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REGULATORY IMPACT ANALYSIS STATEMENT

Description

Amendments to the International Boundary Waters Treaty Act provide for the first time the making of regulations.

The regulations are necessary for the implementation of the amended Act, which: (a) establishes a licencing system for projects affecting waters running along the Canada-United States boundary and rivers flowing into Canada, and (b) prohibits out-of-basin removals from those boundary waters.

The regulations outline the information that is to be included in a licence application and oblige the Minister of Foreign Affairs to include applicable conditions in a licence. The regulations also elaborate on the prohibition contained in the Act by:

- limiting the prohibition to removals of waters in bulk;
- defining bulk water removals as any removals that exceed 50,000 litres per day or removals by diversion;
- defining the water basins to which the removal prohibition applies.

The regulations ensure that minor removals that may technically fit within the prohibition are excluded from its application for health, safety and humanitarian reasons. These include ballast water, water used for people or goods aboard a conveyance or for the operation of the conveyance, and water used for firefighting or humanitarian purposes. The regulation makes clear that the prohibition applies to both treated and untreated water but does not apply to water contained in manufactured products leaving the basin, including beverages in bottles or packages.

Alternatives

The regulations limit the boundary water removal prohibition to bulk water removals. To set the definition of bulk removal below 50,000 l/day, about the capacity of a tanker truck and trailer, would involve the federal government in the control of small water projects that are better left to the provinces. Provinces have legislation or regulations or are in the process of passing legislation or regulations that prohibit lower level water removals. To set the definition higher might permit bulk removal from boundary waters, contrary to a key purpose of the amended Act.

The descriptions of the water basins (Great Lakes – St Lawrence, Hudson Bay and Saint John-St. Croix) are necessary to implement the prohibition against water removals, since an offence is committed in respect of removals beyond the limits of the water basins where the boundary water are located. Large basin areas are used so as not to interfere unnecessarily with provincial control and regulation of water within a province. There are no water basins described west of the Lake of the Woods because there are no significant boundary waters in that area of Canada, at least not significant enough for a bulk water removal project.

The obvious exceptions to water removals are covered. Should others arise, it is expected that the regulations would be amended. In clarifying the meaning of bulk water removals, water contained in products manufactured in the basin is excluded as these products have traditionally not been

addressed by the Boundary Waters Treaty.

Benefits and Costs

Benefits for proponents of projects include the information requirements to apply for a licence and the advance knowledge that bulk removals of boundary waters out of designated water basins will not receive licences.

An aim of the regulations is to maintain the traditional approach to the review of projects in boundary and transboundary waters, in the sense that only major projects such as dams, bridges, diversions and tanker traffic are reviewed by the government and the International Joint Commission. In this context, there should not be any new major costs associated with the implementation of the Boundary Waters Treaty.

Consultations

Provinces and territories, especially those containing boundary and transboundary waters have been consulted on two occasions. Suggested improvements were incorporated and explanations and reassurances provided about the scope and implications of the regulations. Provinces with large boundary waters were pleased that control of minor water removals was left to the provinces while the federal government provided a backstop for bulk removals, i.e. removals of more than 50,000 litres per day and diversions.

Questions were raised as to whether removals or projects obtaining provincial environmental approvals could be exempt from the application of the Act. It was explained that the Boundary Waters Treaty contained obligations between Canada and the United States and that provincial approval could not override or bypass these federal obligations. However, it was pointed out that federal/provincial arrangements might be developed under the Act (s.20) to reduce red tape, such as duplicate environmental assessments.

The International Joint Commission (IJC) and the US State Department have been consulted on the development of the amended legislation and regulations. While the Canadian Section of the IJC indicated a preference for the federal government to submit a project to the IJC without prejudice to its possible approval, the IJC acknowledged that the Boundary Waters Treaty provisions require independent approvals by both the IJC and the Canadian government before a project subject to the Treaty can proceed in our territory. It should be noted that the amended legislation and the regulations are consistent with the Final Report to the Governments of Canada and the United States on the Protection of the Waters of the Great Lakes by the IJC (February 2000). That Report was developed after substantial public and expert consultation throughout the Great Lakes region.

A draft of the regulations was submitted to Parliament as background information before review of Bill C-6 by the relevant House and Senate Committees.

Compliance and Enforcement

Persons will not be considered for licences, licence renewal or amendment until they fulfill the information requirements contained in the regulations. If persons proceed with projects covered by the Act in a way that is not in accordance with a required licence, or if the project is prohibited by the Act, they are subject to the penalties contained in s.22. These include fines of up to \$1,000,000 and/or up to three years in prison for each day a contravention continues. This level of punishment is consistent with serious environmental or fisheries offences.

Additional fines can be imposed to confiscate any monetary benefits received over and above the level of fines imposed (s.23). Injunctions can be ordered by courts to prevent actions directed towards the commission of an offence (s.26) and Ministerial orders can require removal of works or the stopping of prohibited uses of boundary waters (s.19).

Inspection of projects that may fall under the jurisdiction of this Act are expected to be carried out by existing mechanisms in place, to identify violations of environmental, fisheries and navigation enactments.

Contact

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Her Excellency the Governor General in Council, on the recommendation of the Minister of Foreign Affairs, pursuant to section 21 of the International Boundary Waters Treaty Act, hereby makes the annexed International Boundary Waters Regulations.

PROPOSED REGULATORY TEXT

Notice is hereby given that the Governor in Council, pursuant to section 21a of the International Boundary Waters Treaty Act, proposes to make the annexed International Boundary Waters Regulations.

Interested persons may make representations with respect to the proposed Regulations within 75 days after the date of publication of this notice. All such representations must cite the Canada Gazette, Part I, and the date of publication of this notice, and be addressed to Peter Fawcett, Deputy Director, United States Transboundary Division, Department of Foreign Affairs and International Trade, 125 Sussex Drive, Ottawa, Ontario K1A 0G2

Ottawa, June 20, 2002

EILEEN BOYD
Assistant Clerk of the Privy Council

INTERNATIONAL BOUNDARY WATERS REGULATIONS

interpretation

1. The definitions in this section apply in these Regulations. "Act" means the International Boundary Waters Treaty Act. (Loi) "non-commercial project" means a project involving the removal of boundary waters in bulk in which no one is required to pay for the waters. (projet non commercial)

2. (1) In these Regulations, "removal of boundary waters in bulk" means the removal of water from boundary waters and taking the water, whether it has been treated or not, outside the water basin in which the boundary waters are located

(a) by any means of diversion, including by pipeline, canal, tunnel, aqueduct or channel; or

(b) by any other means by which more than 50,000 L of boundary waters are taken outside the water basin per day.

(2) The removal of boundary waters in bulk does not include taking a manufactured product that contains water, including water and other beverages in bottles or packages, outside a water basin.

licences

3. An application for a licence or for the renewal or amendment of a licence must be submitted to the Minister and contain the following information:

- (a) the name and address of the applicant;
- (b) a description of the intended project;
- (c) a description of the place where the project is to be located and the waters it will likely affect;
- (d) if the project involves the use, obstruction or diversion of boundary waters and the project requires a licence under subsection 11(1) of the Act, a description of the increase or decrease in the natural flow or level of the boundary waters on the other side of the international boundary that would be caused by the project;
- (e) if the project consists of the construction or maintenance of any remedial or protective work, dam or other obstruction in waters flowing from boundary waters, or in downstream waters of rivers flowing across the international boundary and the project requires a licence under subsection 12(1) of the Act, a description of the increase in the natural level of waters on the other side of the international boundary that would be caused by the project;
- (f) a concise economic analysis of the direct and indirect benefits and costs of the project;
- (g) a concise environmental analysis of the project that includes a description of the measures to be taken to protect the integrity of the ecosystem in which the project is located;
- (h) a copy of any permit or other authorization issued in respect of the project; and
- (i) any other details concerning the project that indicate how the project would be compatible with the management of the resources, environment and economy of Canada.

4. The licence must include the conditions to which the licence is subject.

water removal

5. Subsection 13(1) of the Act applies only in respect of the Canadian portion of the following water basins:

- (a) Great Lakes & St. Lawrence Basin, which is the area of land from which water drains into the Great Lakes or the St. Lawrence River;
- (b) Hudson Bay Basin, which is the area of land from which water drains into Hudson Bay; and
- (c) Saint John & St. Croix Basin, which is the area of land from which water drains into the St. John River or the St. Croix River.

6. (1) Subsection 13(1) of the Act does not apply to the removal of boundary waters other than the removal of boundary waters in bulk.