

January 11, 1999

Grand Chief Phil Fontaine
Assembly of First Nations
1002 1 Nicholas Street
Ottawa ON K1N 7B7

Dear Phil,

I am writing to set up a meeting between the Assembly of First Nations and a new common front that has come together to protect Canada's water. We are calling our campaign *WaterWatch* and I am writing on behalf of Judy Darcy, President of the Canadian Union of Public Employees, Paul Muldoon of the Canadian Environmental Law Association, Steve Shrybman of the West Coast Environmental Law Association and my own group, The Council of Canadians, to request an opportunity to brief you and your key policy advisors in person at your earliest convenience. We are hosting a larger information meeting on our project with a number of other national groups on February 9th, here in Ottawa, and will be inviting you to join us for this as well. When we have finalized the details of location, etc., you will receive a separate invitation to this event.

Our group has come together as a result of recent threats to Canada's water resources and our concern over the lack of government regulation to deal with these threats. Last May, Foreign Affairs Minister Lloyd Axworthy promised to take measures to protect Canadian water after a public outcry greeted the news that several provinces were poised to allow the export of bulk water to markets in Asia and the Middle East. He and Environment Minister Christine Stewart were to consult the provinces over the summer and table legislation last fall - a promise obviously not kept.

This is not the first attempt to protect our water. In 1987, the Mulroney government tabled the *Canada Water Preservation Act*, largely in response to the Liberals' charge that the Canada-U.S. Free Trade Agreement posed a threat to Canadian water security; but that session of Parliament ended before the law could be passed and it was never re-introduced. The Liberals have not yet fulfilled their 1993 pledge to legislate against water exports and, without a ban, the possibility of provincial water exports may trigger a run on Canadian water.

This is because Chapter 3 of NAFTA establishes obligations regarding the trade in goods and uses the GATT definition of a "good" which clearly lists, "waters, including natural or



artificial waters and aerated waters" and adds in an explanatory note that "ordinary natural water of all kinds (other than sea water)" is included. When the deal was being negotiated, NAFTA opponents pointed this out and asked the government to specifically exempt the trade in water from the deal. The government argued that under Canadian domestic law, NAFTA does not apply to the trade in water. This is correct.

But domestic law does not bind NAFTA panels. In fact, the U.S. spelled out its clear position at the time. Mickey Kantor, then U.S. Trade Representative, said "when water is traded as a good, all provisions of the agreement governing trade in goods apply."

"Thus," explains respected trade lawyer, Barry Appleton, "in the American view, NAFTA's obligations on water will commence whenever water is traded as a good. This view appears to be an accurate reading of the terms of NAFTA. When water is not traded as a good, it would not be subject to the terms of NAFTA chapter 3. *While water is covered as a good, the NAFTA trade obligations will not apply until water is traded.*"

In other words, the question is moot until some government in Canada grants a permit to export water. What happens then is that the "National Treatment" provision of NAFTA kicks in. This provision provides for "non-discrimination" in the commercial use of our water to investors in all NAFTA partner countries. Private American and Mexican companies would then have the same right of establishment to the commercial use of Canadian waters as Canadians. If Canadian companies export our water, American transnationals could help themselves to as much as they like. We can only start to imagine the free-for-all that will take place over the next thirsty century.

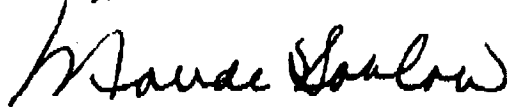
If any province or the federal government decides to limit water exports to Canadian companies, Chapter 11 of NAFTA - the provision that gives companies the right to sue governments for lost future profit and under which Ethyl Corp. of Virginia forced the Canadian government to reverse its ban on the neurotoxin, MMT - could be used by American corporations to sue Canada for cash compensation. Even if the federal government bans the export of Canadian water, by that very act it would name water as a commercial tradeable commodity, triggering NAFTA. American "investors" would be granted NAFTA rights in the very law that excludes them, and under Chapter 11, they could claim for financial compensation. A California company has already filed a NAFTA challenge with the Canadian government because the government of British Columbia has banned the export of bulk water.

Because Canada holds almost 25% of the world's fresh water supplies, there are those too eager to start exporting Canada's water now. Liberal MP Dennis Mills is promoting the GRAND Canal project which would entail massive water diversion of Canadian freshwater

to the U.S. A Canadian company, Global Water Corporation, has signed an agreement with Sitka, Alaska, to export 18 billion gallons per year of glacier water to China where it will be bottled in one of that country's infamous free trade zones to save on labour costs. The company brochure entices investors "to harvest the accelerating opportunity...as traditional sources of water around the world become progressively depleted and degraded" and laments the B.C. government's ban on bulk water exports.

So you see, this is an issue that is becoming very contentious and one that will have a huge impact on the lives and rights of First Nations' peoples. I hope to hear from you in the very near future so that we can set up a time that is mutually convenient for us to sit down and discuss working together on this vital question.

Sincerely,

A handwritten signature in black ink, appearing to read "Maude Barlow". The signature is fluid and cursive, with the first name "Maude" being more prominent than the last name "Barlow".

Maude Barlow
National Chairperson,
Council of Canadians