

National Water Policy

Canada's economy is built on the myth of an abundance of fresh water, but only 1% of Canada's fresh water is renewable and, even during an economic slowdown, water use and consumption in Canada will remain unsustainable unless protective measures are taken.

At the federal level, legislative safeguards to protect Canada's water from bulk exports, contamination, and unsustainable commercial exploitation are weak or non-existent. Canada is one of the few industrialized countries without enforceable national drinking water standards. Canada does not recognize water as a human right and does not have a federal ban on bulk water exports. Canada is also the only industrialized country to allow mining corporations to dump toxic waste into pristine lakes and rivers.

Water is defined as an "investment" and a "service" under the North American Free Trade Agreement (NAFTA), which guards the interests of foreign corporations that invest in water or whose investments require the use, consumption, or pollution of water.

The Alternative Federal Budget's national water policy fulfills the following goals:

- 1. Water justice:** Access for all citizens to safe, clean drinking water and sanitation, and to legal instruments providing recourse for communities and individuals who are denied this right.
- 2. Water security:** A national water infrastructure fund to ensure adequate funding to municipalities and First Nations communities; national enforceable drinking water standards; public or local control of water infrastructure; and a comprehensive strategy to protect source water from pollution and shortages.
- 3. Water democracy:** Mechanisms to strengthen the powers of local, provincial, and federal governments to protect watersheds by banning bulk water exports, excluding water from NAFTA and other trade agreements, amending the Great Lakes Compact, and recognizing the role of the International Joint Commission.
- 4. Water knowledge:** A plan to expand and improve research and capacity with regards to water, water treatment, conservation, and climate change impacts on watersheds.

1. Water justice

Recognition of water as a human right

The AFB recognizes water as a human right by enshrining it in domestic law, by recognizing the existing rights of Aboriginal communities to water, and by supporting the recognition of water in international law.

Water as a human right in Canadian law

Water must be recognized as a human right at every level of government. This will ensure that all people living in Canada, without discrimination, are legally entitled to safe, clean drinking water and water for sanitation in sufficient quantities, and that inequalities in access are addressed immediately.

According to the World Health Organization,¹ the recognition of water as a human right will require governments to:

- *respect or* refrain from interfering directly or indirectly with the enjoyment of the right to water;
- *protect or* prevent third parties such as corporations from interfering in any way with the enjoyment of the right to water; and
- *fulfill or* adopt the necessary measures to achieve the full realization of the right to water.

In particular, the recognition of water as a human right will grant communities lacking access to clean drinking water a legal tool to exercise this right. It will also provide legal recourse from the destruction of source water by industrial activities.

Supporting water as a human right in international law

According to the UN, one billion people around the world lack access to safe drinking water and basic sanitation. The recognition of water as a

human right in international law allows for the means and mechanisms available in the United Nations human rights system to be used to monitor the progress of states in realizing the right to water and to hold governments accountable.² The Canadian government has consistently opposed the recognition of water as a human right at key UN meetings.

The AFB supports the recognition of water as a human right in international law.

Recognition of First Nations' water rights

Indigenous communities in Canada have been affected disproportionately by the water crisis. Despite repeated pledges to ensure they have access to clean drinking water, their water is still often contaminated. Last November, Health Canada reported 103 drinking water advisories in First Nations communities.³

Industrial water pollution is rampant in these communities. High cancer rates associated with exposure to tar sands production, for example, have been reported among the First Nations and Metis communities in Fort Chipewyan, Alberta.

Because industrial expansion is either directly on land to which Indigenous communities lay claim or upstream from where they live, it is crucial that the authority of Indigenous governments be respected.

The recognition of First Nations water rights requires the federal government to:

- respect Aboriginal self-determination;
- recognize and respect the authority of Indigenous governments;
- honour the right of Indigenous peoples to participate in decision-making regarding water; and
- acknowledge and incorporate Indigenous knowledge in federal decision-making with respect to water.

Declaring surface and ground water a public trust

The declaration of surface and ground water as a public trust will require the government to protect it for the public's reasonable use. Although its application varies and depends on other aspects of the legal and political context, the general idea of a public trust doctrine is that private use must be subservient to the public interest. Permission to extract groundwater under the public trust doctrine, for example, might be granted based on the ability to show public benefit for any proposed extraction.⁴ It may also lead to the creation of a hierarchy of use requiring that water use be allocated for ecosystems and basic human needs first.

2. Water security

National public water infrastructure fund

Decades of cuts in infrastructure funding, coupled with the downloading of several programs and services to municipal governments, have resulted in a "municipal infrastructure deficit," conservatively estimated at \$123 billion by the Federation of Canadian Municipalities. Water and wastewater needs alone are estimated at \$31 billion.

As part of the AFB Stimulus Plan, \$3.7 billion in 2009–10 will be invested in a National Public Water Fund. Some of the general municipal infrastructure spending will likely also be spent on rebuilding water infrastructure. Municipal water transfers will then reach their yearly target of \$3.1 billion a year in 2010–11 in order to pay down the infrastructure deficit in 10 years. The AFB devotes this spending exclusively to publicly owned and operated water infrastructure instead of through the failed P3 model.

An additional \$150 million over two years will be devoted to water operator training and certification in the public sector, along with water conservation programs.

The AFB also commits \$100 million to upgrades in Aboriginal water systems in accordance with the Kelowna Accord. (For more information see the *Aboriginal Peoples Chapter*.)

National enforceable drinking water standards

Canada does not have legally enforceable drinking water standards.⁵ In February 2008, the *Canadian Medical Association Journal* reported 1,766 boil-water advisories in Canadian municipalities, not including First Nations communities.⁶ Several communities have endured drinking water advisories for years, and 90 Canadians die from water-borne disease every year.

The AFB will establish national enforceable drinking water standards that include a training program for workers and dedicated money for upgrading of infrastructure.

Strategy to address water pollution

Although regulating water pollution falls largely under provincial jurisdiction, the federal government is responsible for protecting fish-bearing waters through the Fisheries Act and controlling toxic substances under the Canadian Environmental Protection Act.

The AFB therefore introduces a plan to curb water pollution that includes:

- standards for industry and agribusiness;
- a slowdown of tar sands production;
- removal of Schedule 2 from the Fisheries Act;
- national enforceable standards for sewage treatment;
- research and funding for environmentally friendly sewage treatment methods; and
- an end to regulatory harmonization under the Security and Prosperity Partnership.

Standards for industry and agribusiness: Every level of government must commit to creating and

enforcing strict laws against industrial dumping, the use of non-essential pesticides on public and private lands, and the discharge of toxins into waterways or landfills.

Slowdown of tar sands production: The tar sands projects release four billion litres of contaminated water into Alberta's groundwater and natural ecosystems every year. Toxins connected to tar sands production have been found as far downstream as the Athabasca delta, one of the largest freshwater deltas in the world. A slowdown in production is clearly imperative.

Removal of Schedule 2 from Fisheries Act: Lakes that would normally be protected as fish habitat by the Fisheries Act are now being re-defined as "tailing impoundment areas" in a 2002 "schedule" added to the Metal Mining Effluent Regulations of the Act. Once added to Schedule 2, healthy freshwater lakes lose all protection and become dump-sites for mining waste. Canada is the only industrialized country to allow this practice. It must stop.

National enforceable standards for sewage treatment: Canada has no national standards for municipal sewage treatment and wastewater effluent quality.⁷ As a result, 200 billion litres of raw sewage are flushed into our waterways every year. It is crucial that municipalities get the necessary financial support from higher levels of government to sanitize their sewage before discharging it into our waterways. Municipalities that continue to dump raw sewage into fish-bearing waters will be prosecuted under the Fisheries Act.

An end to regulatory harmonization through the SPP: The Security and Prosperity Partnership which Canada entered into with the U.S. and Mexico in 2005 includes a regulatory framework agreement that permits, among other things, an increase in the levels of pesticides allowed in Canada to match the higher U.S. levels. This is one of many reasons why the SPP must be terminated.

National Water Policy

GENDER

Access to clean water and recognizing this as an essential right is a benefit to women. The Council of Canadians and the National Network on Environments and Women's Health will be releasing a study on the impacts of water privatization on women in Canada. Please visit www.canadians.org for details.

Strategy to address water shortages

Groundwater mapping and protection

A third of our communities rely on groundwater as a source of drinking water, yet Canada still has not mapped its groundwater supplies or ascertained how long they will last.⁸ The federal government has finally launched a plan to map groundwater by 2010, but the information generated must serve as the basis for a thorough groundwater protection plan that will include:

- the application of the public trust doctrine to groundwater;
- prohibiting the extraction of groundwater in quantities that exceed its recharge rate; and
- a "local-sources-first" strategy that gives first rights to local people, farmers, and communities.

Restrictions on bottled water industry

Canada is a net exporter of bottled water.⁹ And, despite growing shortages in municipal water supplies, over a quarter of bottled water consumed in Canada is actually public water repackaged.

The AFB will introduce stricter regulation of the bottled water industry that will:

- require bottled water corporations to identify their sources on labels; and
- work with provinces to demand restrictions on water-taking permits.

A climate change plan

The Conservative government has failed to plan for the impact of climate change on Canadian watersheds and water infrastructure. Provinces and municipalities will require assistance from the federal government in planning for the water shortages, floods, and droughts that may arise.

The AFB plan for climate change includes:

- research and information on impacts of climate change on watersheds and infrastructure;
- renewal and funding of the Flood Damage Reduction Program; and
- drought and flood planning and support for Indigenous communities.

The AFB allocates \$50 million over two years to conduct this research agenda.

Alternative sources of power

The energy sector is the single largest user of water. Canada diverts more water for hydroelectricity than any other country in the world and tremendous amounts of water are consumed for tar sands development. A comprehensive water strategy must include plans to develop publicly owned alternative sources of power that put less strain on water resources.

3. Water democracy

Corporations in Canada benefit from an environmental policy gap, while trade agreements protect foreign investors against future policies that would restrict or prohibit their activities. The AFB therefore institutes the following mechanisms to enable governments to protect watersheds:

A ban on bulk water exports: The need for such a ban is pressing, given the pressure to export water to serve drought-prone areas in the United States. In the last two years we have seen detailed proposals from right-wing think tanks in

both the United States and Canada to export water from Manitoba and Quebec. These projects are tremendously costly, require vast amounts of energy, and pose great threats to watersheds.

The exclusion of water from NAFTA and all future trade agreements: Under NAFTA, water is defined as an investment and a service. This protects the right of foreign investors to consume vast and unsustainable amounts of water to extract oil from the tar sands, to bottle ancient glacier water and groundwater, and to dump their waste into lakes. If a corporation is granted permission to export water anywhere in Canada, it becomes a tradeable good under NAFTA, and other provinces will have to grant similar access to corporations seeking water export rights. Only a clear exclusion of water from NAFTA and other trade agreements will avert this threat.

Amendments to the Great Lakes Compact and recognition of the IJC: The International Joint Commission (IJC) is responsible for resolving conflicts over boundary waters between Canada and the U.S. However, it is increasingly being circumvented and its authority undermined. The Great Lakes Annex, initially created to prevent diversions from the Great Lakes-St. Lawrence River Basin, was negotiated by Ontario, Quebec, and the eight Great Lakes States without involvement by the Canadian federal government. The Great Lakes Compact, which makes the provisions of the Annex enforceable in the U.S., was signed into law by President George Bush in December 2008. These agreements empower another body with the responsibility for dispute resolution, thus making the IJC irrelevant and restricting Canada's ability to responsibly protect the future of the Great Lakes. The agreement also allows diversions through a loophole that gives bottled water corporations the right to withdraw unlimited amounts of water in containers of 20 litres or less. Key groups in Canada and the United States are now calling

for an amendment of the Compact to incorporate the public trust doctrine and remove of the bottled water exception.

The AFB will open negotiations with the U.S. to incorporate the public trust doctrine into the Great Lakes Compact Agreement and eliminate the bottled water loophole. It will also refer all boundary water matters to the IJC.

4. Water knowledge

Canada has the resources to be a leader in environmental research, but Canadian scientists are concerned that research in this area has declined significantly due to a lack of political will and severe funding cuts. To address the numerous information gaps in water quality and quantity, the 2009 Alternative Federal budget injects funds into:

- the monitoring of water quantity and quality;
- the Global Environmental Monitoring program; and
- a comprehensive study of water contamination in the tar sands.

Monitoring of water quantity and quality: This responsibility is shared between the federal and provincial governments. Inadequate funding and lack of coordination have led to gaps and inconsistencies in information.

The AFB will improve water monitoring through:

- the development of an overarching water quality and water quantity monitoring frameworks to assist provinces and communities;
- an increase in monitoring stations; and
- training for staff in water monitoring.

The AFB will allocate \$325 million over two years towards funding these initiatives, as well participating in the Global Environmental Monitoring

System (GEMS). This Canada-led UN program that monitors the quality of freshwater around the world is an important contribution to addressing the global water crisis. To preserve this program, the AFB will meet the actual funding requirements in the GEMS program of \$2.2 million per year.

Study on water contamination by tar sands development:

This contamination has caused health and environmental problems for the residents of Fort Chipewyan and other communities on the Athabasca watershed. A thorough investigation of the tar sands' health and environmental impacts is clearly imperative.

The AFB will commit \$30 million to an in-depth study of the water effects of tar sands development.

Conclusion

The myth of water abundance and the lack of legislation have created a climate in Canada where corporations have been able to exploit water resources with very little restriction compared to other industrialized countries. Canada, through better research and science, must improve its understanding of the looming freshwater crisis, set concrete targets to protect water and guarantee access to clean drinking water in all communities, while ensuring that water services remain in public hands.

Notes

¹ 2003. WHO. Right to Water. Health and human rights publications, series no. 3.

² WHO: http://www.who.int/water_sanitation_health/rightwater/en/

³ Health Canada: <http://www.hc-sc.gc.ca>

⁴ January, 2007. Legislative Study Committee of Groundwater Regulation and Funding. Legislative Council State House, Vermont.

5 Barlow, Maude. *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water*. (Toronto: McLelland and Stewart, 2007) 184

6 2008. Canadian Medical Association Journal. Investigative Report: 1,766 boil-water advisories now in place across Canada: <http://www.cmaj.ca/cgi/content/full/178/10/1261>

7 Barlow, Maude. *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water*. (Toronto: McLelland and Stewart, 2007) 184

8 Barlow, Maude Barlow, Maude. *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water*. (Toronto: McLelland and Stewart, 2007) p.179

9 Barlow, Maude. *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water*. (Toronto: McLelland and Stewart, 2007)