INTRODUCTION OF IBWTA AMENDMENTS
Qs & As
(Trade)

On February 9, 1999, the House of Commons passed a motion calling on the federal government to ban the export of water. The Council of Canadians has urged similar action. Why has the federal government not followed this advice?

The federal government agrees that measures need to be taken to protect the integrity of Canada's water resources. The federal government's strategy of prohibiting the bulk removal of water from all major drainage basins in Canada is the best means to achieve this goal.

Prohibiting bulk water removal from 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. Sovereign control over water as a natural resource rests with Canadian, not foreign, governments.
- 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 appear as 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. This contrasts sharply with the federal government's approach.

Even the legal opinion of the Council of Canadians agrees that an export ban may be vulnerable to trade challenges when it states:...«we do not believe that it is possible to craft effective water export control measures that would not be in breach of Canada's obligations under both the WTO and NAFTA».

Would a ban on exports be contrary to the NAFTA?

Under the NAFTA and the GATT, Parties cannot restrict or prohibit the export of goods. This provision in the GATT dates from 1947. A blanket prohibition on the export of water as a good, as for example, in the form of bottled water or water in tankers, could be vulnerable to challenge.

Is a prohibition on the bulk removal of water from water basins contrary to NAFTA?

No.

Preventing the removal of water from its natural state before it becomes a good is consistent with our trade obligations. This is reflected in the 1993 Joint Statement by the governments of Canada, Mexico and the United States:

> "The NAFTA creates no rights to the natural water resources of any Party to the Agreement.... nothing in the NAFTA would oblige any NAFTA Party to either exploit its water for commercial use or to begin exporting water in any form. Water in its natural state in lakes, rivers, reservoirs, aquifers, waterbasins, and the like is not a good or product, is not traded, and therefore is not and never has been subject to the terms of any trade agreement."

What is the effect of the Joint Statement in international law and where is the evidence that the U.S. has agreed to it?

The Joint Statement is exactly what it says - it is an agreement between the governments of the NAFTA Parties on their interpretation of the treatment of water resources under international trade agreements, including the NAFTA.

All three governments of the NAFTA Parties made this statement publicly prior to the coming into effect of the NAFTA.

When does water become a good? How does this affect water in its natural state?

Generally speaking, a good is an article that has entered into trade or commerce. Water in its natural state (e.g. a lake or a river) has not entered into commerce and is therefore not a good.

Furthermore, even if water is extracted from its natural state to be made into a good (e.g. bottled water or water used as an ingredient in another bottled beverage), the natural source from which the water was drawn is still in its natural state, and therefore still not a good.

Water in its natural state can be equated with other natural resources, such as trees in the forest, fish in the sea, or minerals in the ground. While all of these things can be transformed into saleable commodities through harvesting or extraction, until that crucial step is taken they remain natural resources and outside the scope of trade agreements.

If some water, such as water used for municipal, industrial or agricultural purposes, is considered a good, does that mean that all water will be treated as a good and be subject to the trade agreements?

Only the water that was removed and commercialised, such as bottled water, for example, would become a good. Water remaining in its natural state would not be a good. Even if water supplied for municipal or other purposes became a good, it would not change the status of the body of water from which it was drawn, i.e. it would remain in its natural state.

How can the federal government be certain the amendments to the Act or the federal government's strategy will not be challenged, and a trade panel decide against Canada?

The federal government's responsibility to Canadians is to design an approach which protects the integrity of Canada's water resources, is environmentally sound and holds the least risk of trade challenge.

The federal government's strategy is based on a careful analysis of all of the legal and environmental factors, and is well-grounded in policy and law. The Canada-U.S. International Joint Commission (IJC), the independent binational body set up to oversee boundary waters, arrived at the same conclusions on trade implications as the federal government in its Interim Report on the Protection of the Waters of the Great Lakes. At an IJC public hearing in Ottawa on October 13, two independent trade law experts agreed with the federal government's views on all major trade policy issues.

The federal government considers that an export ban would run a far greater risk of trade challenges, thereby exposing Canada's water resources.

If one project for export of water is allowed, does this open the floodgates to exports of water generally? Can we «turn off the tap»?

There is nothing in Canada's international trade obligations that would require that future projects for the removal of water for bulk exports be approved, just because other projects have been given approval. Canadian governments, federal and provincial, retain full sovereignty over Canadian waters.

The key point is that water in its natural state is not a good, and therefore is not subject to trade obligations. Any possible precedent from a water export project would be limited to the province involved and would arise from the particular legislation that permitted removal for export, and not from trade agreements.

If one province's legislation permitted removal of water and a project were to be approved, other provinces could still have legislation that prohibited removal of water.

Within a province that did permit removal of water, application for approval to remove water would still have to be considered on its merits in the light of the legislation, including environmental assessment requirements in the particular province, and in accordance with principles of administrative law, such as fairness and reasonableness, and without discrimination in treatment on the basis of nationality between applicants (as investors) in Canada and applicants (as investors) of other countries.

For example, if a bulk water removal *project x* in *lake y* in *province z* was approved, the rest of the water in its natural state *in province z,* and in the rest of Canada, remains in its natural state, and is still not a good, nor subject to international trade agreements. Furthermore, the water in *lake y* is also still in its natural state and not a good, nor subject to international trade agreements. *Province z*'s obligation would be that any application for bulk removal from *lake y* would have to be considered on its merits in the light of existing legislation of the province, as outlined above. *Province z* could change its legislation to prevent bulk removal, so long as it was done without discrimination in treatment on the basis of nationality of the applicant (as an investor).

This point is readily illustrated by looking at the fishing industry for a parallel example of a natural resource that can be transformed into a good. In that context, governments have a discretionary power to decide not only whether to allow fishing as a general policy, but also where and when fishing may take place, and the total quantity of fish that may be caught. From the standpoint of trade agreements, that discretion is not affected by previous decisions that allowed some fishing to take place.

The federal government's strategy is to prohibit the bulk removal of water from water basins. Is this a disguised restriction on export of water?

No.

The prohibition is a non-discriminatory environmental measure of general application aimed at preserving the integrity of the ecosystem within waterbasins. It is not a trade measure, disguised or otherwise. Nor does it target the export of water as a good.

The measure is consistent with Canada's international trade obligations as reflected in the 1993 Joint Statement by the governments of NAFTA countries (Canada, Mexico and the United States), to the effect that water in its natural state is not a tradeable good and is not subject to the terms of any trade agreement.

This approach is better than an export ban because it protects water at its source from bulk removal outside the water basin by any company, Canadian or foreign.

Are **the** ***International Boundary Waters Treaty Act*** and the *Boundary Waters Treaty* **exempted from NAFTA?**

The question is not relevant. The Treaty and the Act are not trade-related in any way. They have no relation to NAFTA, nor does NAFTA govern them in any way.

The 1909 *Boundary Waters Treaty* and the *International Boundary Waters Treaty Act* are instruments which deal with water in its natural state along the Canada-U.S. border. The Preliminary Article of the Treaty defines boundary waters as «..., the waters from main shore to main shore of the lakes and rivers and connecting waterways...», i.e. water is unambiguously defined in its natural state.

Could a prohibition on bulk removal from waterbasins lead to a challenge by US investors in Canada under Chapter 11 of the NAFTA?

The investment provisions of the NAFTA (Chapter 11) do not prevent Canadian governments from taking measures to prohibit the removal of water from its natural state for use outside the watershed, so long as these measures are applied without discriminatory treatment based on the nationality of the investor, in keeping with treatment in accordance with international law, and without expropriating an investment.

A prohibition applicable to Canadian and other companies without discrimination, would make it unlikely that there would be any investment in the business of removal of water from the waterbasin, whether by American or Canadian companies and thus minimize any grounds for a Chapter 11 investment challenge.

If there is no investment, there is no basis for a claim under the investor-State provisions of the NAFTA.

We understand there are some grandfathered water export permits in BC.

The BC Water Protection Act lists 5 licences for specific amounts of water. We are not aware of the terms and conditions of these licences, and therefore cannot comment on them.

What is the status of the Sun Belt case?

We are aware that Sun Belt Water has tried twice to submit a Notice of Arbitration under NAFTA Chapter 11 to the Government.

Our position is that their submissions do not meet the NAFTA requirements for a Notice of Arbitration.

Our position is that no NAFTA Chapter 11 arbitration begins unless Sun Belt Water submits a valid Notice of Arbitration.

We have advised Sun Belt Water of our position in this matter

Does the Sun Belt complaint under NAFTA concern B.C. water-export controls? What happens if Sun Belt wins its Chapter 11 case in B.C..

At this time, it is the position of Canada that there is no NAFTA Chapter 11 arbitration has started_on this matter.

Sun Belt Water's document does <u>not</u> claim damages on the allegation that B.C. water export controls breach the NAFTA.

Sun Belt Water alleges_damages under NAFTA Chapter 11 due to allegations relating to its treatment by the B.C. Government and courts in a domestic lawsuit.

With the US$10.5 billion lawsuit, have we already lost control of Canada's water?

No. There is nothing in Canada's international trade obligations that would require that future projects for the removal of water for bulk exports be approved, just because other projects have been given approval. Canadian governments, federal and provincial, retain full sovereignty over Canadian waters.

Canada's position is that no arbitration has started under NAFTA Chapter 11 concerning Sun Belt.

Sun Belt's allegation of damages under NAFTA Chapter 11 are based on allegations of treatment received in the course of a domestic lawsuit.

The possibility that Sun Belt water might request arbitration concerning a domestic lawsuit does not affect Canada's strategy to regulate bulk water removals from waterbasins.

These are confidential
briefing notes leaked...
not to be quoted

INTRODUCTION OF IBWTA AMENDMENTS
Qs & As

What is the purpose of the Bill?

The main purpose of this bill is to prohibit the bulk removal of boundary waters out of their water basins, principally the Great Lakes. The bill will protect this precious natural resource from exploitation and environmental damage caused by bulk removal of water out of_watersheds.

This is significant because the Great Lakes are of sufficient size to attract developers of bulk removals, including for the purposes of export, or diversion schemes out of water basins; and the federal government is acting within its jurisdiction to prohibit bulk removal of water, consistent with ongoing federal-provincial discussions to reach a Canada-wide prohibition on the bulk removal of water. A number of provinces have already taken or are in the process of taking, similar measures.

Separate from the prohibition, the amendments will formalize a 90 year old process under which the federal government and the International Joint Commission have examined and approved certain projects under the provisions of the *Boundary Waters Treaty.* Those projects have always required federal approval. Now they will need a licence from the Minister of Foreign Affairs. Such projects include dams, obstructions, causeways, etc. which would have the effect of altering the natural level or flow in boundary waters (e.g. a dam across a boundary water such as the St. Lawrence River) or in transboundary rivers where Canada is downstream (i.e. where a dam or obstruction in Canada would result in water backing up into the U.S.)

What steps has the federal government taken to address the issue of bulk water removal?

On February 10, 1999, the federal government announced a strategy to prohibit the bulk removal of water, including for the purposes of export, from Canadian water basins. The federal strategy is based on an environmental approach. The water basin approach treats water as a resource and not as a good, and is the most comprehensive and environmentally sound way to protect our water basins from environmental damage that can be caused by bulk removals. This approach respects federal and provincial jurisdictions, and is consistent with Canada's international trade obligations.

There are three parts to the strategy:

- amendments to the *International Boundary Waters Treaty Act*, which will give the Minister of Foreign Affairs the power to prohibit bulk removals from *boundary* waters principally the Great Lakes. The federal government is demonstrating commitment by taking action within its jurisdiction.

- a joint Canada-U.S. reference to the International Joint Commission (IJC), the independent, binational agency charged with preventing and resolving disputes, or investigating issues, over waters shared with the U.S. The reference asked the IJC to study the effects of water consumption, diversion and removal, including for export, from *boundary* waters, with an initial emphasis on the Great Lakes. In August the IJC released an Interim Report on the *Protection of the Waters of the Great Lakes*. It was generally supportive of the environmental approach, and called for an immediate six month moratorium on bulk water removal and sale. The final report is due in February 2000.

- a proposal to develop, in cooperation with the provinces and territories, a Canada-wide accord to prohibit bulk water removals which would apply to *all* waters. The Minister of the Environment will be seeking endorsement of the accord by all provinces and territories at the end of November.

On February 9, 1999, the House of Commons passed a motion calling on the federal government to ban the export of water. The Council of Canadians has urged similar action. Why has the federal government not followed this advice?

The federal government agrees that measures need to be taken to protect the integrity of Canada's water resources. The federal government's strategy of prohibiting the bulk removal of water from all major drainage basins in Canada is the best means to achieve this goal.

Prohibiting bulk water removal from 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. Sovereign control over water as a natural resource rests with Canadian, not foreign, governments.
- 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 appear as 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. This contrasts sharply with the federal government's approach.

Even the legal opinion of the Council of Canadians agrees that an export ban may be vulnerable to trade challenges when it states:«...we do not believe that it is possible to craft effective water export control measures that would not be in breach of Canada's obligations under both the WTO and NAFTA».

What is the *Boundary Waters Treaty*?

In 1909, Great Britain (on behalf of Canada) and the United States signed the *Treaty between the United States and Great Britain relating to boundary waters, and questions arising between the United States and Canada,* more commonly known as the *Boundary Waters Treaty.*

The Treaty establishes principles and procedures for preventing or settling disputes, particularly regarding the quantity and quality of boundary waters between Canada and the United States.

The Canadian parliament passed an act to implement the Treaty in 1911, the *International Boundary Waters Treaty Act*

.

What is meant by «boundary waters» and «transboundary waters»?

Boundary Waters

The Treaty defines boundary waters as «the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and Canada passes, including all bays, arms, and inlets thereof...»

For example, boundary waters include Lake of the Woods, the Great Lakes, the section of the St. Lawrence River from the outlet of Lake Ontario to Cornwall, Ontario-Massena, New York, the Upper St. John River (Quebec/New Brunswick) and the St. Croix River (New Brunswick).

A river that forms or runs along the boundary (as opposed to crossing it) is a boundary water (e.g. a section of the St. Lawrence).

Transboundary Waters

The Treaty defines transboundary waters as «rivers flowing across the boundary.»

For example, transboundary waters include, depending on the issue under the provisions of the Treaty, the Red River, Milk River (Alberta), Souris River, Richelieu River, Saint John River.

What is the International Joint Commission's Interim Report on the Great Lakes? What is the connection with the amendments to the Act?

In February 1999, Canada and the U.S. gave a reference to the International Joint Commission (IJC). The reference asked the IJC to study the effects of water consumption, diversion and removal, including for export, from *boundary* waters, with an initial emphasis on the Great Lakes. In August the IJC released an Interim Report on the *Protection of the Waters of the Great Lakes*. It was generally supportive of the environmental approach by the federal government. The final report is due in February 2000.

Among other things, the report concluded that:

- «water is a non-renewable resource»;
- «If all the interests in the [Great Lakes] Basin are considered, there is never a «surplus» of water. Every drop of water has several potential uses...»
- «Provisions of the [NAFTA and WTO] agreements, including the [GATT] do not prevent Canada and the U.S. from taking measures to protect their water resources and preserve the integrity of the Great Lakes Basin ecosystem so long as there is no discrimination by decision makers against individuals from other countries in the application of those measures. Canada and the U.S. cannot be compelled by trade laws to endanger the waters of the Great Lakes...»

The IJC also recommended that governments should exercise caution and called for a moratorium on any bulk removals pending its final report.

The federal government's strategy is consistent with the conclusions and recommendations of the IJC.

If the current Act does not implement the Treaty effectively, how were you able to meet Canada's international obligations over the last 90 years?

The federal government has historically approved or rejected proposed projects on an informal basis (the IJC also gives its approval through its own process), under the authority of the Treaty. In this manner, the Government of Canada has always met its international obligations. However, in light of increasing pressures on freshwater resources, the federal government felt that stronger protections are required and that the licencing arrangements need to be formalized.

The federal government also believes that a definite prohibition on bulk water removal from boundary waters is necessary to protect the ecological integrity of these shared basins.

What do the principal amendments consist of?

The amendments:

- will impose a prohibition on removals of boundary waters out of their water basin because it is deemed that the cumulative effect of such removal will alter the natural level or flow of waters on the other side of the border and lead to potential environmental degradation and exploitation of the water supply. Exceptions will be considered. This could include ballast water, short-term humanitarian purposes and water used in the production of food and beverages (e.g. bottled water).

- will introduce a licencing system which will confirm the authority of the Minister of Foreign Affairs to approve or reject projects that could have an impact on the natural level or flow of boundary waters, waters flowing from boundary waters, or transboundary waters on the other side of the border. Ordinary uses for domestic or sanitary purposes would be excluded from the licencing regime in accordance with Article III of the Treaty. Such activities have traditionally been covered by provincial regulations and this would continue. Other traditional uses, such as agricultural and industrial withdrawals that remain within the basin, would not be covered by the licensing system.

Why are the amendments aimed at protecting waters on the U.S. side?

The amendments are aimed at fulfilling Canada's obligation under the Treaty, i.e. not to affect the level and flow of waters on the U.S. side of the boundary. The same obligations apply to the U.S. with respect to Canada.

The U.S. has numerous laws aimed at protecting their waters and must ensure that projects affecting or likely to affect the natural level or flow of waters on the Canadian side of the border will be correctly addressed.

What is the protection offered to the Canadian side of boundary waters by the U.S.?

U.S. law and practice differs along the border, from state to state.

In the Great Lakes states, the governors have a Congressionally-affirmed power to veto new «diversions» and could interpret this power to cover bulk water transfers to ships. The *Water Resources Development Act* (1986) provides that no bulk export or diversions from the Great Lakes can take place without the unanimous approval of all eight Governors of the Great Lakes states. While not a prohibition, it is a significant hurdle.

Under the Great Lakes Charter (1985), the Governors of the eight Great Lakes states notify and consult with each other, and the Premiers of Ontario and Quebec, on proposals for diversions and consumptive uses of waters within the Great Lakes Basin. The Charter is non-binding political declaration, but carries considerable weight with state and provincial governments.

On October 14-15th, the Council of Great Lakes Governors (along with Ontario and Quebec) announced an initiative to more closely manage, plan and take decisions regarding the protection of the Great Lakes.

Do the amendments cover groundwater?

The *Boundary Waters Treaty* does not cover groundwater. Boundary waters, as defined in the Treaty, do not refer specifically to underground watercourses or groundwater. Groundwater was not an issue at the turn of the century and therefore it is difficult to argue that the contracting parties intended to cover this concept. Because our jurisdiction is based on the Treaty, we are limited by the Treaty's scope of application.

Why is «water removal» being prohibited? Is this a disguised trade measure?

This initiative is not a trade measure, disguised or otherwise.

The prohibition is an environmental measure intended to preserve the integrity of water basin ecosystems. The *Boundary Waters Treaty* and the *International Boundary Waters Treaty Act* deal with water in its natural state, i.e. in the lakes and rivers along the boundary.

The prohibition recognizes that bulk removal of water out of drainage basins should be managed differently from within basin uses. Bulk removal involves the permanent loss of water to the basin. Given the dependency of ecosystems and communities within the basin on this supply of water, bulk removal is considered to represent an unsustainable use of water.

Such a prohibition is consistent with our international trade obligations as set out in the 1993 Joint Declaration by Canada, Mexico and the United States. At the time, the three countries stated that water in its natural state was not a commercial product and not subject to any trade agreement.

Why is there no prohibition on the removal of boundary waters for transfer within the water basin?

When water is withdrawn within the water basin, most of it usually returns to the boundary waters by a natural route - there is essentially no net loss to the system. The effect of a removal of water within the same water basin on the natural level or flow of waters on the other side of the boundary is therefore assessed on a case-by-case basis. The amendments state that such diversions of boundary waters will be covered by a licensing system set out in the amendments and not by the prohibition.

Does the prohibition cover the removal of non-boundary waters?

This prohibition applies to boundary waters only to the degree specified in the Treaty. _Provincial jurisdiction covers other waters.

The federal strategy to prohibit the bulk removal of water out of_major drainage basins, including for domestic and export purposes, recognizes the primary responsibility of provinces and territories for water management and proposes the development of a Canada-wide accord on bulk water removal. Under the accord_each jurisdiction would commit to adopting this approach, if they have not already done so.

The Minister of the Environment will be seeking endorsement of the Canada-wide accord by all provinces and territories at the end of November.

Why was it not decided to use the *Export and Import Permits Act*?

The *Export and Import Permits Act* applies exclusively to water products, for example bottled water, and does not protect water in its natural state. Putting water on the Export Control List would ensure that water removal was controlled but would not necessarily prevent it.

An export ban may appear as 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. This contrasts sharply with the federal government's approach.

Even the legal opinion of the Council of Canadians agrees that an export ban may be vulnerable to trade challenges when it states:«...«we do not believe that it is possible to craft effective water export control measures that would not be in breach of Canada's obligations under both the WTO and NAFTA».

What is the constitutional authority being used by the federal government to take this action?

Section 132 of *The Constitution Act, 1867* gives the federal Parliament the jurisdiction to implement treaties signed by Great Britain on behalf of Canada (e.g. the *Boundary Waters Treaty*), otherwise known as «Empire Treaties». The federal Parliament also has the jurisdiction to amend the implementing legislation for such treaties.

Do the amendments to the Act expand federal jurisdiction or activities into provincial areas of competence?

No. Federal jurisdiction is being applied only to the degree stipulated in the Treaty. Only the federal government has authority to fulfill the Treaty's obligations.

The prohibition provision is being applied under Article III of the Treaty, i.e. bulk removal of boundary waters out of their water basinwill alter the natural level or flow of waters on the U.S. side of the boundary.

With regard to the licencing provision, the informal system of federal and IJC approvals has operated for 90 years under Articles III and IV of the Treaty. Under the amended Act, the fundamental test of whether or not a future project triggers federal government and IJC involvement will remain precisely what it has been_since 1909: does it fall within the scope of Articles III or IV of the Treaty. Only the federal government has the jurisdiction to discharge this Treaty obligation.

The federal government has consulted extensively with the provinces on these amendments. We will continue to consult with provinces on how best to implement the licensing provisions. The details will be included in the regulations._Consultations with the provinces on the regulations will begin concurrent with the tabling of the legislation.

Why did the federal government not prohibit removal of all waters located in Canadian territory?

The federal government does not have jurisdiction over all waters in Canadian territory. The *Boundary Waters Treaty* gives the federal government clear jurisdiction over boundary waters to the extent stipulated in the Treaty. Amending the *International Boundary Waters Treaty Act* was therefore the best way to achieve our objective, while respecting provincial jurisdiction.

With regard to territories, while devolution is underway to given them province-like responsibilities, the federal government presently has responsibility for water in the three northern territories. Actions to prohibit removals in the North will be discussed in close consultation with the territories.

Will there be problems of duplication or overlap with provincial laws or regulations?

Over the past 90 years, the federal government and the IJC have dealt with approximately 30 applications related to projects in transboundary waters or waters flowing from boundary waters, and a similar number related to boundary waters, without any evidence of or problems with duplication or overlap. As there will be no substantive change to the existing procedure for applications and approval, we do not anticipate, under the amended Act, that there will be problems between federal and provincial areas of responsibility.

Nevertheless, should some problem arise, provision is made in the amendments that the Minister of Foreign Affairs may reach an agreement or an arrangement with a province respecting either the prohibition provision or the licencing regime.

Have the provinces and territories been consulted?

Yes, extensively.

During the summer of 1998, federal officials travelled to each province and territory to discuss the various options for a federal approach to bulk water removals.

Since the announcement of the federal strategy on February 10, there have been extensive discussions with the provinces and territories on all aspects of the federal strategy, including the amendments to the Act. Some adjustments have been made in response to provincial input.

As regulations to the Act are being developed, the federal government will consult closely with the provinces.

Will the Canadian Environmental Assessment Act review apply to projects requiring licences under the amended International Boundary Waters Treaty Act?

The issue is being reviewed as part of the development of regulations for the amended Act. Regulations are expected to be published in the Canada Gazette in due course after the amended Act comes into force.

The Atlantic and Pacific drainage basins extend the length of North and South America. Does this mean that bulk removal or export could occur within these basins under the proposed Canada-wide accord?

No.

Under the accord, each jurisdiction would prohibit bulk removal of water from its portions of a drainage basin. The application of each jurisdiction's law applies only within its boundaries. For example, B.C. could prohibit the bulk removal of water from the Pacific Basin within its borders. This would effectively prevent the removal of water out of the province, whether to the U.S. or Alberta. For domestic purposes, the province would also not allow transfers of water in bulk from the Pacific Basin tot he Arctic Basin.

It is important to note that the use the major drainage basins, (e.g. Atlantic and Pacific) only represents a starting point. Each jurisdiction will look at the scale of watershed or drainage basin appropriate to its environmental management needs.

Is the Columbia River covered by these amendments?

No.

The Columbia River is a transboundary river. The prohibition provision does not apply to transboundary rivers.

The regulation of dams is covered by the *Columbia River Treaty*, not the *Boundary Waters Treaty*.

The Canada-wide Accord is intended to cover all water basins including the Columbia River basin.