

The taking of Canada's water – the final chapter.

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Oh what a tangled web we weave,
when first we practice to deceive...

What Canada does over the next 6 months or so in the water/trade debate will forever define us as a people and as a nation.

At the end of the day, we will either have retained sovereign control over our water resources and from that experience gained a sense of empowerment and validation which fuels Canadian leadership in community and global sustainability.

Or we will have lost control over Canada's water resources, scrabbling into the darkness with a whimper not a bang because we feel powerless to do anything else.

Water is the dividing point; the most critical policy arena of the century. We owe it to our children's children to quickly get up to speed on the issue and be as proactive as we can in the upcoming debate. We must all become involved or Canada's water is, I fear, completely lost.

THE PLAYERS

I personally don't think then-Trade Minister Pat Carney lied about water. I think she was "had" by Mulroney, who had this one cooked ever since he appointed former GRAND (Great Recycling And Northern Diversion) Canal lobbyist Simon Reisman as Canada's trade negotiator in January 1986.

Reisman's appointment came a scant 8 months following his statements to the Ontario Economic Council that the price of free trade with the US was massive development of Canadian water exports, that he had "personally" suggested the idea to leaders of government and business on both sides of the border and that he had "been greatly heartened by the initial response".

Following his appointment as Canada's trade negotiator, Reisman said "In my judgment, water will be the most critical area of Canada-US relations over the next hundred years. How quickly this issue develops and how much attention is paid depends on how critical the American water shortage is."

Reisman's US counterpart at the trade table was Clayton Yeutter, a man with an extensive background in international agriculture, a Ph.D. in international water law and an long-standing interest in Canada's water. Yeutter was closely associated with Nixon during the US Army Corps of Engineers' covert mapping of Canada's northern water resources and a member of the Committee to Reelect the President in 1972.

The US House Speaker at the time was Jim Wright, a Texas Democrat and one of the most influential politicians in the US. In his 1966 book The Coming Water Famine, Wright noted "There is to the north of us a stupendous supply of water... enough to satisfy our predictable wants for years to come. We need the water. We need to develop a means of getting that water."

THE DOUBLE-TALK

The denials and ridicule that characterized the government's response to the water/trade debate were astounding. Mulroney assured Canadians that when it got down to the negotiations, water wasn't even mentioned at the trade table, but it wasn't until John Crosbie took over as International Trade Minister that the web of deception was spun in earnest.

The first lie remains a source of confusion to this day: “Water’s not part of the agreement” said Crosbie in the spring of 1988, “and just to assure Canadians of that fact, we have introduced an amendment to the free trade legislation to specifically prohibit bulk water exports.”

Slippery words these. The free trade LEGISLATION Crosbie was referring to is NOT the free trade AGREEMENT but merely the domestic enabling legislation each party to the international treaty had agreed to enact “to give full force and effect” to the terms and conditions of the international treaty. Neither country vetted the other’s domestic enabling legislation and nothing in each country’s domestic enabling legislation changed the terms of the international trade treaty. Crosbie’s amendment DID NOTHING to address the problem.

In response, 13 well known Canadians and I came together and in six weeks - from idea to typeset - wrote the book Water and Free Trade (Lorimer, Toronto, 1988), released November 1st, two weeks before the federal election.

We were optimistic. But the rhetoric was heavy and the boys from Bay Street (Tom d’Aquino and friends) had money and weren’t afraid to lie. In the end, Canadians were confused. The idea of outright lying by politicians was uncomfortable. The Tories won the election. And the FTA was enacted.

Several years later, the NAFTA was signed. Same problems. Same results. This time, the US chimed in. Clayton Yeutter’s successor, then-US Trade Representative Mickey Kantor, made his now infamous contribution to the discussion:

“Interbasin transfers of water in which water is not traded as a good are not governed by either trade agreement. {But} when water is traded as a good, all provisions of the agreements governing trade in goods apply, including the national treatment provisions.

Water in Canada’s free flowing rivers and lakes is not subject to the trade agreements. But once water becomes a good of commerce and enters into international trade, all of the terms of the trade agreement apply, including national treatment.

What Kantor meant was EACH TIME water becomes a good of commerce and enters into international trade, all terms of the trade agreement apply TO EACH EXPORT CONTRACT SO ENTERED INTO. For example, trees standing in a forest are not subject to the trade agreements but a wooden chair made in Vancouver and sold to a buyer in Seattle is. If chairs were only manufactured by the provincial government, and if American buyers wanted to purchase chairs, the Canadian government couldn’t discriminate against them in favour of a Canadian buyer; we would have to give the Americans equal access to the chairs; that’s what national treatment is all about. A simple concept that applies equally to water, particularly so because water licenses (including those for irrigation) are issued by government for compensation.

Instead, Kantor’s simple statement spawned the “as-long-as-we-don’t-call-water-a-good-it-won’t-become-one” and “as-long-as-we-don’t-export-the first-drop-we’re-ok-but-once-we-do-all-of-Canada’s-water-is-at-risk” silliness by the feds.

Water is “in” the FTA and NAFTA because it’s not “out” (not explicitly exempted as are raw logs and certain species of fish from the Maritimes) and because “water” — all natural water other than sea water, including ice and snow — appears as Item 22.01.9 of the Harmonized Commodity Coding System of the GATT, to which FTA and NAFTA refer for their definition of “goods”. The rights are there and the tap is open. In perpetuity. Period.

CONNECTING THE DOTS

Eight years ago, a colleague of mine, a lawyer in Alberta, was told by an executive with one of the large pipeline construction companies that they were laying TWO parallel pipelines. “What for” she asked. “One for natural gas and one for water” was the prompt and candid reply. Several years ago, Alberta Premier Ralph Kline made a special trip to California to promote Alberta resources.

In May, Bill C-6 (An Act to Amend the International Boundary Water's Treaty Act, the federal government's only response to the water/trade crisis) received Second Reading. When implemented, C-6 will establish water export permits at the pleasure of the Minister of International Trade, setting the stage for transcontinental water sharing.

A few days before the G-8 Summit, US President George W. Bush finally said he wanted to talk water. In a Washington interview with the Globe and Mail, Bush said "I look forward to discussing this with the Prime Minister... at any time because water is valuable for a lot of our countries", adding he would be open to "any discussions" about a possible continental water pact — along the lines of the co-operation talks now under way between Canada, the United States and Mexico on energy — to pipe Canadian water to the parched American southwest. At the G-8 Summit, Chretien unexpectedly announced (pre-empting a ruling by the National Energy Board) his support for an "over the top" MacKenzie Delta route for Alaskan natural gas. Why are both men are smiling?

The ONLY solution to the water/trade dilemma is for Chretien to stand up to the Americans and demand an exemption for water under the goods, services and investment provisions of the NAFTA. And threaten to walk from the deal if we don't get it. Trust me, the Americans will grant the exemption before they walk from the NAFTA. But only if we make it their only option.

IF CANADIANS CANNOT RESOLVE THIS ISSUE, WITH ALL THE HISTORY BEHIND IT, WE DO NOT LIVE IN A DEMOCRACY. It is the 11th hour, and hardball is the only game. Send me your ideas. Become involved. For Canada's sake. holm@pinc.com. 604.947.2893.