

## Nothing Sacred

### **The Growing Threat to Water & Indigenous Peoples**

*by The Interior Alliance of B.C. and The Council of Canadians 2001*

Water is life. It is our greatest gift from the earth. We celebrate it in our families, in our communities, and in our daily lives. Water is one of the foundations of our traditions and our survival as peoples.

Today, we see all around us that water is threatened. It is being polluted, depleted and given to corporations to quench their insatiable thirst for profits. These corporate rights are increasingly in conflict with our inherent and inalienable rights as Indigenous Peoples and the protection of the earth. We must insist that our Aboriginal Title, Rights and traditional knowledge to preserve water be given a prominent role in the solutions to the problems we face.

### **The Crisis**

Worldwide, the consumption of water is doubling every 20 years<sup>1</sup>, at more than twice the rate of the increase in human population, placing enormous pressures on aquatic ecosystems. Today, over a billion people lack adequate access to clean drinking water. By the year 2025, as much as two-thirds of the world's population will be living in conditions of water scarcity and demand will outstrip supply by 56%.

From the Far North of the Americas where much of the traditional lands of the James Bay Cree of Quebec now lie beneath a giant hydro-electric project, to Mexico, where centuries old systems of land tenure and resource protection have been devastated by industrialisation, to the very South of the continent where the Mapuche struggle to protect their traditional territory from the construction of further dams, indigenous peoples often bear the greatest impacts of global development and pressures on water. People in the developing world make up 75% of those without enough water and they will make up 95% of those suffering by 2025.

In Bolivia, where indigenous people make up 80% of the population, the spring of 2000 saw a mass uprising in city of Cochabamba to throw out the transnational water companies. These companies had raised the cost of water to one quarter of the average family's monthly salary. Clashes with the police and army resulted in one death, dozens of injuries and hundreds of arrests. Even now the water companies are trying to pressure the Bolivian government to reinstate their contract.

The threat to the environment is just as great. In Canada, wetland loss includes 65 percent of Atlantic coastal marshes, 70 percent of Southern Ontario wetlands, 71 percent of Prairie wetlands, and 80 percent of the Fraser River Delta in British Columbia. As a result of more than a century of mining, forestry and large-scale industrial production, toxic chemicals are found even in the most remote parts of the Far North. Less than 3 percent of the Great Lakes' shoreline is suitable for swimming, drinking or even supporting any aquatic life<sup>2</sup>. This represents a terrible danger to our fishing, hunting and trapping.

## **The Threat**

For decades governments and business have been anticipating this crisis and planning incredible schemes to cash in, regardless of the environmental and social impacts.

The GRAND Canal - the Great Recycling and Northern Development Canal which calls for the building of a dike across James Bay to divert waters flowing north to Hudson's Bay, south through a massive series of dikes, canals, dams, power plants and locks to the Great Lakes and down to the American Sunbelt. First proposed by Canadian engineer Tom Kierans in the 1959<sup>3</sup>, the scheme has found new fans speculating on the market in the thirsty American Southwest.

The NAWAPA - the North American Water and Power Alliance - has gone through a similar rebirth. The original plan included building a large number of major dams to trap the Yukon, Peace and Liard Rivers into a giant reservoir that would flood one-tenth of British Columbia to supply the United States market<sup>4</sup>.

Similarly, the call to export water by supertanker is heating up again. In British Columbia, a number of export companies were lined up for business when the government stopped the export of bulk water in 1991. Under just one of these contracts, sixteen supertankers sailing around the clock would have shipped to California the same amount of water Vancouver uses in one year<sup>5</sup>.

In 1998 Nova Corp. of Sault St Marie won approval to ship 600 million litres of water a year from Lake Superior. This licences was revoked due to pressure from the US State Department<sup>6</sup>.

In Newfoundland, The McCurdy Group, wants to export 52 billion litres of water a year from pristine Gisborne Lake. Despite new provincial legislation, McCurdy's president remains hopeful that eventually the world price will make water exports too enticing to ignore.

Global Water Corporation of Vancouver bluntly states: "Water has moved from being an endless commodity that may be taken for granted to a rationed necessity that may be taken by force." <sup>7</sup>

## **Our Aboriginal Title and Rights**

As indigenous peoples we have inherent rights to our traditional territories, including the whole circle of life, from the trees, to the water, to the fish and animals. Our rights stem from our use and possession of the land as warranted in our own legal and social systems since time immemorial. We have maintained those rights despite the undermining forces of colonisation and assimilation, because we fought for them in any way we could. After long judicial struggles the courts recognized our inherent rights to the land and water. The Supreme Court of Canada recognized Aboriginal Title in the 1997 Delgamuukw Decision as the collective proprietary interest indigenous peoples hold in their traditional territories. This follows international developments: in 1992 the rights of Aboriginal Peoples to the Australian continent had been recognized as Aboriginal Title and many of the new Latin American

constitutions enshrine legal pluralism, meaning the inherent, parallel jurisdiction of indigenous peoples, as a central principle.

In Canada First Nations fought for constitutional recognition of their inherent rights. In the 1980s thousands of Indians travelled from British Columbia to Ottawa and to Europe to have their rights recognized. Today Section 35 of the Canadian Constitution extends constitutional protection to our Aboriginal Title and Rights. These rights include control of resources sufficient to support and direct our lives and communities. This ensures that our access to water must come before non-aboriginal users.

The United Nations has recognised that indigenous people have the inalienable right to self-determination, including the right to sustain and protect their culture. As a central part of our traditional and spiritual life, water is elemental in the protection of these rights.

Yet these rights are not a priority for the Canadian government who maintains its policy calling for the extinguishment of Aboriginal Title and who has pursued a policy of guaranteeing corporate rights to water for more than twelve years. They have allowed our title and rights and the knowledge about sustainability that we bring with them, to be undermined by poor provincial management and international trade agreements that do not recognise our claims to resources in the protection of our culture.

### **Trade Agreements**

From the Winters Doctrine in the United States to the Sparrow decision in Canada, it has been recognised that Aboriginal Peoples have a priority right to water to sustain their communities. However, by signing international trade and services agreements, the government of Canada has abandoned these priority rights in order to secure corporate rights to water.

The list of goods subject to the provisions of the North American Free Trade Agreement includes "waters, including natural or artificial waters and aerated waters, ordinary natural water of all kinds".<sup>8</sup>

There are three key provisions of NAFTA that place water at risk:

"National Treatment" stipulates that no country can "discriminate" in favour of its own water users. This means that all NAFTA countries have equal rights to access each others water for commercial purposes of any kind.<sup>9</sup>

The "Proportionality" provisions mean a government of a NAFTA country cannot reduce or restrict the export of a resource to another NAFTA country once the exports have started.<sup>10</sup> This means that once water exports have started, the tap can't be turned off, even if new evidence finds that they pose a threat to the environment.

"Investor State" (NAFTA Chapter 11) gives corporations the right to sue the government of a NAFTA country if legislation interferes with its ability to make profits<sup>11</sup>. By using Chapter 11, Sun Belt Water Inc. of Santa Barbara, California is suing the Canadian government for

\$10.5 billion<sup>12</sup> because the government of British Columbia stopped it from exporting water to California.

Since NAFTA borrows its list of "goods" from the General Agreement on Tariffs and Trade (GATT), water is also under the rules of The World Trade Organization. Unlike any other global institution, including NAFTA, the WTO has the authority and capacity to challenge laws, policies, and programs of member countries and force them to be changed.<sup>13</sup>

Finally, the General Agreement on Trade in Services or GATS, also under the WTO, covers water as a service and an investment. The GATS negotiations currently underway include environmental services, and will try to force the privatisation of water services and waste management, ostensibly taking water out of the control of communities and putting it in the hands of corporations.

These agreements and the ideology that everything should be for sale to the highest bidder not only threaten our rights but deny the sacred nature of water - that it is given to us by the creator and the earth. This is the basis of our traditions and beliefs.

### **What we must do**

As First Nations we must:

1. Demand that we participate in any decisions that affects water.
2. Educate our communities to protect water
3. Insist that First Nation rights to water and self determination be protected from trade agreements like NAFTA and the WTO
4. Defend the sacredness of water and educate native and non-native people about its role in nature and in sustaining our culture. This means that water must be removed from trade agreements that contradict this reality.
5. Demand that the federal government live up to its commitments to indigenous peoples by recognizing our Aboriginal Title and Rights to the land and water
6. Use our inherent rights to defend water from pollution, depletion, and diversion and by banning bulk water exports. As we hold collective proprietary interest in our traditional territories and natural resources all dealing with them without our consent is an unfair trade practice and amounts to the trade of stolen goods.
7. Use our unique position as the traditional owners of the land and our inherent rights to the land and water to support initiatives of civil society and active non-governmental organisations such as the Council of Canadians to protect the environment and our water.

Together we must oppose the unsustainable belief in unlimited growth and irresponsible development that will eventually destroy the rights of all human beings. Without a new way, one in which our traditions can play a leading role, the earth will not survive.

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### **Endnotes**

<sup>1</sup> World Resources 1998-99, jointly published by the World Resources Institute, the United Nations Environmental Program, The United Nations Development Program, and the World Bank. Oxford U Press, Oxford and New York 1998 pp 188- 189

<sup>2</sup> Abramovitz, Janet N. "Sustaining Freshwater Ecosystems", Worldwatch Institute Annual Report, 1996 p.72

<sup>3</sup> Holm, Wendy. " Incompetence or Agenda" in Water and Free Trade, Lorimer, 1988 p. 33

<sup>4</sup> Holm, page 31

<sup>5</sup> Holm, page 41

<sup>6</sup> Toronto Star May 3, 1998

<sup>7</sup> Global Water Corporation website November 2, 1999

<sup>8</sup> for the definition of a good, NAFTA relies on the GATT Harmonized Commodity a Description Coding System 22.01

<sup>9</sup> Shrybman, "Abridged opinion" p 3

<sup>10</sup> NAFTA Article 315 (a) " the restriction does not reduce the proportion of the total export shipments of the specific good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction." means that the total supply of water in Canada would have to diminish before Canada could curtail exports to the U.S.

<sup>11</sup> Shrybman, "Abridged opinion" p 3

<sup>12</sup> Sun Belt Water Inc., news release October 14, 1999

<sup>13</sup> Marrakesh agreement establishing the WTO Article XVI (4) "Each member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed agreements." which the GATT.