



Background Paper

Bulk Water Removals: Canadian Legislation

Publication No. 02-13-E
Revised 7 July 2010

David Johansen

Industry, Infrastructure and Resources Division
Parliamentary Information and Research Service

Bulk Water Removals: Canadian Legislation
(Background Paper)

HTML and PDF versions of this publication are available on Intraparl
(the parliamentary intranet) and on the Parliament of Canada website.

In the electronic versions, a number of the endnote entries contain
hyperlinks to referenced resources.

Ce document est également publié en français.

Library of Parliament ***Background Papers*** present and analyze various aspects of current issues in an objective, impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations.

BULK WATER REMOVALS: CANADIAN LEGISLATION

On 10 February 1999, the then Foreign Affairs Minister, the Hon. Lloyd Axworthy, and the then Environment Minister, the Hon. Christine Stewart, announced a strategy to prohibit the bulk removal of water, including removal for export, from major Canadian water basins.¹ They noted that the strategy responded to Canadian concerns about the security of Canada's freshwater resources. According to the news release issued on the same date, the strategy reaffirmed the federal government's long-standing position opposing bulk water removal and was consistent with the following 1993 statement by the governments of Canada, the United States and Mexico, the three countries that are parties to the North American Free Trade Agreement (NAFTA): "Unless water in any form has entered into commerce and become a good or product, it is not covered by the provisions of any trade agreement including the NAFTA." The strategy dealt with the protection of water in its natural state as a water management and environmental issue rather than as a trade issue.²

The strategy comprised three key elements:

- proposed amendments to the *International Boundary Waters Treaty Act*;
- a joint Canada–United States reference to the International Joint Commission (IJC) to study the effects of water consumption, diversion and removal, including for export, from the Great Lakes; and
- a proposed Canada-wide accord on bulk water removals.

The strategy recognized that the provinces have primary responsibility for water management and that the federal government has jurisdiction over boundary waters to the extent specified in the 1909 *Boundary Waters Treaty*.³ The strategy also noted that actions by territorial governments will be important as they assume greater responsibility over water resource management. The federal government stated that joint participation was essential to develop and implement a permanent Canada-wide solution to bulk water removal.⁴

With respect to the first part of the strategy, the federal government enacted legislation to amend the *International Boundary Waters Treaty Act*, the main effect being to prohibit the bulk removal of water from the Canadian portion of boundary water basins between Canada and the United States, principally the Great Lakes. The amending legislation was enacted into law and received Royal Assent on 18 December 2001; it came into force on 9 December 2002.⁵

The second part of the strategy included a joint Canada–United States reference to the IJC on consumption of, obstructions to and diversions of Great Lakes water. The IJC's final report in February 2000 concluded that the Great Lakes require protection, especially in the light of uncertainties, pressures and the cumulative effects of removals, consumption, population growth, economic growth and climate change.⁶

Recommendations for action to protect the ecological integrity of the Great Lakes Basin were directed by the IJC to all levels of government in Canada and the United States. According to federal government sources, the amendments to the *International Boundary Waters Treaty Act* are consistent with and supportive of the IJC's conclusions and recommendations.

The third part of the strategy involved the federal minister of the Environment seeking endorsement by the provinces and territories of a Canada-wide accord prohibiting bulk water removals from Canada's major watersheds. The proposed accord was discussed at meetings of the Canadian Council of Ministers of the Environment in November 1999 and again in May 2000. Quebec and the Western provinces refused to endorse the accord as presented. Federal government sources have pointed out, however, that subsequent to discussion of the proposed accord, all provinces have developed or are developing legislation or regulations that will accomplish this goal by prohibiting bulk water removals within their respective jurisdictions.⁷

The purpose of this paper is to outline, in chart form, the initiatives thus far taken by the federal government, each of the provinces, and Yukon⁸ within their respective jurisdictions with regard to bulk water removals.⁹ In each case, references are made to the relevant sections of the appropriate statute and/or regulations.

Canadian Legislation/Regulations Regarding Bulk Water Removals

| Jurisdiction | Legislation | Approach | Exceptions |
|--------------|--|--|--|
| Federal | <p><i>International Boundary Waters Treaty Act</i>, R.S.C. 1985, c. I-17 as amended</p> <p><i>International Boundary Waters Regulations</i>, <i>Canada Gazette</i>, SOR/2002-445</p> | <p>No person shall use or divert boundary waters by removing water from the boundary waters and taking it outside the water basin in which the boundary waters are located (section 13(1) of the Act). The prohibition against water removal applies only in respect of the water basins described in the regulations (section 13(3) of the Act), and only to the removal of boundary waters in bulk (section 6(1) of the regulations).</p> <p>The regulations, in section 2(1), define the "removal of boundary waters in bulk" as follows:</p> <p>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</p> <p>(a) by any means of diversion, including by pipeline, canal, tunnel, aqueduct or channel; or</p> <p>(b) by any other means by which more than 50,000 litres of boundary waters are taken outside the water basin per day.</p> | <p>According to the regulations, the prohibition against the bulk removal of boundary waters does not apply to boundary waters used:</p> <ul style="list-style-type: none"> • in a conveyance, including a vessel, aircraft or train, (a) as ballast; (b) for the operation of the conveyance; or (c) for people, animals or goods on or in the conveyance (section 6(2) of the regulations); • in a manufactured product containing water, including water and other beverages in bottles or packages, that is then taken outside a water basin (section 2(2) of the regulations); or |

BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction | Legislation | Approach | Exceptions |
|---------------------|-------------|---|--|
| Federal (cont'd) | | <p>The regulations, in section 5, state that the prohibition against water removals from boundary waters set out in section 13(1) of the Act applies only in respect of the Canadian portion of the following water basins:</p> <p>(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;</p> <p>(b) Hudson Bay Basin, which is the area of land from which water drains into Hudson Bay; and</p> <p>(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.</p> <p>Note: Bill C-26, the Transboundary Waters Protection Act, was introduced in the House of Commons on 13 May 2010 (3rd Session, 40th Parliament). At the time of writing, the bill has only received first reading. If and when the bill is enacted into law, it will amend the <i>International Boundary Waters Treaty Act</i>. It will strengthen existing protections by bringing the waters that fall under federal jurisdiction under a more comprehensive prohibition against bulk water removals: transboundary waters (waters defined in the bill as waters that flow <i>across</i> the international boundary between Canada and the United States) would be included, in addition to boundary waters, which are those waters that run <i>along</i> the boundary and that are now covered.</p> <p>Certain provisions that are currently found in the regulations would be moved to the Act. These include, notably, the definitions of “removal of boundary waters in bulk” (which would be replaced by a definition of “bulk removal” that would expressly exclude the taking of a manufactured product that contains water, including water and other beverages in bottles or other containers, outside a water basin) and a “non-commercial project”; the identification of water basins to which the Act applies; and the exceptions to the prohibition against bulk removals from waters covered by the Act. Consequently, any future changes to those provisions would have to be approved in legislation passed by Parliament.</p> <p>As noted above, section 5 of the regulations describes the water basins to which the Act applies. The proposed new definition of “bulk removal” would make clear that the prohibition would apply to both boundary and</p> | <ul style="list-style-type: none"> in a non-commercial project on a short-term basis for firefighting or humanitarian purposes (section 6(3) of the regulations); a “non-commercial project” is defined in section 1 of the regulations to mean a project involving the removal of boundary waters in bulk in which no one is required to pay for the waters. |

| Jurisdiction | Legislation | Approach | Exceptions |
|---------------------------|--|---|---|
| Federal (cont'd) | | <p>transboundary waters, and to the removal of those waters from the Canadian portion only of the expanded water basins set out in proposed Schedule 2 to the Act, namely: Arctic Ocean, Atlantic Ocean, Gulf of Mexico, Hudson Bay, and Pacific Ocean. Proposed Schedule 3 would contain a non-all-inclusive list of transboundary waters for purposes of the Act.</p> <p>The bill would also give the federal government new powers of inspection and enforcement and would introduce stiff new penalties for violations of the Act. The proposed provisions in that regard are generally consistent with amendments made in 2009 to nine environmental statutes, pursuant to the <i>Environmental Enforcement Act</i>.</p> <p>For further information on Bill C-26, see David Johansen, Bill C-26: Transboundary Waters Protection Act, Publication No. 40-3-26-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2 June 2010.</p> | |
| Newfoundland and Labrador | <p><i>Water Resources Act, S. Nfld. and Labrador 2002, c. W-4.01</i></p> | <p>A person shall not remove water from the province (section 12(2)).</p> <p>The Act defines “water” for purposes of the Act to mean all water located in or derived from a “body of water” (section 2(y)). The latter is defined for purposes of the Act as follows:</p> <p>“Body of water” means a surface or subterranean source of fresh or salt water within the jurisdiction of the province, whether that source usually contains liquid or frozen water or not, and includes water above the bed of the sea that is within the jurisdiction of the province, a river, stream, brook, creek, watercourse, lake, pond, spring, lagoon, ravine, gully, canal, wetland and other flowing or standing water and the land occupied by that body of water (section 2(d)).</p> | <ul style="list-style-type: none"> • water contained in containers of not more than 30 litres in volume (section 12(3)(a)) • water used in the operation of or for the use by or consumption of persons in a motor vehicle, vessel or aircraft (section 12(3)(b)) • water used to transport food or an industrial product out of the province (section 12(3)(c)) • water removed for a non-commercial purpose approved by the minister of Environment, including for safety or humanitarian purposes (section 12(3)(d)) |

BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction | Legislation | Approach | Exceptions |
|--------------|--|---|--|
| Nova Scotia | <p><i>Water Resources Protection Act</i>, S.N.S. 2000, c. 10</p> | <p>No person shall be granted an approval to and no person shall</p> <p>(a) drill for, divert, extract, take or store water for removal;</p> <p>(b) sell or otherwise dispose of water to a person for removal;</p> <p>(c) convey or transport water for removal; or</p> <p>(d) remove water from the portion of the Atlantic Drainage Basin that is located within the province (section 4).</p> <p>The Act defines “water” for purposes of the Act to mean all surface water or groundwater and, for greater certainty, to include such water in the form of ice (section 2(c)). The Act defines “Atlantic Drainage Basin” to mean the geographic area that drains into the Atlantic Ocean and, for greater certainty, to include all of the province (section 2(a)).</p> | <ul style="list-style-type: none"> • water packaged in the province in a container of not more than 25 litres or such maximum capacity as is prescribed by the regulations (section 5(1)(a)) • water transported in a motor vehicle, vessel or aircraft and that is necessary for the operation of the motor vehicle, vessel or aircraft or is intended for the use of animals or persons in or on those forms of transport (section 5(1)(b)) • water used to transport fish or any other product (section 5(1)(c)) • water used for a non-commercial purpose approved by the minister of the Environment, including meeting short-term safety, security, firefighting or humanitarian needs (section 5(1)(d)) • water included in manufactured, produced or packaged foods or other products (section 5(1)(e)); potable or other water is not a manufactured or produced product (section 5(2)) • water removed under such other circumstances as are prescribed by the regulations (section 5(1)(f)); no regulations have been made pursuant to the Act as of the date of this paper |

BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction | Legislation | Approach | Exceptions |
|----------------------|---|--|--|
| Prince Edward Island | <i>Environmental Protection Act</i> , R.S.P.E.I. 1988, c. E-9 as amended | <p>No person shall drill for, extract, take or use groundwater for the purpose of transfer or removal from the province (section 12.1(1)).</p> <p>No person shall extract, remove or withdraw water from any water basin, watercourse or other surface water body in the province for the purpose of transfer or removal from the province (section 12.1(2)).</p> <p>For purposes of the Act, water includes liquid and frozen surface and groundwater (section 1(r)).</p> | <ul style="list-style-type: none"> • water used for drinking purposes and packaged in Prince Edward Island in containers having a capacity of not more than 25 litres (section 12.1(3)(a)) • water in a vehicle, vessel, or aircraft used by persons or animals while they are being transported in it (section 12.1(3)(b)) or for the ordinary operation of the vehicle, vessel or aircraft or the transport of food or products in it (section 12.1(4)(a)) • water removed, with the written permission of the minister of Environment and Energy, to meet short-term safety, security or humanitarian needs (section 12.1(4)(b)) |
| New Brunswick | <i>Water Quality Regulation – Clean Environment Act</i> , Regulation 82-126 made under the authority of the <i>Clean Environment Act</i> , R.S.N.B., c. C-6 | <p>No person shall, without an approval, which approval must include approval of the supply and quality of water, construct, modify or operate or permit the construction, modification or operation of any waterworks (section 3(5)).</p> <p>The Act, in section 1, defines “approval” to mean any approval or certificate of approval granted pursuant to the Act or the regulations that has not expired or been suspended or cancelled. “Waterworks” is defined in the same section to mean all or any part of a private, public, commercial or industrial works for the collection, production, treatment, storage, supply or distribution of water.</p> <p>In other words, New Brunswick’s legislation does not place an outright ban on bulk water removals from water basins in the province, but instead requires approval on a case-by-case basis.</p> <p>As well, “all projects involving the transfer of water between drainage basins” are subject to an environmental impact assessment pursuant to Regulation 87-83 made under the authority of the <i>Clean Environment Act</i>.</p> | |

BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction | Legislation | Approach | Exceptions |
|--------------|---|--|---|
| Quebec | <i>Water Resources Preservation Act</i> , R.S.Q., c. P-18.1 | <p>No water taken in Quebec may be transferred outside Quebec (section 2).</p> <p>The Act applies to surface water and groundwater (section 1).</p> <p>Note: Bill 27, enacted as <i>An Act to affirm the collective nature of water resources and provide for increased water resource protection</i>, was introduced in the Quebec National Assembly by the Minister of Sustainable Development, Environment and Parks on 18 March 2009 and was subsequently passed (11 June 2009) and assented to (12 June 2009). It became S.Q. 2009, c. 21 (R.S.Q., c. 6.2). A copy of the Act appears on the National Assembly website.</p> <p>At the time of writing, most of the provisions of the Act are not yet in force; according to section 41, they will come into force on a day(s) to be set by the government. When the relevant provisions come into force, they will, among other things, repeal the current <i>Water Resources Preservation Act</i> and instead incorporate the above prohibition against water withdrawn in Quebec being transferred out of Quebec into the <i>Environment Quality Act</i>, R.S.Q., c. Q-2. Similar exceptions to those currently contained in the <i>Water Resources Preservation Act</i> and listed above will be continued.</p> <p>As mentioned in the explanatory notes at the beginning of Bill 27 (now enacted into law), when the relevant provisions come into force, they will, among other things, implement in Quebec the <i>Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement</i>, which was entered into on 13 December 2005 by Quebec, Ontario and the US states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. They will amend Quebec’s <i>Environment Quality Act</i> so as to prohibit the transfer out of the St. Lawrence River Basin water withdrawn from the basin, except as set out in the Act. In addition, new or increased water withdrawals from the Basin will be subjected to new rules for the reinforcement of water resource protection and management, under the conditions defined by the Act.</p> | <p>Exceptions to the prohibition against water taken in Quebec being transported outside Quebec:</p> <ul style="list-style-type: none"> • water taken to produce electric power (section 2(1)) • water to be marketed as water intended for human consumption, insofar as the water is packaged in Quebec in containers having a capacity of not more than 20 litres (section 2(2)) • water taken to supply potable water to establishments or dwellings situated in a bordering zone (section 2(3)) • water taken to supply vehicles, vessels or aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles (section 2(4)) • subject to the provisions of the <i>Environment Quality Act</i>, the Quebec government may, on the grounds of urgency, for humanitarian or other reasons considered to be in the public interest, lift the prohibition against water taken in Quebec being transferred outside Quebec; the prohibition may be lifted in relation to one specific case or several cases, and the government’s decision to lift it must describe the situation that warrants the lifting (section 3) |

| Jurisdiction | Legislation | Approach | Exceptions |
|--------------|--|---|--|
| Ontario | <i>Ontario Water Resources Act</i> , R.S.O. 1990, c. O.40 as amended | <p>No person shall take water from a water basin described below if the water is to be transferred out of the water basin (section 34.3(2)).</p> <p>For purposes of the Act, Ontario is divided into the following three water basins:</p> <ol style="list-style-type: none"> 1. The Great Lakes–St. Lawrence River Basin, which consists of the part of Ontario the water of which drains into the Great Lakes or the St. Lawrence River, including the parts of the Great Lakes and of the St. Lawrence River that are within Ontario; 2. The Nelson Basin, which consists of the part of Ontario the water of which drains into the Nelson River; and 3. The Hudson Bay Basin, which consists of the part of Ontario, not included in the Nelson Basin, the water of which drains into Hudson Bay or James Bay (section 34.3(1)). <p>In addition to the prohibition against transfers out of the Great Lakes–St. Lawrence River Basin described above (i.e., inter-basin transfers), there is a ban on new and increased transfers of 379,000 litres per day or greater of water from one Great Lakes watershed to another within the Great Lakes–St. Lawrence River Basin (i.e., intra-basin transfers) (section 34.6(1)), subject to strictly regulated exceptions (section 34.6(2)). For purposes of the above provision, the Great Lakes–St. Lawrence River Basin is divided into the following five watersheds, each of which consists of the area described by the regulations:</p> <ol style="list-style-type: none"> 1. Lake Superior watershed 2. Lake Huron watershed 3. Lake Erie watershed 4. Lake Ontario watershed 5. St. Lawrence River watershed (section 34.5(2)) | <p>Exceptions to the prohibition against transfers of water out of a water basin:</p> <ul style="list-style-type: none"> • water packaged in a container having a volume of 20 litres or less (section 34.3(3)) • water used in the water basin to manufacture or produce a product that is then transferred out of the water basin (section 34.3(3)) • a transfer of water that is necessary for the operation of the vehicle, vessel or other form of transport it is being transferred in, including water that is for the use of people, livestock or poultry in or on the vehicle, vessel or other form of transport (section 34.3(3)) • a transfer of water for the purpose of firefighting or other emergency purposes (section 34.3(3)) • undertakings commenced before 1 January 1998 if the amount of water transferred out of a water basin by the undertaking in any calendar year after 1997 does not exceed the highest amount of water transferred out of the water basin by the undertaking in any calendar year after 1960 and before 1998 (section 34.3(3)) • water taken pursuant to an Order of the Lieutenant Governor in Council dated 2 October 1913 respecting the Greater Winnipeg Water District (section 34.3(3)) |

BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction | Legislation | Approach | Exceptions |
|---------------------|--|--|---|
| Ontario (cont'd) | | | There are strictly regulated exceptions with detailed stringent criteria (as set out in section 34.6(2)) that must be met before transfers of water of 379,000 litres per day or greater can take place from one Great Lakes watershed to another. |
| Manitoba | <i>Water Resources Conservation Act</i> , C.C.S.M., c. W72 | <p>No person shall</p> <p>(a) drill for, divert, extract, take or store water for removal;</p> <p>(b) sell or otherwise dispose of water to a person for removal;</p> <p>(c) convey or transport water for removal; or</p> <p>(d) remove water</p> <p>from a water basin or sub-water basin (section 2).</p> <p>The Act, in section 1, defines “water” to mean all surface water or groundwater, whether in liquid or solid form. A “water basin” is defined to mean the Manitoba portion of the Hudson Bay drainage basin. A “sub-water basin” is defined to mean a part of the water basin that is designated as a sub-water basin in the regulations. (At the time of writing, there are no regulations under the Act.)</p> | <ul style="list-style-type: none"> • water packaged in a container of not more than 25 litres, or any other maximum capacity prescribed in the regulations (section 3(1)(a)) • water used in the ordinary operation of a vehicle, vessel or aircraft or for the use of persons or animals or the transportation of food or products on such forms of transport (sections 3(1)(b) and (c)) • water removed to meet short-term safety, security or humanitarian needs with the approval of the minister (section 3(1)(d)) • water used in Manitoba to manufacture or produce a product (section 3(1)(e)); for purposes of this provision, potable or other water is not a manufactured or produced product (section 3(2)) • further exceptions may be made by the Lieutenant Governor in Council in regulations (section 3(3)); at the time of writing, there are no regulations under the Act |

BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction | Legislation | Approach | Exceptions |
|--------------|--|--|--|
| Saskatchewan | <p><i>Saskatchewan Watershed Authority Act, 2005, S.S. 2005, c. S-35.03 as amended</i></p> | <p>Notwithstanding any other provision in the <i>Saskatchewan Watershed Authority Act, 2005</i> or any other Act, the Saskatchewan Watershed Authority shall not grant</p> <p>(a) any licence or approval to construct or operate works for the purposes of transferring water out of a watershed; or</p> <p>(b) any licence or approval to transfer water out of a watershed (section 55).</p> <p>The Act defines “water” to be groundwater or surface water (section 2(o)); “groundwater” is defined to mean water beneath the surface of land (section 2(i)); “surface water” is defined to mean water above the surface of land and being in a river, stream, lake, creek, spring, ravine, coulee, canyon, lagoon, swamp, marsh or other watercourse or water body (section 2(o)).</p> | <ul style="list-style-type: none"> • water packaged in containers that have a capacity that is less than the maximum capacity prescribed in the regulations (section 55(b)); at the time of writing, no relevant regulation has been made in this regard • water transferred or taken for the purpose of transfer between watersheds, or portions of watersheds, within Saskatchewan (section 55(a)) • water used for the ordinary operation of a vehicle, vessel or aircraft, or for the use of persons or animals or for the transportation of food or products on such forms of transport (sections 55(c) and (d)) • water that is of a class prescribed in the regulations or that is removed in a manner or purpose prescribed in the regulations (section 55(e)); at the time of writing, these matters have not been addressed in regulations |
| Alberta | <p><i>Water Act, R.S.A. 2000, c. W-3 as amended</i></p> <p><i>Water (Ministerial) Regulation, Alta. Reg. 205/98 as amended</i></p> | <p>For the purpose of promoting the conservation and management of water, including the wise allocation and use of water, a licence shall not be issued for the purpose of transporting water from the province outside Canada by any means, unless the licence is authorized by a special Act of the legislature (section 46(2)).</p> <p>A licence shall not be issued that authorizes the transfer of water between major river basins in the province unless the licence is specifically authorized by a special Act of the legislature (section 47).</p> <p>The Act defines a “major river basin” in section 1(1)(ff) to mean:</p> | <ul style="list-style-type: none"> • prohibition against transferring water from the province outside Canada by any means set out in section 46(2) does not apply to “municipal water” and “processed water” as defined in the regulations (sections 46(1) and (3)). The relevant regulation, the <i>Water (Ministerial) Regulation</i>, defines “municipal water” and |

BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction | Legislation | Approach | Exceptions |
|---------------------|--|--|---|
| Alberta (cont'd) | | <p>(i) the Peace/Slave River Basin (ii) the Athabaska River Basin (iii) the North Saskatchewan River Basin (iv) the South Saskatchewan River Basin (v) the Milk River Basin (vi) the Beaver River Basin (vii) the Hay River Basin</p> <p>with boundaries as specified in the regulations.</p> <p>(The boundaries of the river basins are set out in section 10(1) of the <i>Water (Ministerial) Regulation</i>.)</p> <p>The Act defines “water” in section 1(1)(fff) to mean all water on or under the surface of the ground, whether in liquid or solid state.</p> <p>Before a bill to amend section 46 or 47 or to enact a special Act described in those sections is introduced into the Legislative Assembly, the Minister responsible for the <i>Water Act</i> must consult with the public, in a form and manner satisfactory to the Minister, with respect to such a bill (section 48).</p> | <p>“processed water” in sections 1(3)(c) and (e) respectively for purposes of the <i>Water Act</i> as follows:</p> <p>“municipal water” means water under a deemed licence that is processed through a treatment plant of a local authority of Alberta, where water under the deemed licence is transferred from within the province to a location outside of Canada on the date the Act comes into force.</p> <p>“processed water” means</p> <ul style="list-style-type: none"> (i) water that is packaged in Alberta as a beverage, including but not limited to bottled or canned water, and (ii) water used in the processing of a food or industrial product if the water is a component of or used to transport the food or industrial product. |
| British Columbia | <p><i>Water Protection Act</i>, R.S.B.C. 1996, c. 484 as amended</p> | <p>A person must not remove water from British Columbia (section 5).</p> <p>A person must not construct or operate a large-scale project capable of transferring water from one major watershed to another (section (6(1)).</p> <p>The Act, in section 1(1), defines a “large-scale project” to mean a project to divert or extract a peak instantaneous flow of 10 cubic metres or more a second, but does not include a project that on 20 June 1995 was complete or in operation, or for which on that date site preparation had begun or the construction, installation or supply of buildings, equipment, machinery or other facilities had begun.</p> <p>A “major watershed” is defined in section 1(1) to mean any of the following nine regions in British Columbia:</p> | <ul style="list-style-type: none"> • water packaged in British Columbia in containers having a capacity of not more than 20 litres (section 5(c)) • a person who is a “licensed registrant” (defined in section 1(1) of the Act) under a “registered licence” (defined in section 1(1) of the Act) that remains in effect and who complies with the registered licence (section 5(a)) |

| Jurisdiction | Legislation | Approach | Exceptions |
|------------------------------|-------------|---|---|
| British Columbia (cont'd) | | <p>(a) the Fraser Watershed, comprising the area that drains into the Fraser River and its tributaries, and includes the area inside and outside the boundaries of the Greater Vancouver Regional District that is drained by streams and their tributaries contained in whole or in part within the boundaries of the Greater Vancouver Regional District</p> <p>(b) the MacKenzie Watershed, comprising the area that drains into the MacKenzie River and its tributaries</p> <p>(c) the Columbia Watershed, comprising the area that drains into the Columbia River and its tributaries</p> <p>(d) the Skeena Watershed, comprising the area that drains into the Skeena River and its tributaries</p> <p>(e) the Nass Watershed, comprising the area that drains into the Nass River and its tributaries</p> <p>(f) the Stikine Watershed, comprising the area that drains into the Stikine River and its tributaries</p> <p>(g) the Taku Watershed, comprising the area that drains into the Taku River and its tributaries</p> <p>(h) the Yukon Watershed, comprising the area that drains into the Yukon River and its tributaries</p> <p>(i) the Coastal Watershed, comprising the rest of British Columbia</p> | <ul style="list-style-type: none"> • a person who is registered as an “unlicensed registrant” (defined in section 1(1) of the Act), under a registration that remains in effect, and complies with the applicable conditions (set out in section 16 of the Act) of that registration (section 5(b)) • water carried in vehicles, vessels or aircraft for the use of persons or animals while they are being transported in those forms of transport (section 8) |
| Yukon | | <p>The federal government entered into the <i>Yukon Devolution Transfer Agreement</i> with the Yukon territorial government on 29 October 2001. By virtue of this agreement, the federal government agreed to replace the then existing <i>Yukon Act</i> with a new <i>Yukon Act</i> (S.C. 2002, c. 7) which, when proclaimed on 1 April 2003, gave the Yukon government provincial-type responsibilities in relation to water management in the territory.</p> <p>The federal <i>Yukon Waters Act</i> was repealed and replaced by a mirror territorial Act (<i>Waters Act</i>, S.Y. 2003, c. 19) that provided the territorial government with identical authority to that previously provided to the federal minister of Indian Affairs and Northern Development in Yukon. Yukon is no longer an area of federal jurisdiction with respect to</p> | |

BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction | Legislation | Approach | Exceptions |
|----------------------------------|-------------|--|--|
| Yukon (cont'd) | | <p>water management; accordingly, it is now the responsibility of the Yukon government to decide whether to prohibit bulk water removals in the territory.</p> <p>The Yukon government has developed an interim policy statement for use in the territory based on the Indian and Northern Affairs Canada policy statements (December 2003) for the Northwest Territories and Nunavut prohibiting bulk water removals from major river basins in those territories.</p> | <ul style="list-style-type: none"> Some exceptions are set out in the interim policy statement. |
| Northwest Territories Nunavut | | <p>The federal government is responsible for water management (except the health aspects of drinking water) in the Northwest Territories and Nunavut. The jurisdiction is exercised under the following three federal Acts:</p> <ul style="list-style-type: none"> <i>Northwest Territories Waters Act</i>, S.C. 1992, c. 39 as amended; <i>Mackenzie Valley Resource Management Act</i>, S.C. 1998, c. 25 as amended; and <i>Nunavut Waters and Nunavut Surface Rights Tribunal Act</i>, S.C. 2002, c. 10. <p>Water licensing boards are established under these Acts, and any major diversion or use of water requires the issuance of a licence by the appropriate water licensing board and approval by the minister of Indian Affairs and Northern Development.</p> <p>The minister has informed the water licensing boards that he will not approve, under the current legislation, any licence issued to allow bulk water removal out of a major river basin. Indian and Northern Affairs Canada has worked with the territorial governments in the Northwest Territories and Nunavut to develop policy statements for each territory. The territorial governments have indicated their support for these policy statements. The statements, published in December 2003, are in line with the federal position to prohibit bulk water removals in areas of federal jurisdiction.</p> | <ul style="list-style-type: none"> Some exceptions are set out in each policy statement. |

NOTES

1. Department of Foreign Affairs and International Trade, "Strategy Launched to Prohibit the Bulk Removal of Canadian Water, including Water for Export," News release, 10 February 1999. Along with the news release, the department released two backgrounders – "Water Facts" and "A Strategy to Protect Canadian Water" – on the same date.
2. For further information concerning these and other issues relating to bulk water removals and water exports, see David Johansen, *Bulk Water Removals, Water Exports and the NAFTA*, Publication No. 00-41E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 31 January 2002; see also David Johansen, *Bulk Water Removals and the NAFTA*, Publication No. TIPS-20E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 9 January 2003.
3. The *Boundary Waters Treaty* appears as a schedule to the *International Boundary Waters Treaty Act*, R.S.C. 1985, c. I-17 as amended.
4. Department of Foreign Affairs and International Trade, "A Strategy to Protect Canadian Water," Backgrounder, Ottawa, 10 February 1999.
5. *An Act to amend the International Boundary Waters Treaty Act*, S.C. 2001, c. 40. For background information on and an analysis of the legislation when it was at the bill stage (Bill C-6, 1st Session, 37th Parliament), see David Johansen, *Bill C-6: An Act to amend the International Boundary Waters Treaty Act*, LS-383E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 4 February 2002.
6. International Joint Commission, [*Protection of the Waters of the Great Lakes: Final Report to the Governments of Canada and the United States*](#), Ottawa and Washington, 22 February 2000. The report was released to the public on 15 March 2000. An interim report had been released in August 1999.
7. Environment Canada, *Background Information on Bulk Water Removal and Water Export*, October 2004.
8. The current *Yukon Act* (S.C. 2002, c. 7, proclaimed on 1 April 2003) gives the Yukon government provincial-type responsibilities in relation to water management in the territory. The federal government is responsible for water management (except the health aspects of drinking water) in the Northwest Territories and Nunavut.
9. The writer acknowledges the assistance of the officials in the Water Conservation Division of Environment Canada, who were helpful in providing references to most of the relevant statutory provisions.