring the Ministry of Environment started to address a wide range of water issues by preparing a discussion paper "Sustaining the Resource: Water" which would seek public input on possible changes to current policies and regulations. However, this paper has not been released and this process is currently "on hold".

From a Ministry of International Business and Immigration perspective, the remaining international trade law issues would be best addressed in the context of a broader review of water policies as planned by the Ministry of Environment. A broad review will examine a GATT/FTA legal basis to establish trade law consistent controls on the movement of water.

This process should not be delayed. Experience with the salmon and herring case suggests it would be advisable to change these policies at an early date before they are challenged. A trade law challenge could force the province to accept retaliation by other countries or adopt undesirable changes to the policies based on a GATT or FTA dispute settlement panel decision. A trade law challenge might also close off options which might otherwise exist.

**C. Option for Consideration**

Request the Ministry of Environment to chair an interministerial task force to conduct a comprehensive review of provincial water policies and report back to Cabinet within six months with recommendations on how the Water Act and related regulations and policies should be changed.

**Review Western Canada Water Contract**

It might be advisable to explore all options available under the existing contract between the Ministry of Crown Lands

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and Western Canada Water regarding possible differences which may exist between Western Canada Water and all other firms respecting fees and rentals payable under the Water Act. This review will permit all firms to compete on a level playing field. Currently, if rental rates are increased, Western Canada water will be at an advantage compared to other British Columbia firms.

**D. Option for Consideration**

Request the Ministry of Crown Lands and Ministry of Attorney General to immediately review Western Canada Water's contract with the Ministry of Crown Lands with the objective of determining what steps may be necessary to place Western Canada Water on an equal footing with all other water bottling and bulk shipping firms.

**3. OPTIONS**

**PACKAGE A. Maintain Status Quo/Accelerate Water Review Process**

Delay any changes in the Water Act, regulations, or related policies, but direct the Ministry of Environment to accelerate a comprehensive water review. Under this option, the Ministry of Environment would continue to process applications for water licenses. In Appendix B (attached), the Ministry of Attorney General has indicated that imposing a moratorium on the issuance of water licenses would present significant legal problems.

**Pro:**

- May be possible to delay a contentious issue which poses political risks because of the sensitivity of the water issue in the general public ;
- Avoids piecemeal changes;
- Accelerates the review of the water policies by the Ministry of Environment and other concerned ministries.

**Con:**

- Bulk export sales appear imminent and it will be more difficult to change these policies once bulk export shipments have begun;
- If a trade law challenge occurs in the interim, defense of the Provincial position would be weak and the Province may face the prospect of making undesirable changes due to an adverse GATT/FTA ruling.

**PACKAGE B.        Modify Bulk Water Policies/Assist Our  
Bottlers/Accelerate Water Review/Review Western  
Canada Water Contract**  
(Adopt all the options in the  
Background/Discussion section.)

- double bulk water rates
- limit bulk licenses to a single purpose
- establish a two-tier price system for bulk water
- delete "export" from the bulk category
- add "in tanks" to the bulk category
- develop export promotion plan for British Columbia bottlers
- accelerate review of water regulations and policy
- review Western Canada Water contract

**Pro:**

- Increases the returns to the Province for bulk water exports and may increase public support for bulk exports, if properly explained;
- Minimizes the negative impacts on existing bulk license holders who have yet to ship any water;
- strengthens the British Columbia bottling industry;
- accelerates the review of the water policies by the Ministry of Environment and other concerned ministries;
- these changes do not prejudice future government decisions related to water, the environment, native affairs or other issues related to water. (The Province can further increase the water rates for existing and pending licenses if water sales take off.)

**Con:**

- existing bulk water license holders will oppose the changes;
- the price increases are arbitrary and do not reflect any analysis of the real value of the water;
- may discourage an infant industry which has been unable to conclude any international sales;
- opens government to criticism that this action is premature because comprehensive review is still in its early stages;
- in the absence of a sound public information strategy, there is risk that the public will see the changes as yet another sale of resources to the U.S. on terms favourable to it;
- may increase the risk of a trade law challenge as the spread between "domestic" and "international" rates will be increased.

### 3. CONSIDERATIONS/CONSULTATIONS

#### A. Financial Management Considerations

If option package B is adopted, there may be some cost in auditing the "end use" of bulk sales to determine the applicable rate. The use of "end use" as the basis for water charges is already an integral part of the existing water license schedule so this is not viewed as a significant problem.

General Revenues should increase over time because bulk sales will be charged higher rates than is currently the case.

Developing the bulk water market could provide significant revenues to the provincial government which in turn could be used to promote British Columbia bottled water sales and further other important water/environmental objectives.

#### B. Economic, Social and Environmental Development Policy Considerations

If option package B is adopted, there would be no change in the current policy of the Ministry of Environment that applications for bulk water sales must first pass several requirements including an environmental review before they are issued.

#### C. Legislative and Legal Considerations

If option package B is adopted, minor changes to the Water Act and water regulations would be necessary to implement these changes.

#### D. Intergovernmental (Federal/Provincial or International) Considerations

As noted above, the current water licensing policies are inconsistent with the GATT and the FTA. Neither option significantly changes the risk that British Columbia will be found to be violating these two international trade agreements.

The issue of native land claims is important in many water licensing and use decisions. If option either package A or B is adopted, the native land claims issues would still have to be taken into account in any decision to grant a bulk license. The native lands

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claims issue should be addressed in the comprehensive review. The approaches taken by other provinces to water exports are summarized in Appendix 3.

**E. Regional Considerations**

The sources of the best water suitable for bulk shipment tend to be in the less populated coastal regions. Expansion over time of the bulk water sales from these areas could provide some additional (not major) employment opportunities.

**F. Consultations**

Consultations have taken place with all ministries represented on the Task Force on Water Use and Exports:

Ministry of Finance and Corporate Relations  
Ministry of Environment  
Ministry of Native Affairs  
Ministry of Agriculture and Fisheries  
Ministry of Crown Lands  
Ministry of Attorney General  
Ministry of Regional and Economic Development  
British Columbia Trade Development Corporation

**4. PUBLIC INFORMATION STRATEGY**

If option package B is adopted, the modifications suggested should be pursued on "technical" grounds within the context of the current policy and regulatory framework to minimize any inflammation of public sentiments on the water issue. This is particularly important given the confusion sowed by opponents of the FTA with respect to water trade issues in the free trade debate. Any public information strategy should emphasize the initiation of a comprehensive review of water policy and provide a role for public input. A supporting announcement would also be issued on the bottled water export promotion strategy.

**5. RECOMMENDED DECISIONS**

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Minister of International  
Business and Immigration

DRAFT  
APPENDIX 1

**MINISTRY:** MINISTRY OF INTERNATIONAL BUSINESS AND IMMIGRATION

**DATE:** February 14, 1991

**SUBJECT/TITLE:** REPORT AND RECOMMENDATIONS OF THE INTERMINISTRY  
TASK FORCE ON WATER USE AND EXPORTS

**BACKGROUND:**

In addition to the immediate problem addressed in the cabinet submission, the overall problem relating to water and trade law is important.

Policies and regulations regarding the licensing of water use and exports are complex and sensitive issues which transcend all social, economic and political boundaries. Current British Columbia policies and regulations on water exports violate international trade law and any comprehensive solution will take considerable time, funding and staff to resolve.

Canada has about 9% of the world's renewable fresh water supply compared to 8% for the United States which has ten times the population. This figure is based on discharge volumes of renewable freshwater supplies (i.e., does not include polar ice or stocks of water).

Many nations in the world are currently facing water shortages. The Middle East has been experiencing a drought which has resulted in Israel negotiating with both Yugoslavia and Bulgaria to supply bulk water. The current Gulf crisis may exacerbate the conditions caused by the drought if major desalination plants are affected or damaged. The Government of Saudi Arabia has already inquired about water exports from at least two British Columbia Companies. Many counties in California are searching for sources of clean water. In the future it is possible that water sales will become one of British Columbia's largest export industries.

**REGULATORY COVERAGE:**

Provincial policies and regulations regarding the export of water are not consistent with the General Agreement on Tariffs and Trade (GATT) or the Free Trade Agreement (FTA), nor are they consistent with each other.

The Province's water can essentially be categorized as: coastal streams, inland streams and ground water.

British Columbia currently allows for the export of commercial bulk water originating from a coastal stream which discharges into the ocean, provided that the water is surplus to local and provincial requirements. The export operation must also not impact undesirably upon other resource values including environmental and land use concerns.

The province currently prohibits bulk (but not bottled) exports of water from interior streams.

In addition, the province does not exercise control over the use or bulk export of ground water (well water). Ground water has remained unregulated although provision exists in the Water Act to include ground water by an Order in Council.

No British Columbia firm has exported bulk water by marine transportation. There is at least one firm (International Beverage Company which produces Clearly Canadian Water) currently exporting interior well water (no licence required) by truck and rail tanker to California for bottling in the U.S.

Seven bulk water export licences have been issued by the Ministry of Environment. Two of these licences are issued in the name of the Ministry of Crown Lands which in turn has a confidential agreement with W.S.W. Western Canada Water Enterprises Inc. (Western Canada Water). This contract has a clause in it which permits the licences to be transferred to Western Canada Water.

An environmental review process has been established for all bulk water export license applications.

In addition, there have been specific objections from native bands regarding the export of water from the Province. Aboriginal land claim issues affect at least two of the licence sites (Link Lake [Western Canada Water] and Tzela Creek [SnowCap Water]).

It is not evident that the current licence application fees and annual rentals are a reflection of the real value of water. Rather, the rates have been established on an ad hoc basis over a long period of time.

### PROBLEMS RELATED TO TRADE POLICY

#### 1. Export Restriction/Export Tax

##### **Coastal Water:**

Water license application fees and annual rentals paid to the Crown are generally very low, however, they are relatively high for bulk water exports. As these fees and annual rentals are premised on the sales going into the export market, it may well be viewed as an export tax as similar domestic bulk water shipments are charged lower rates.

International trade law does not prevent governments from imposing different fees for a given commodity so long as the fees are not trade distorting. It is important to note that both the GATT and the FTA prohibit the use of export restrictions, except under tightly controlled exceptions, and the FTA prohibits the use of export taxes.

While coastal water is very abundant and may be perceived by some to be of lower value, it often commands higher prices for well understood reasons: purity, easy access, transportability, etc. Therefore, a higher rental rate may be justified as a legitimate capture of the economic rent inherent in this water. (One British Columbia company advertises its water as the cleanest in the world). However, it may be difficult to defend this position unless careful economic arguments are established to justify this price relative to other classifications.

##### **Ground Water:**

No permits or licenses are required to export or to use ground water and no revenue is remitted to the Crown.

The Ministry of Environment has reviewed proposals relevant to the regulation of ground water. Legislative and budgetary review of these proposals is ongoing and draft legislation will be prepared if a favourable outcome of the budgetary review occurs. The white paper "Sustaining the resource: Water" is being held pending the outcome of the budget review process and acceptance of the "Environment 2001" action plan.

If there is too much delay in the implementation of the regulation of ground water under the Water Act there will be a considerable number of firms engaged in the export of bulk water from ground water sources. This will make implementation more difficult. Both the British Columbia Trade Development Corporation and the Ministry of Environment receive a significant number of inquiries each week on how to export bulk water to the U.S. and what licenses are required.

The ability of people to use ground water, unregulated, is placing a greater burden on both other ground water and surface water users. Under the current scheme a person could drill a well in an area of the Province which does not have an adequate supply of water and export as much as they could pump out of the well. It would also be possible to dig a well next to a stream and export the water which flowed into the well.

In addition the Province is losing potential revenue derived from license application fees and annual rentals.

A considerable number of staff will be required by the Ministry of Environment to license and regulate the supply of ground water.

Bulk water, from ground water sources, will increasingly be hauled to the U.S. to be bottled and otherwise used. This could result in negative environmental impacts on other users of the resource, increased competition for British Columbia bottlers as they have to pay licence applications and annual rentals if they bottle water obtained from a coastal or inland stream, and increased difficulty if the Province decides to regulate ground water due to the proportionality of supply restrictions under the FTA.

#### **Interior Stream Water:**

Currently, all water licences for interior stream water are conditioned on an "end use" in British Columbia, i.e., it is a fundamental requirement of British Columbia water policy that this water be beneficially used in the Province. In most cases, the water license is conditioned on the holder of the license using the water in a particular way. This use in turn determines the rate which the licensee pays (see rate schedule). Generally these regulations are premised on the basis that the water is used in British Columbia.

It is possible, on conservation grounds, to restrict exports however the same measures and restrictions must be treated proportionally to domestic users of the good. Due to the basic GATT/FTA ban on export restrictions (i.e. the requirement that water be bottled in British Columbia), it would appear that current restrictions are not consistent with our GATT and FTA obligations.

2. Relevant International Trade Laws

A. FTA Implications - Water as a "good"

Water is not specifically mentioned in the FTA, except as an "agricultural good" (Article 711). The FTA also defines "goods of a Party" as domestic products as understood in the GATT. As water is included in the tariff schedules of both Canada and the U.S. (Harmonized System [HS] tariff heading 22.01) which form part of the GATT, it is a "good" in the FTA. There is no sub heading in the HS system based on method of transport.

Section 7 of the Canadian Free Trade Implementation Act ("Implementation Act" states that water is a good when packaged in a bottle as a beverage or placed in a tank, but natural surface and ground water in liquid, gaseous or solid state are not covered in the FTA. In other words, Canada is taking the position that only water in containers, bottles, tanks, etc are subject to the FTA obligations. The shipment of water by marine freighter falls within the definition of a tank. An argument can be made that water transfer by pipeline is not included in Canada's definition because it is not transferred in a bottle, as a beverage, or in a tank. The U.S. implementing legislation has no similar provision and it is worth noting that the Canadian Implementation Act is not binding on the United States.

Inclusion of section 7 in the Implementation Act was intended to address public concerns about the potential large scale diversion of Canadian freshwater basins to the U.S. Both the federal government and the provincial government have policies against the diversion of natural waterways by inter-basin transfers. To what extent these domestic legislative provisions and policies are affected by the FTA is not clear. But arguably the U.S. retains the right to challenge any measure it views as trade restrictive unless it surrendered the right to do so in the FTA.

The fact that water is not specifically excluded in the FTA means that water is treated like any other natural resource (good) under the Agreement. This opinion is supported by both the Canadian and British Columbia Bar Associations.

The FTA supersedes the GATT for Canada/U.S. relations and the FTA is being interpreted by Canada (with no objection from the U.S. government) as only applying to water when packaged as a beverage or put in a tank or container. In other words, from an international trade law perspective, we can impose blanket prohibitions of bulk water exports to the U.S. by canal, pipeline or similar devices which do not constitute a tank or a container. Canada also retains the right to determine the rate and the method by which resources are extracted and priced, subject to provisions of the FTA.

#### **B. National Treatment**

We apply the same water rates to British Columbia residents or corporations, whether they are domestically or foreign controlled.

However Article 105 of the FTA states that "each party shall, to the extent provided in this agreement, accord national treatment to trade in goods and services." In other words, national treatment applies to exports as well as imports under the FTA. In contrast, the GATT limits national treatment rights and obligations to internal taxes and regulations on imported products only (Article III).

This may mean that Canadian governments - provincial as well as federal - are obligated to accord Americans treatment no less favourable than that accorded to Canadians in respect of all laws regulations and requirements affecting the export of water.

#### **C. Short Supply/Proportional Access**

The FTA has a special provision which gives either country a right to proportional access to goods in circumstances when the goods in the country of export are disrupted and are in short supply due to some unforeseen event. These "proportional access" rights only apply to goods under contract which are currently being exported from one country to the other. In these circumstances, such new licensing and regulation of ground water, shipments to the importing country can be cut back and rationed, but the cuts can be no greater proportionately than the cutbacks in the country of export.

In summary, in these special circumstances volume restrictions must be shared equally among users, foreign and domestic.

If long term contracts for the export of ground water are in force the Province could not reduce the volume of water or charge fees for that water unless equal restrictions were applied domestically.

**D. Export Restrictions/Export Taxes**

As noted above, the current water regime appears to run afoul of GATT and FTA rules on export restrictions and export taxes. Therefore, the solutions to these problems cannot include any type of prohibition on exporting water in tanks or other types of containers.

**DISCUSSION:**

**Community Views:**

Water is not viewed to be a normal commodity by many British Columbians and hence additional problems are created. For many years water has been considered not only as a "free" good, that is unlimited in supply, but also as an "input" to life itself. Accordingly, in most communities a governmental entity was formed to supply water and its price was kept low, merely being sufficient to recover the necessary collection and delivery costs. It is perhaps the last natural resource of which the harvesting or extraction is not controlled, or strongly influenced, by large multi-national corporations.

It is widely believed, in the Province, that British Columbia's water should first be used to meet requirements in the Province. Further analysis is needed to determine to what extent increased foreign access to bulk water in the interior would result in shortages in the near or mid-term assuming current provincial water license fees are maintained.

**Native Views:**

There are concerns relating to Native issues and Aboriginal land claims. Natives, like most British Columbians, place a very high value on water and objections have been received from a number of bands regarding the potential export of water.

The Heiltsuk and Klahoose Indian Bands are actively opposing proposed water exports from Link Lake (Western Canada Water) and Toba Inlet (SnowCap Water) respectively. Their opposition is based on aboriginal rights and title, as well as jurisdictional questions, but has yet to be brought to court. The Bands claim that the Province must receive approval from them prior to issuing licenses. Native concerns regarding bulk water export are that:

- o there have been insufficient environmental impact assessments completed on bulk water export (including the removal of the water, as well as the tanker traffic impacts);
- o there has been no approval process for Indian bands based on reserves adjacent to the proposed site, or within whose traditional territory the site falls;
- o there has been insufficient information dissemination to the public, and consequently little opportunity for public debate.

Bulk water export is an issue which concerns both coastal and interior bands. In the interior, unregulated ground water is presently being removed and shipped to the U.S.

#### **Economic Considerations:**

From an economic point of view our objectives should be first, to ensure that the quality and reputation of our water supply are maintained, and second to maximize the economic benefits from extracting, using and selling the resource.

In terms of value added processing, water presents a limited range of options, and bottling is the most common.

Current policies relating to bottling are based on two assumptions: 1) that additional economic benefits are obtained from bottling rather than bulk shipping; and 2) that protection and assistance should be provided to our bottling industry as these policies will help the industry grow and become a major contributor to the British Columbia economy. Neither of these assumptions have been proven and it is possible that both are incorrect.

Bulk water and bottled water are not perfect substitutes for one another, so it should not be assumed that exporting one necessarily undercuts or affects the market of the other. If we were to prohibit sales of bulk water, it would not mean that sales of bottled water would increase as the use of both products is not always identical.

The value of water is dependent on a large number of variables which are source and site specific. The probable impact of the current export restrictions is to understate demand for water and lower its perceived value.

Policies which artificially depress the value of water will also encourage its waste. They will also stymie research into substitutes, economizing techniques, and technological solutions to things such as cleaning or decontaminating water and hence hamper our international competitiveness in this area.

By broadening the market for British Columbia water, and thereby better approximating the true demand for the resource, we will face a closer to true market price for water. We will then be more likely to both conserve our existing water supplies and develop new supplies.

We should also remember that the Province derives considerable economic benefit from packaging and processing resources and goods from other nations. Examples include the canning of fruit from Japan, tuna and clams from Malaysia, the bottling of wine from France and California and the packaging of a wide array of foodstuffs particularly from Asia. If the Province requires that all water be processed (i.e., bottled) in British Columbia before it is exported, this regulation would be at odds with our treatment of goods from other nations.

#### **Environmental/Conservation Considerations**

Bulk shipments of water have the potential to extract large volumes of water from British Columbia streams. Most projects which require large volumes of water are reviewed for environmental impacts under the Mine Development Review Process, the Energy Project Review Process, or the Major Project Review Process. The Ministry of Environment is now reviewing applications for bulk water for their environmental impacts by requiring the project proponent to submit a Prospectus describing the operation, any proposed impacts and the proposed mitigation strategy. If a review of the prospectus shows all impacts can be mitigated or accepted, a water license can be issued. If significant concerns are raised, which extend beyond the authority of the Comptroller of Water Rights to adjudicate, the proposal could be subject to review by the Major Project Review Process.

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**Agricultural Issues:**

The Ministry of Agriculture has expressed concern that once British Columbia bulk water has entered an out of Province water district system, pricing practices of that district will come into play. These practices may include subsidizing local agriculture through provision of low cost water. For this to occur, it would be necessary for a water district to charge its domestic users higher than average rates thereby cross-subsidizing agriculture.

Agricultural users of ground water are also expected to voice opposition to the regulation of ground water.

**CROSS-CANADA BULK WATER PERSPECTIVE**

**FEBRUARY, 1991**

**Alberta**

No export of water in bulk  
Perhaps a dozen approvals for bottling; some exported

**Saskatchewan**

No provision in their legislation for bulk export and no requests have been received  
Generally opposed to the export of water as the province is water short  
One licence issued for bottling spring water for export

**Manitoba**

No export in bulk  
Two or three licences issued for bottling from springs

**Ontario**

No export; some bottling  
Ontario only licenses uses greater than 50,000 litres per day

**Quebec**

Not aware of any exports of water  
Are trucking water in bulk to Inuit in northern Quebec  
Permits required only for industrial or commercial use

**New Brunswick**

No applications to export water in bulk  
All surface and ground water use is licensed  
Some bulk delivery of water by truck within New Brunswick

**Nova Scotia**

No present bulk export but have one 1984 application on the books - will lapse in April, 1991  
Some water bottling  
Use greater than 5,000 gallons per day is licensed

**Prince Edward Island**

No present water export but would not be prohibited  
Some water bottling  
Permits required only for use greater than 50 gallons per minute

**Newfoundland**

Water export prohibited by Cabinet Order in June, 1990  
Newfoundland government is waiting for a specific incident  
No charge for water permits in Newfoundland