

Background

AMENDMENTS TO THE INTERNATIONAL BOUNDARY WATERS TREATY ACT

Canadians are looking to all levels of government to take action to assure the long-term security and integrity of Canada's freshwater resources. As we pass into the 21st century, federal, provincial and territorial governments need to co-operate to ensure a coherent and effective policy that preserves freshwater resources. The reintroduction of amendments to the International Boundary Waters Treaty Act (IBWTA) reaffirms Canada's commitment to act within its jurisdiction to prohibit bulk water removal.

What do the amendments do?

The main element of the proposed amendments to the IBWTA is to prohibit bulk removal of boundary waters (i.e. those shared between Canada and the U.S.) out of their water basins. With these amendments, the Great Lakes and other boundary waters will now have protection from bulk removals under federal law. This is significant because the Great Lakes are of sufficient size to attract developers of bulk removal — including for the purposes of export — or diversion schemes. The federal government is taking action within its jurisdiction to ensure that these incomparable freshwater resources, which belong to all Canadians, are protected from exploitation and environmental damage caused by the bulk removal of water.

Under the 1909 Canada-U.S. Boundary Waters Treaty and the IBWTA, the federal government has jurisdiction over boundary waters, such as the Great Lakes, in order to fulfill Canada's obligation under the Treaty not to affect unilaterally the level and flow of waters on the U.S. side of the boundary. The amendments would give the Minister of Foreign Affairs the authority to:

- impose a prohibition on removals of boundary waters out of their water basins. Exceptions will be considered, such as ballast water, short-term humanitarian purposes and water used in the production of food or beverages (e.g. bottled water); and
- introduce a licensing system, separate from the prohibition, formalizing a 90-year-old process under which the federal government and the International Joint Commission (IJC) have examined and approved certain projects, such as dams and obstructions, under the provisions of the Treaty. The licensing system would not cover ordinary municipal, industrial or agricultural uses.

What about protecting all of Canada's water resources?

In February 1999, Canada announced a three-part strategy to prohibit the bulk removal of water out of all major Canadian water basins. Over the past two years there has been significant progress:

- Canada promised to take action within its jurisdiction by introducing the amendments to the IBWTA. This was done in November 1999. Today, the amendments have been reintroduced to the new session of Parliament.
- a proposal by the Minister of the Environment, in co-operation with the provinces and territories, to develop a Canada-wide accord to prohibit bulk water removals. This would apply to all waters. Each level of government would take appropriate action within its jurisdiction. All provinces have put into place or are developing legislation or regulations that accomplish this goal.
- Canada and the U.S. agreed to a joint reference to the IJC on consumptive uses, diversions and removals of Great Lakes waters, including for the purposes of export. The IJC's final report (Protection of the Waters of the Great Lakes, February 2000) concluded that the Great Lakes require protection, especially in the light of the uncertainties, pressures and cumulative impacts from removals, consumption, population and economic growth, and climate change. Recommendations for action to protect the ecological integrity of the Great Lakes Basin are directed by the IJC to all levels of government in Canada and the U.S. The IBWTA amendments are consistent with and supportive of the IJC's conclusions and recommendations.

Prohibition of bulk water removal out of water basins vs. an export ban: which is the better approach?

There is a consensus among Canadians that freshwater resources need protection from bulk removals. What is the best way of achieving this goal?

Prohibiting bulk water removal out of water basins is better than an export ban because it is more comprehensive, environmentally sound, respects constitutional responsibilities and is consistent with Canada's international trade obligations.

- Water is protected in its water basin, before the issue of exporting arises. This is an environmental protection measure of general application, aimed at preserving the integrity of ecosystems.
- Under the Canada-wide accord, each level of government has a responsibility and each level must take action. Canadian governments have full sovereignty over the management of water in its natural state, and in exercising this sovereignty are not constrained by trade agreements.

- Water is regulated in its natural state, before it has become a commercial good or a saleable commodity. This is consistent with Canada's international trade obligations.

An export ban may seem like a quick and simple solution. However, it does not focus on the environmental dimension, has possible constitutional limitations, and may be vulnerable to a trade challenge. An export ban would focus on water once it has become a good and therefore subject to international trade agreements. Because these agreements limit the ability of governments to control the export of goods, a ban on exports is likely to be contrary to Canada's international trade obligations. This contrasts sharply with the federal government's approach.