

Response to the British Columbia Government's Stewardship of the Water Initiative in Respect of Water Pricing

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I. EXECUTIVE SUMMARY

The West Coast Environmental Law Association promotes the prevention of harm to the environment. We welcome the Government's recent initiative in respect of reform of the *Water Act* and have studied the paper on water pricing. The water pricing strategy requires amendments in order to ensure comprehensiveness.

It is essential that any water pricing strategy not be guided solely by market economy objectives, but by the broader principle of the promotion of prosperity. Market forces are incapable of placing appropriate weight on factors such as damage to the environment and fiduciary duties in respect of native land claims, and will therefore, undermine these important though non-economic considerations.

A water pricing strategy must also consider the disproportionate price power wielded by lobby groups and cooperatives. The nature of water -- a resource without substitutes, which cannot readily respond to price by repositioning itself to the physical place in which it is most valued -- must be taken into account. For these reasons, a pure market system is not viable as a responsible regulator of water prices.

Climate change as a result of the build-up of "greenhouse gases" is another factor which will effect both the demand and the supply of water, and therefore, its price. Also, the trend towards lowering of trade barriers will impact water prices by allowing for the exports of water, and for potential speculation triggered and scarcity-induced price fluctuations.

The process of managing this most essential of all resources must reflect its preciousness. The wisdom of treating water like any other commodity in a market economy is suspect. A more farsighted approach needs to be adopted, and an approach which promotes regional self-reliance -- living within ecological means -- is well worth considering.

We urge the government to consider the recommendations outlined in this submission, and to incorporate them into a final version of its water pricing strategy .

II. INTRODUCTION

Since 1974, the West Coast Environmental Law Association (WCELA) has provided legal services to members of the public concerned about harm to the environment. WCELA and the West Coast Environmental Law Research Foundation provide legal representation, promote law reform, provide legal education, conduct legal research and maintain a library of environmental legal materials.

III. THE GOVERNMENT'S WATER-PRICING PROPOSAL

For many years, WCELA has strongly supported a comprehensive provincial review of the *Water Act*. We have reviewed the Government's series of papers entitled "Stewardship of the Water," and specifically, the one entitled "Water Pricing." We welcome the government's recognition that Canada's water resources are under-valued, and its realization that an increased reliance on water-pricing is essential in order to ration this resource more effectively and to maintain existing delivery systems. The implementation of a well-considered pricing scheme constitutes sound economic policy.

However, further amendments are required to ensure that British Columbia has a workable water-pricing strategy. Our discussion below focuses on the key areas requiring change.

IV. ECONOMIC POLICY VS. PROSPERITY

As a general principle, the purpose of economic policy is to allow a government to deliver the maximum level of prosperity attainable by society. Prosperity includes not just economic growth, but also an enriched social fabric, fortified systems of education and health care, sustainable levels of resource use, and social justice.

Market forces are efficient allocators of economic growth only, and do not address the many other components of prosperity. Consequently, a government must use regulatory instruments to intervene in the marketplace when the market's response will lead to the undermining of prosperity.

A water-pricing policy which treats the resource in a manner appropriate to the generating of prosperity is essential. One which promotes water markets, irrespective of quantity or source is antithetical to prosperity objectives. The maximization of prosperity should be the guiding principle of water policy, and amendments should be made to a policy inconsistent with this principle. The following examples constitute areas requiring changes in this regard.

V. AREAS NOT ADDRESSED BY ECONOMIC THEORY

Classical economic theory holds economic growth paramount over other components of prosperity and is therefore, incapable of giving adequate weight to non-economic but nonetheless essential factors. These include:

- marginalized stakeholders;
- the influence of domestic and international lobby groups and cooperatives; and
- allocative problems in water utilization.

Each of these is discussed in greater detail below.

i. Marginalized Stakeholders: the environment, native lands

There are stakeholders whose interests are not protected in a system governed by market forces. For example, river systems and the animals and fish dependent on them have an enormous stake in the way water is managed, but no voice:

...we humans do not know what guides a salmon to the particular stream of its origin. By interfering with the natural flows into a waterway, what might we be doing to the water salinity, temperature, or other markers on which salmon may be relying? What may appear to be a trivial difference to humans, may be a matter of life or death to the fish within that system.¹

Another example of marginalization is the status of native land claims in a water market. For example, in August, 1990, the then Social Credit government of British Columbia authorized eight bulk export licenses and four bottled water licences from creeks in the Toba Inlet area of Cortez Island. The licences were to supply water to the city of Santa Barbara, California. They had been granted in the absence of meaningful native involvement, and over waters flowing through land that was the subject of an aboriginal claim.

At the very time, then, that the Government has been proposing to negotiate a fair and just settlement of the aboriginal land question, we have witnessed the same Government being involved in trying to license to private commercial interests the last uncommitted "resource" within our territories. Such a dishonourable manner of proceeding on this issue was taken by First Nations as further evidence of the previous government's lack of sincerity towards settling the aboriginal land question in a fair and honourable manner.²

Although transfer of water to California was averted in the Toba Inlet case, due to public pressure exerted by the affected Indian band on the city of Santa Barbara, the incident is a clear illustration of how a water market is unresponsive, in the absence of government intervention, to important though non-economic issues.

Recommendation

In its paper on water-pricing, the Government makes mention of the "intrinsic value" of water, to "healthy fish and wildlife populations, aquatic environments, and aesthetic and

recreational enjoyment."³ The current water pricing policy needs to more accurately reflect these values, by expanding to encompass all marginalized stakeholders.

ii. Lobby Groups, Cooperatives: domestic and international

Any market economy will be skewed by a group of consumers coming together and exerting economic pressure in order to obtain more favourable terms. A water market is vulnerable to these same pressures. For example, in B.C's Okanagan Valley, which has some of the highest-potential orchard land in the world, farmers face stiff competition for valley water supplies from urban growth advocates.⁴ Municipal politicians together with companies whose interests are furthered by rapid urban growth are able, in concert, to exert great pressure on water use, and potentially, on price.

Pressure on the price of Canadian water can also be exerted indirectly by lobby groups in other countries. For example, the farm lobby in the U.S. has caused the establishment of federal and state irrigation projects which provide water to farmers at a fraction of the real cost. The results are gross inefficiencies, such as California using 35% of its water to grow rice and cotton -- crops which comprise one third, of 1% of the State's economic product.⁵ If California continues to misallocate water resources and suffers a shortage as a result, there is no reason to believe that the U.S. practice of subsidizing water will cease, given the proven ability of the farm lobby to exert political pressure. Canada is likely to be considered an alternate source of supply, (as the Toba Inlet case suggests) and this will have consequences in the area of domestic water pricing.

Recommendation

The potential influence on water prices of lobby groups and cooperative has not been addressed in the Government's paper. We recommend that this omission be corrected.

iii. Allocative Problems: small and large scale diversions

A market economy relies on the premise that supply will eventually reposition itself in response to price. This premise breaks down when applied to water, which cannot reallocate itself in response to market signals, and has no substitutes. An inevitable response to this reality is an effort to artificially redistribute water. This can be done by small scale methods (bottling, containerized shipments, pipelines between neighbouring communities) or large scale ones (pipelines stretching many miles, dams, inter-basin diversion projects).

Transfer of small scale quantities of water is supportable, provided that a rigorous evaluation policy is implemented to assess the impact on existing industries, (e.g., fishing) on the environment generally, (e.g., effect of tanker traffic, flushed bilges, oilspills, construction of loading facilities, changes in water temperature and salinity, behaviour of fish and animal populations) and on unextinguished native land claims. Such assessments will have to be conducted on an on-going basis, which would indicate that water transfer permits be short term. Also, the cumulative effect of the issuance of a multiplicity of permits will have to be factored in.

There should be no policy consideration given to any form of large scale water diversion because these projects are enormously destructive to the environment:

A diverse set of changes occurs when one river system is dammed and its flow diverted to another ... Moderate earthquakes and climate change are to be expected in the vicinity of large empoundments. Erosion and turbidity decrease primary biological productivity in some existing lakes and rivers. Forests, agricultural lands, and wildlife habitat may be lost in perpetuity and existing fisheries habitats destroyed. Mercury is released into the water column and bioaccumulates in fish to levels which make them unsuitable for human consumption.⁶

Also, large scale diversions are ill-advised from an economic standpoint because, even in the face of future water shortages in the supplier's region, the supplier will be under pressure from dependant downstream markets to continue to supply.

Recommendation

The allocation issue has considerable implications for a water pricing scheme, but has not been addressed in the Government's paper. We recommend a final version of the Government's paper on water pricing policy contain guidelines in respect of small scale diversions, and a prohibition on large scale ones.

III. OTHER OMISSIONS

The Government water pricing paper has omitted to address several issues whose impact on a pricing scheme would be considerable. These include:

- climate change;
- the effects of trade liberalization; and
- alternative ecological vision.

i. Climate Change

Meteorological experts agree that the buildup of carbon dioxide and other "greenhouse gases" has, and will continue to have, the effect of increasing global median temperatures. The four warmest years in the last 100 have occurred since 1980.⁷ The warming will, predictably, increase both the evaporation of water and the demand for it, stretching water resources in two directions. Thus, future competition over supplies will intensify even in the absence of a growth-driven increase in demand.

Such considerations will undoubtedly have an impact on domestic water prices. Also, scarcity in the U.S. will lead to international price pressure being exerted. Indeed, even the perception of future water shortages will have an effect on water prices, as speculators will enter the market.

Recommendation

The effect on water resources of climactic change has not been considered in the Government's paper and we recommend that this omission be remedied.

ii. The Effects of Trade Liberalization: exports, reduced conservation

Trade liberalization schemes such as NAFTA, have an impact on water supply, and therefore on price, because they allow for the export of water.

Whether NAFTA contemplates large as well as small scale exports has been unclear, but increasingly, the evidence indicates that large scale water exports are covered by the Agreement.⁸ Further, Canada has, under the Agreement, relinquished its powers to use export taxes, quantitative restrictions, or minimum export prices in regulating water exports.⁹ These conditions make the management and pricing of water a Herculean task.

Given that under NAFTA, the U.S. will be able to import water from Canada on a massive scale, the U.S. will be less inclined to promote water conservation at home than if it had to rely on its own resources. In addition, any effort by the government of either country to initiate water conservation could be attacked under the Agreement. For example, a government subsidy to industries using water efficiently could be challenged by the industries' foreign competition as an unfair trade advantage. Clearly, a free trade regime is antithetical to resource conservation.

Recommendation

NAFTA will have a very significant effect on the economics of water. We submit that this issue requires urgent consideration. The final version of B.C.'s water pricing policy should contain a prohibition on large-scale water exports. Also, the provincial government should urge the Federal government to negotiate a side agreement to NAFTA whereby water is not given the same treatment as any other good. Both of these steps are essential if B.C. is to have a significant measure of control over the price of its own water.

VII. ALTERNATIVE ECOLOGICAL VISION

By promoting the transfer of goods from one region to another, trade enables some regions to live beyond their ecological means. For example, if a city like Vancouver had to supply all of its own food, water and natural resource needs, it would soon be unable to sustain itself in its present form.

Seen from an ecological viewpoint, trade is the transfer of resources (wood, fish, water) from living ecosystems (rivers, fields and forests). A certain amount of transfer is sustainable, but too much can undermine the functioning of the ecosystem, thereby destroying the ecological foundation of all economic systems.

Consequently, an alternative to ever-increasing trade must be sought:

The main principle in developing this alternative to trade liberalization is that every region should try to live within its own ecological constraints. If each region were to succeed in this, their net result would be global sustainability. With greater regional self-sufficiency, there would be less need for trade. This would result in a reduction in the amount of resource depletion at one end and pollution at the other, and a contraction of the distances between producer and consumer.¹⁰

Regional self-reliance can be furthered by recognizing and living within naturally created boundaries such as watersheds. Watersheds constitute a set of essential parameters that govern nearly all life in the region, so diverting water from one watershed to another can be a clear signal that the growth fuelled by the transfer is unsustainable over the long term.

Using watershed boundaries to promote regional governance and self-sufficiency has a precedent in Ontario. The province's *Conservation Act* stresses three basic principles: local initiative, cooperation between levels of government, and the watershed as a resource management unit.¹¹ The Toronto Waterfront, for example, is managed in accordance with an "ecosystem approach" which develops regional economic strategies based on existing natural advantages. In this way, attention is focussed on the interdependencies that exist within an ecosystem, and a more sustainable way of life is created.

Recommendation

The B.C. Government needs to rethink the consequences of increased reliance on trade and to cultivate an "ecosystem approach" to the question of water. A balanced water-pricing policy must ensure that we sustain our water "capital", and live only off the "interest," otherwise we will be trading a fiscal surplus for an ecological deficit.

VIII. CONCLUSION

It is our conclusion that the water pricing policy, as advanced, needs to address many more areas of potential impact. These include areas not encompassed by market economics (e.g., marginalized stakeholders, lobby groups, allocative problems) as well as concerns such as climatic change and trade liberalization.

It is our further conclusion that the above-noted issues need to be viewed through other than a market economy lens, and that the most ecologically sound way in which to make future water pricing decisions is using an ecosystem approach.

We urge that these changes be incorporated in a final version of the water pricing policy.

Endnotes

¹. Chief Kathy Francis, "First they came and took our trees, now they want our water too." *Water Exports*, CWRA, May 1992, at 99.

[2.](#) *Ibid.* at 98.

[3.](#) "Stewardship of the Water", *Water Pricing*, (Victoria, British Columbia: Ministry of Environment, Lands and Parks, 1993) at 7.

[4.](#) Wendy Holm, "Agriculture," *NAFTA and Water Exports* (Toronto: Canadian Environmental Law Association, 1993) at 12.

[5.](#) Jamie Linton, "Water Export," *Ibid.* at 12.

[6.](#) *Ibid.*, at 2.

[7.](#) *Supra*, footnote 4, at 5.

[8.](#) Economist Wendy Holm describing U.S. Chief Negotiator Mickey Kantor's position on the issue: "..now we have evidence that the kingpin in the U.S. is saying yes, all water -- including interbasin water -- is included when water is traded as a good. We do not have the ability to make laws to prohibit water exports." "NAFTA covers Canada's Water, U.S. Says,": *Vancouver Sun*, November 9, 1993 at 1.

[9.](#) Executive Summary, *NAFTA and Water Exports*, (Toronto, CELA, 1993) at 1.

[10.](#) "Toward An Alternative Ecological Vision" *Ibid.* at 1.

[11.](#) *Supra*, footnote 9.